

OPINION NO. 2002-038**Syllabus:**

Pursuant to R.C. 3750.11(G), a municipal corporation that owns and operates a public water system, as defined in R.C. 6109.01(A), and a township that is served by that public water system have coextensive authority to establish and enforce requirements in their respective zoning regulations to protect ground water resources that serve as a source of drinking water for the public water system and that are located within scientifically derived wellhead protection areas situated entirely in the unincorporated territory of the township.

To: William F. Schenck, Greene County Prosecuting Attorney, Xenia, Ohio
By: Betty D. Montgomery, Attorney General, December 17, 2002

You have requested an opinion concerning the protection of ground water¹ resources that serve as a source of drinking water for a public water system. In your letter you state that municipal corporations that own and operate public water systems are establishing requirements in their zoning regulations that provide for the protection of ground

¹Ground water is water found below the water table. Sarah E. Lewis, *The 1986 Amendments to the Safe Drinking Water Act and Their Effect on Groundwater*, 40 Syracuse L. Rev. 893, 895-96 (1989); see 7 Ohio Admin. Code 3745-81-01(II).

water resources that serve as a source of drinking water for their public water systems and that are located within wellhead protection areas² situated entirely outside of the territorial boundaries of the municipal corporations.

Townships that encompass the wellhead protection areas and that are served by the municipal corporations' public water systems are also establishing similar requirements in their zoning regulations. Accordingly, you wish to know whether the municipal corporation that owns or operates a public water system has priority in establishing zoning regulations related to the protection of the ground water resources in the wellhead protection areas, or whether that authority is shared, or whether the townships that have jurisdictional authority over the wellhead protection areas have primary responsibility for the zoning regulations.

Let us first examine the authority of a township to establish and enforce requirements in its zoning regulations to protect ground water resources. Pursuant to R.C. Chapter 519, a township has the authority to enact zoning regulations. 2000 Op. Att'y Gen. No. 2000-022 at 2-140. R.C. 519.02 states, in part:

For the purpose of promoting the public health, safety, and morals, the board of township trustees may in accordance with a comprehensive plan regulate by resolution ... the uses of buildings and other structures ... and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such township, and for such purposes may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines.

In addition, R.C. 3750.11(G) provides:

A political subdivision that owns, operates, or is served by a public water system as defined in [R.C. 6109.01]³ may establish and enforce requirements that provide for the protection of ground water resources that serve as a source of drinking water for its public water system and that are located within scientifically derived wellhead protection areas. (Footnote added.)

² Pursuant to 42 U.S.C. § 300h-7(a) (2000), each state is required to establish a "program to protect wellhead areas within [its] jurisdiction from contaminants which may have any adverse effect on the health of persons." For purposes of this section, "wellhead protection area" is defined as "the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield." 42 U.S.C. § 300h-7(e) (2000). Each state determines the extent of a wellhead protection area. *Id.* See generally 7 Ohio Admin. Code 3745-81-14(G) ("[t]he best available technology for achieving compliance with the maximum contaminant level for total coliforms as set forth in this rule shall be: ... Where appropriate, the development and implementation of a wellhead protection program approved by the [Director of Environmental Protection]").

³R.C. 6109.01(A) defines a "[p]ublic water system" as "a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system has at least fifteen service connections or regularly serves at least twenty-five individuals."

Thus, the General Assembly has empowered any political subdivision to establish and enforce requirements for the entire scientifically derived wellhead protection area. See generally Ohio Const. art. II, § 36 (laws may be passed "to provide for the conservation of the natural resources of the state").

Although the term "political subdivision" is not statutorily defined for purposes of R.C. 3750.11(G), this term should be construed according to its ordinary meaning and common usage. R.C. 1.42; see 1997 Op. Att'y Gen. No. 97-036 at 2-211. The term "political subdivision" has been defined as "a limited geographical area of the State, within which a public agency is authorized to exercise some governmental function." 1972 Op. Att'y Gen. No. 72-035 at 2-135; accord 1984 Op. Att'y Gen. No. 84-055 at 2-183; see also *Black's Law Dictionary* 1179 (7th ed. 1999) (defining the term "political subdivision" as "[a] division of a state that exists primarily to discharge some function of local government"). Moreover, it has been determined that this general definition of "political subdivision" includes townships. *Tuber v. Perkins*, 6 Ohio St. 2d 155, 157, 216 N.E.2d 877, 879 (1966); see *Washington Twp. v. Rapp*, 50 Ohio App. 1, 3, 197 N.E. 413, 414 (Lucas County 1934); 1950 Op. Att'y Gen. No. 2498, p. 730, at 731. A township, thus, is a "political subdivision" for purposes of R.C. 3750.11(G). Therefore, R.C. 3750.11(G) authorizes a township that is served by a public water system to establish and enforce requirements that provide for the protection of ground water resources that serve as a source of drinking water for the public water system and that are located within scientifically derived wellhead protection areas situated entirely inside the unincorporated territory of the township.

Nothing in the language of R.C. 3750.11(G), however, prohibits, either explicitly or implicitly, a township from establishing and enforcing such requirements when the scientifically derived wellhead protection area that serves as a source of drinking water for the township's public water system is located either entirely or partially outside the unincorporated territory of the township. In addition, a township is not prohibited from establishing and enforcing such requirements when the public water system is owned and operated by a municipal corporation. To the contrary, R.C. 3750.11(G) plainly states that a township that "is served by a public water system ... may establish and enforce [such] requirements." (Emphasis added.) Where the language of a statute is clear and unequivocal, it is to be applied, not interpreted. *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five). Thus, the fact that a scientifically derived wellhead protection area that serves as a source of drinking water for a township's public water system is located either entirely or partially outside the unincorporated territory of the township or that the township's public water system is owned and operated by a municipal corporation does not prevent a township from establishing and enforcing requirements that provide for the protection of ground water resources that serve as a source of drinking water for the township's public water system.

Additionally, no statute prohibits a township from including these requirements as a part of zoning regulations that are enacted by the township pursuant to R.C. Chapter 519. A township thus is not prohibited from placing these requirements in its zoning regulations.⁴ Accordingly, pursuant to R.C. 3750.11(G), a township that is served by a public water system as defined in R.C. 6109.01(A) that is owned and operated by a municipal corporation is authorized to establish and enforce requirements in its zoning regulations that provide for

⁴Any township zoning regulation that contains requirements that provide for the protection of ground water resources that serve as a source of drinking water for a public water system that serves the township must be enacted and enforced in accordance with the provisions of R.C. Chapter 519.

the protection of ground water resources that serve as a source of drinking water for the municipal corporation's public water system and that are located within scientifically derived wellhead protection areas, regardless of the location of the scientifically derived wellhead protection areas.

We turn now to the authority of a municipal corporation to establish and enforce requirements in its zoning regulations to protect ground water resources. A municipal corporation has both the constitutional and statutory authority to enact zoning regulations. 2000 Op. Att'y Gen. No. 2000-022 at 2-141. It is well established that a chartered or nonchartered municipal corporation has the authority to enact zoning regulations as an exercise of its police power granted under home rule, Ohio Const. art. XVIII, § 3. *Id.* Statutes enacted by the General Assembly governing the adoption of zoning regulations by municipal corporations may be found at R.C. 713.06-15. *Id.*

As explained previously, R.C. 3750.11(G) authorizes a "political subdivision" that owns, operates, or is served by a public water system to establish and enforce requirements that provide for the protection of ground water resources that serve as a source of drinking water for the public water system and that are located within scientifically derived wellhead protection areas, regardless of the location of the scientifically derived wellhead protection areas. Municipal corporations, like townships, are included in the general definition of "political subdivision" for purposes of R.C. 3750.11(G). *See Wolf v. City of Columbus*, 98 Ohio App. 333, 129 N.E.2d 309 (Franklin County 1954); *see also New Orleans v. Clark*, 95 U.S. 644, 654 (1877); 1974 Op. Att'y Gen. No. 74-088 at 2-365. Thus, R.C. 3750.11(G) authorizes a municipal corporation that owns, operates, or is served by a public water system to establish and enforce requirements that provide for the protection of ground water resources that serve as a source of drinking water for the public water system and that are located within scientifically derived wellhead protection areas, regardless of the location of the scientifically derived wellhead protection areas.

In support of this conclusion, we note that nothing in the language of R.C. 3750.11(G) states that a municipal corporation that owns and operates a public water system is prohibited from establishing and enforcing requirements to protect ground water resources that are located within scientifically derived wellhead protection areas situated either entirely or partially outside of the municipal corporation's boundaries. In fact, such extra-territorial regulation is expressly authorized by R.C. 3750.11(G). Thus, pursuant to R.C. 3750.11(G), a municipal corporation that owns and operates a public water system may establish and enforce requirements to protect ground water resources that are located within scientifically derived wellhead protection areas situated either entirely or partially outside of the municipal corporation's boundaries. *See generally* 1938 Op. Att'y Gen. No. 3327, vol. III, p. 2187 (syllabus) ("[a] municipality owning and operating a water works which derives its water from a stone quarry less than twenty miles beyond the corporate limits, has the power by ordinance to protect such water supply from pollution").

We are aware that municipal corporations have no inherent authority to regulate activities outside their territorial boundaries. *Prudential Coop. Realty Co. v. City of Youngstown*, 118 Ohio St. 204, 207, 160 N.E. 695, 696 (1928); *Sanders v. Snyder*, 113 Ohio App. 370, 373-74, 178 N.E.2d 174, 176 (Williams County 1960). It is, however, firmly established that the General Assembly may authorize municipal corporations to regulate activities outside their territorial boundaries. *Prudential Coop. Realty Co. v. City of Youngstown*, 118 Ohio St. at 207, 160 N.E. at 696; *Sanders v. Snyder*, 113 Ohio App. at 374, 178 N.E.2d at 176 ("extra-territorial authority may be conferred upon a municipality by legislation"); *see, e.g.,* R.C. 711.09(A)(1) ("[e]xcept as otherwise provided in [R.C. 711.09(A)(2)], when a city planning

commission adopts a plan for the major streets or thoroughfares and for the parks and other open public grounds of a city or any part of it, or for the unincorporated territory within three miles of the corporate limits of a city or any part of it, then no plat of a subdivision of land within that city or territory shall be recorded until it has been approved by the city planning commission and that approval endorsed in writing on the plat"); R.C. 715.50 ("[a] municipal corporation owning and using lands beyond its limits for a municipal purpose may provide, by ordinance or resolution, all needful police or sanitary regulations for the protection of such property and may prosecute violations thereof in the municipal court of such municipal corporation").

As explained in *Prudential Coop. Realty Co. v. City of Youngstown*, 118 Ohio St. at 210-12, 160 N.E. at 697-98:

In recognition of the mutual interests of cities and surrounding territory, Legislatures have given to municipalities certain regulatory authority over their environs.

It has been held that a city may exercise police power in the protection of territory outside of the city to insure cleanliness and to prevent any business and conduct likely to corrupt the source of water supply for the city. A city may acquire outside territory for sewage purposes and exercise police power over the same. It may establish quarantine beyond municipal boundaries to protect citizens from epidemic or contagious and infectious diseases. It may locate and regulate houses of detention and hospitals for contagious diseases beyond the city limits. It may provide for the inspection of milk sold in the city and require dairies located outside of the city to register and to pay a registration fee to cover expenses of inspection.

....

All of these exercises of extraterritorial authority present a strong analogy to the authority exercised in the case at bar. It would be difficult, and it is unnecessary, to enumerate all the ramifications of mutual duty and obligation between cities and surrounding territories. As a city grows, homes and industrial, commercial, educational, and religious institutions spring up outside the city limits, and all these require utility service which only the city can furnish. *It is not contended that a city may by virtue of necessity arrogate to itself any regulatory authority over the people or property located in close proximity, and it is conceded that it has only such authority as may constitutionally be conferred by legislation.... Legislation has conferred upon cities regulatory powers over adjacent territory for so long a period, in so many jurisdictions, and in such a variety of matters, that the general principle has become firmly established, and, the question being one of legislative power, the inquiry must relate to the reasonableness of the regulation, and the justiciable question is whether the regulatory authority conferred has a reasonable relation to the governmental purpose to be served. If it has such reasonable relation, it becomes only a question of legislative wisdom with which the courts have no concern. (Emphasis added and citations omitted.)*

With respect to R.C. 3750.11(G), it is clear that the purpose of this provision is protect ground water resources that serve as a source of drinking water for public water systems. See generally 42 U.S.C. § 300h-7(a) (2000) (each state is required to establish a "program to protect wellhead areas within [its] jurisdiction from contaminants which may

have any adverse effect on the health of persons"). In order to accomplish this objective, the General Assembly has expressly authorized municipal corporations, *inter alia*, to establish and enforce requirements that provide for the protection of ground water resources that serve as a source of drinking water for their public water systems. In addition, the General Assembly has made it clear that requirements established by a municipal corporation to protect its drinking water are to be enforced throughout the scientifically derived wellhead protection area that serves as the source of drinking water for the municipal corporation's public water system, regardless of the location of the scientifically derived wellhead protection area. Thus, a municipal corporation is authorized by R.C. 3750.11(G) to establish and enforce requirements to protect ground water resources that serve as a source of drinking water for its public water system and that are located within a scientifically derived wellhead protection area, even if the scientifically derived wellhead protection area is situated either entirely or partially outside of the municipal corporation's boundaries. See generally 1938 Op. Att'y Gen. No. 2854, vol. II, p. 1596, at 1597 ("where legislative intent is clearly and definitely expressed, this office is bound to give effect to it and cannot, however liberal it may wish to be, nullify, change or amend by its rulings the express provisions of a statute").

We note also that no statute prohibits a municipal corporation from placing these requirements in zoning regulations that are enacted pursuant to R.C. 713.06-.15 or its police power granted under home rule, Ohio Const. art. XVIII, § 3. A municipal corporation thus is not prohibited from placing these requirements in its zoning regulations.⁵ Accordingly, pursuant to R.C. 3750.11(G), a municipal corporation that owns and operates a public water system as defined in R.C. 6109.01(A) is authorized to establish and enforce requirements in its zoning regulations that provide for the protection of ground water resources that serve as a source of drinking water for its public water system and that are located within scientifically derived wellhead protection areas situated either entirely or partially outside of the municipal corporation's boundaries.

R.C. 3750.11(G) thus authorizes both townships and municipal corporations to establish and enforce requirements in their zoning regulations that provide for the protection of ground water resources that serve as a source of drinking water for public water systems and that are located within scientifically derived wellhead protection areas, regardless of the location of the scientifically derived wellhead protection areas. It is a well established principle of law that "when two authorities have the power to regulate an activity or use of land, there must be compliance with the regulations of both." 1988 Op. Att'y Gen. No. 88-051 at 2-228; see, e.g., 1988 Op. Att'y Gen. No. 88-053 (syllabus, paragraph four) ("[a] facility for the disposal of PCB's that is in compliance with state law governing air pollution control, solid waste disposal (other than the disposal of hazardous wastes), and water pollution control is not exempt from township zoning provisions by R.C. Chapter 3704, R.C. Chapter 3734, or R.C. Chapter 6111"); 1985 Op. Att'y Gen. No. 85-053 at 2-199 (stating that "the fact that a state agency has authority to regulate a certain activity does not, in itself, mean that a township may not enact zoning regulations which affect that activity" and concluding that township zoning and state regulation of urban sediment pollution may coexist). It follows, therefore, that, pursuant to R.C. 3750.11(G), a municipal corporation that owns and operates a public water system, as defined in R.C. 6109.01(A), and a township that is served by that public water system have coextensive authority to establish and enforce

⁵Any municipal zoning regulation that contains requirements that provide for the protection of ground water resources that serve as a source of drinking water for a public water system that is owned and operated by the municipal corporation must be enacted and enforced in accordance with the laws that govern municipal zoning.

requirements in their respective zoning regulations to protect ground water resources that serve as a source of drinking water for the public water system and that are located within scientifically derived wellhead protection areas situated entirely in the unincorporated territory of the township.

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to R.C. 3750.11(G), a municipal corporation that owns and operates a public water system, as defined in R.C. 6109.01(A), and a township that is served by that public water system have coextensive authority to establish and enforce requirements in their respective zoning regulations to protect ground water resources that serve as a source of drinking water for the public water system and that are located within scientifically derived wellhead protection areas situated entirely in the unincorporated territory of the township.