

July 6, 2017

The Honorable Scott A. Haselman
Fulton County Prosecuting Attorney
152 South Fulton Street, Suite 240
Wauseon, Ohio 43567

SYLLABUS:

2017-020

The Ohio Department of Health's issuance of a license pursuant to [2016-2017 Ohio Monthly Record, Pamphlet No. 2, at p. 2-414] Ohio Admin. Code 3701-33-03 to operate an agricultural labor camp that houses up to twelve unrelated individuals does not preempt a county zoning regulation that prohibits the construction and use of dwellings that house more than five unrelated individuals in the area or district in which the licensed agricultural labor camp is located, so long as the operation of an agricultural labor camp is permitted in other areas or districts within the county.



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OPINION NO. 2017-020

The Honorable Scott A. Haselman
Fulton County Prosecuting Attorney
152 South Fulton Street, Suite 240
Wauseon, Ohio 43567

Dear Prosecutor Haselman:

We have received your request whether the licensure of an agricultural labor camp pursuant to [2016-2017 Ohio Monthly Record, Pamphlet No. 2, at p. 2-414] Ohio Admin. Code 3701-33-03 preempts the application of a county zoning regulation. The Fulton County Board of Commissioners approved a resolution adopting a zoning code and plan for Fulton County. See *Fulton County Rural Zoning Code, Resolution*, p. iii, available at <http://www.fultoncountyoh.com/DocumentCenter/Home/View/32> (last visited June 30, 2017). Article 100-10 of the Fulton County Zoning Resolution establishes a First Density Residential District “designed to provide a single-family detached dwelling environment with supporting ancillary uses.” *Id.* at Article 100-10.1. The Fulton County Zoning Resolution defines single-family dwellings as “[d]etached, individual dwelling units, which accommodate one family related by blood, adoption, or marriage; or up to five unrelated individuals living as one housekeeping unit.” *Id.* at Article 100-23 (defining “Dwelling, Single Family”).

Pursuant to rule 3701-33-03, the Ohio Department of Health (“ODH”) issued a license to the owner of real property located in a First Density Residential District to operate an agricultural labor camp. The license permits the agricultural labor camp to house up to twelve unrelated individuals. The Fulton County Zoning Inspector desires to enforce Article 100-10 of the Fulton County Zoning Resolution against the operator of the agricultural labor camp. You ask whether the Fulton County Zoning Inspector may enforce the county’s zoning regulation or whether Article 100-10 of the Fulton County Zoning Resolution is preempted by ODH’s issuance of the agricultural labor camp license.

The Authority of a Board of County Commissioners to Adopt Zoning Regulations

“Zoning regulations are enacted” in Ohio “through the exercise of the government’s police power.” *Holiday Homes, Inc. v. Butler Cnty. Bd. of Zoning Appeals*, 35 Ohio App. 3d 161, 165, 520 N.E.2d 605 (Butler County 1987). With the exception of Ohio Const. art. XVIII, § 3, the Ohio Constitution entrusts the police power of the state to the Ohio General Assembly.

Holiday Homes, 35 Ohio App. 3d at 165; *see also* Ohio Const. art. II, § 1 (“[t]he legislative power of the state shall be vested in a General Assembly”); Ohio Const. art. XVIII, § 3 (“[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police ... regulations, as are not in conflict with general laws”). The General Assembly delegates the portion of its police power related to zoning or land use control to counties and townships. *Holiday Homes*, 35 Ohio App. 3d at 165; *see also* R.C. 303.01-.25 (county rural zoning); R.C. Chapter 519 (township zoning); 1990 Op. Att’y Gen. No. 90-081, at 2-346 (“[t]ownships ‘have no inherent or constitutionally granted police power, the power upon which zoning legislation is based. Whatever police or zoning power townships of Ohio have is that delegated by the General Assembly’” (quoting *Yorkavitz v. Bd. of Twp. Trs. of Columbia Twp.*, 166 Ohio St. 349, 351, 142 N.E.2d 655 (1957))). The authority of a county to regulate land use through zoning regulations is governed by R.C. 303.01-.25.

R.C. 303.02 confers upon a board of county commissioners the power “to enact a comprehensive zoning plan for the unincorporated portions of the county.” *Holiday Homes*, 35 Ohio App. 3d at 165. The statute provides, in pertinent part:

(A) Except as otherwise provided in this section, in the interest of the public health and safety, the board of county commissioners may regulate by resolution, in accordance with a comprehensive plan, the location, height, bulk, number of stories, and size of buildings and other structures, ... the density of population, 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 the county. Except as otherwise provided in this section, in the interest of the public convenience, comfort, prosperity, or general welfare, the board, by resolution, in accordance with a comprehensive plan, may regulate the location of ... and 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 the county....

R.C. 303.02(A). “For all these purposes, [a board of county commissioners] may divide all or any part of the unincorporated territory of the county into districts or zones of such number, shape, and area as the board determines.” *Id.* The “regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.” *Id.*

Prior to “availing itself of the powers conferred in [R.C. 303.02],” R.C. 303.03 requires a board of county commissioners to declare its intention to proceed under R.C. 303.01-.25 by passing a resolution to that effect. R.C. 303.03. A board of county commissioners proceeding under R.C. 303.01-.25 “shall create and establish a county rural zoning commission ... composed of five members ... appointed by the board.” R.C. 303.04. The county rural zoning commission is responsible for recommending a plan to the board of county commissioners that details the way in which the board shall carry out “the powers, purposes, and provisions set forth

in [R.C. 303.01-.99].” R.C. 303.05. If a regional planning commission exists in the county, the county rural zoning commission “shall request such planning commission to prepare or make available to the zoning commission a zoning plan ... for the unincorporated area of the county or any portion of the same.”¹ *Id.*

Prior to certifying a zoning plan to the board of county commissioners, “the county rural zoning commission shall hold at least one public hearing in each township affected by the proposed ... plan.” R.C. 303.06. Thereafter, the county rural zoning commission submits the zoning plan to the regional planning commission for approval or suggestions. R.C. 303.07. If approved by the regional planning commission, the zoning plan is certified by the county rural zoning commission to the board of county commissioners. *Id.* The board of county commissioners holds another public hearing on the zoning resolution, and, if no changes are to be made to the resolution, votes upon the zoning resolution’s adoption. R.C. 303.10. Upon adopting the zoning resolution, the board of county commissioners submits the resolution for approval to the electors residing in the unincorporated area of the county. R.C. 303.11. R.C. 303.16 authorizes the board of county commissioners to “establish and fill the position of county zoning inspector” to enforce the county’s zoning regulations.

A County Zoning Regulation May Not Conflict with State Law

A board of county commissioners is not limitless in its power to enact zoning regulations pursuant to R.C. 303.02. A board of county commissioners may not, for example, “prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located.”² R.C. 303.21(A); *see also* R.C. 303.01 (“‘agriculture’ includes farming; ranching; ...

¹ Fulton County has a regional planning commission. *See* Fulton County, Ohio Website, *Fulton County Regional Planning Commission*, available at <http://www.fultoncountyoh.com/index.aspx?NID=197> (last visited June 30, 2017).

² In this instance, we understand that the licensed agricultural labor camp is used solely as a residence for laborers who participate in agricultural activities several miles away from the land on which the agricultural labor camp is located. A zoning regulation that prohibits the construction or use of buildings or structures used to house laborers who participate in agricultural activities on land other than where the buildings or structures are located does not “prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located” for the purpose of R.C. 303.21(A). *Cf.* 1993 Op. Att’y Gen. No. 93-034, at 2-171 (“buildings used to house farm laborers who work exclusively on land other than that where the buildings are located” are not “buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located” for purposes of R.C. 519.21(A), the township equivalent to R.C. 303.21(A)). Therefore, in this instance, the

animal husbandry ...; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; ... any combination of the foregoing; and the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production”). *But see* R.C. 303.21(B) (excepting certain regulations from the prohibition in R.C. 303.21(A)). A board of county commissioners also may not enact, or have its county zoning inspector enforce, zoning regulations that conflict with the general laws of the state. *See Clarke v. Bd. of Cnty. Comm’rs of Warren Cnty., Ohio*, Warren App. No. CA2005-04-048, 2006-Ohio-1271, at ¶24 (recognizing that the enactment of a county zoning regulation “is a legitimate exercise of police power so long as the ordinance is not in conflict with general law”). If such a conflict exists, state law preempts the application and enforceability of the local zoning regulation. *See, e.g., Perry v. Providence Twp.*, 63 Ohio App. 3d 377, 381, 578 N.E.2d 886 (Lucas County 1991) (holding that because a township zoning regulation prohibiting the disposal or spreading of sludge and sewage by-products throughout the entire township conflicted with provisions in R.C. Chapter 6111 that implicitly authorized the operation of sewage disposal facilities, the zoning resolution was preempted by state law). It is this limitation on the county’s zoning power that has caused you to ask whether the Fulton County Zoning Inspector may enforce Article 100-10 of the Fulton County Zoning Resolution against the licensed agricultural labor camp.

The test for determining “when a conflict exists between a [local zoning resolution] and a general law of the state is ‘whether the [resolution] permits or licenses that which the statute forbids and prohibits, and vice versa.’” *Vill. of Sheffield v. Rowland*, 87 Ohio St. 3d 9, 11, 716 N.E.2d 1121 (1999) (quoting *Vill. of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) (syllabus, paragraph two)); *see also* 2007 Op. Att’y Gen. No. 2007-038, at 2-390. “General laws are defined as those ‘operating uniformly throughout the state ..., which prescribe a rule of conduct upon citizens generally, and which operate with general uniform application throughout the state under the same circumstances and conditions.’” *Sheffield*, 87 Ohio St. 3d at 11 (quoting *Garcia v. Siffrin Residential Ass’n*, 63 Ohio St. 2d 259, 270, 407 N.E.2d 1369 (1980), *overruled sub silentio on other grounds by Saunders v. Clark Cnty. Zoning Dep’t*, 66 Ohio St. 2d 259, 421 N.E.2d 152 (1981)). R.C. 3733.41-49 govern the licensure, inspection, and habitability of agricultural labor camps in the state of Ohio. An “agricultural labor camp” is “one or more buildings or structures, trailers, tents, or vehicles, together with any land appertaining thereto, established, operated, or used as temporary living quarters for two or more families or five or more persons intending to engage in or engaged in agriculture or related food processing.” R.C. 3733.41(A). R.C. 3733.42 requires the Director of Health to “adopt rules having a uniform application throughout the state” that govern “the issuance of licenses, location, layout, construction, approval of plans, sanitation, safety, operation, use, and maintenance of agricultural labor camps.”

application of Article 100-10 of the Fulton County Zoning Resolution to the agricultural labor camp is not prohibited by R.C. 303.21(A).

Rule 3701-33-03 mandates state licensure of agricultural labor camps. The rule requires “[e]very person who intends to operate an agricultural labor camp” to “submit an application to [the Director of Health] ... for a license to operate such camp.” Rule 3701-33-03(A). Divisions (A)(1) through (A)(12) of rule 3701-33-03 list the information that shall be included in an application for an agricultural labor camp license, including the location of the proposed camp, the number of expected occupants, and the number of housing units. R.C. 3733.41-.49 and the rules adopted by the Director of Health pursuant to R.C. 3733.42 impose rules of conduct upon persons desiring to operate agricultural labor camps in Ohio and operate uniformly throughout the state. Therefore, R.C. 3733.41-.49 and the rules adopted thereunder are general laws.

“[T]he fact that a state agency has authority to regulate a certain activity does not, in itself,” prohibit a local government from enacting zoning regulations “which affect that activity.” 1985 Op. Att’y Gen. No. 85-053, at 2-199; *see also* 1990 Op. Att’y Gen. No. 90-081, at 2-347 (“[t]he fact that a ... state statute governs the same subject matter as a township zoning regulation does not ... necessarily create a conflict which invalidates [a] township zoning regulation”). The court of appeals in *Board of Trustees, Jackson Township, Clermont County, Ohio v. Miami Valley Associates, Inc.*, App. No. 540, 1975 WL 181077, (Clermont County June 2, 1975), thoroughly examined the circumstances in which general state laws preempt local zoning regulations. In that case, a company sought permission from a township zoning board of appeals to construct a trailer park in an area zoned “agricultural.” *Miami Valley Assocs.*, 1975 WL 181077 at *1. The township’s zoning resolution authorized the construction of a trailer park in an agricultural district as a special exception, upon written approval from the township zoning board of appeals. *Id.* The township’s zoning resolution required, among other things, that the sites for each mobile home in the park contain a minimum of one-half acre. *Id.* The company’s proposed trailer park did not satisfy this requirement. *Id.* Therefore, the board of township trustees filed an action to enjoin the company from constructing the park. *Id.*

The trial court determined that the township’s zoning resolution “was unconstitutional inasmuch as the state had preempted the regulation of trailer lots, pursuant to R.C. 3733.02(A), and Public Health Council, Department of Health, State of Ohio, Regulation HE-27-08.” *Id.* Similar to the language in R.C. 3733.42, R.C. 3733.02(A) stated that “[t]he public health council ... may make regulations of general application throughout the state governing the location, layout, construction, drainage, sanitation, safety, and operation of house trailer parks and travel trailer parks.” *Miami Valley Assocs.*, 1975 WL 181077 at *3 (quoting R.C. 3733.02). Public Health Council Regulation HE-27-08 provided that mobile home sites could not be less than 3,600 square feet. *Id.* at *1.

The court of appeals reversed the trial court’s holding, finding that no conflict existed between the township’s zoning regulation and R.C. Chapter 3733 “as implemented by Public Health Council Regulation HE-27-08.” *Id.* at *4. The court stated: “[R.C.] Chapter 3733 does preempt the field as far as permitting licensing of a trailer park by the board of health only in the district in which it is located,” but “does not preempt the field as to zoning and location of trailer parks completely.” *Id.* The court explained that local zoning authorities “still ha[ve] some power to provide for zoning of trailer parks,” and “held that the state has not preempted the field

concerning the original location of trailer parks so as to preclude township trustees who have properly enacted zoning regulations to require larger lot sizes than the minimums required by Public Health Regulation HE-27-08.” *Id.* at *4, *5; *see also Parrish v. Bd. of Twp. Trs. of Marion Twp.*, App. No. 9-95-53, 1996 WL 368228, at *5 n.2 (Marion County June 24, 1996) (recognizing that while “R.C. 3733.02 has preempted some aspects” of mobile home park regulation, “there is authority supporting the conclusion that a township, nonetheless, retains the authority to adopt zoning provisions regulating mobile home park site locations in accordance with R.C. 519.02”).

The reasoning in *Miami Valley Associates* demonstrates that, similar to the statutes governing licensing of trailer parks, R.C. 3733.41-.49 and rule 3701-33-03 preempt local regulations that govern the licensure of agricultural labor camps.³ *Cf. State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St. 3d 271, 37 N.E.3d 128, 2015-Ohio-485 (provisions in R.C. Chapter 1509 that governed state permits for oil and gas wells preempted city ordinances that, among other things, required a landowner to obtain a zoning certificate from the city zoning inspector before undergoing any construction or excavation on land within the municipality). The reasoning in *Miami Valley Associates* also demonstrates that R.C. 3733.41-.49 and rule 3701-33-03 do not, as a general matter, preempt local zoning resolutions that regulate the original location of agricultural labor camps.⁴ *See also Painesville Twp. v. Buss*, App. No. 94-L-101, 1996 WL 857915, at *3 (Trumbull County May 17, 1996) (finding that a township zoning

³ For example, if a local regulation were to impose upon agricultural labor camps licensing requirements that are additional or different from those set forth in R.C. 3733.41-.49 and rule 3701-33-03, the regulation would be preempted by state law.

⁴ A local zoning regulation that prohibits the operation of agricultural labor camps throughout the county, either on its face or by its application, is preempted by R.C. 3733.41-.49. *See, e.g., Vill. of Sheffield v. Rowland*, 87 Ohio St. 3d 9, 716 N.E.2d 1121 (1999) (village zoning ordinances that prohibited the operation of construction and demolition debris facilities throughout the entire village conflicted with provisions in R.C. Chapter 3714 governing the licensure of such facilities); *Newbury Twp. Bd. of Twp. Trs. v. Lomak Petroleum (Ohio), Inc.*, 62 Ohio St. 3d 387, 583 N.E.2d 302 (1992), *superseded by statute on other grounds* (a township zoning regulation that, on its face, appeared to limit oil drilling to particular areas or districts in the township, but that acted as a per se prohibition on oil drilling when applied, was preempted by state law governing the licensing of oil and gas wells). *See generally* 1994 Op. Att’y Gen. No. 94-040, at 2-205 (“[i]n situations where state statutes affirmatively encourage a particular use, ... the Ohio Supreme Court has found that blanket zoning prohibitions not specifically tailored to local conditions are impermissibly in conflict with state law”). You have informed us that the operation of agricultural labor camps is permitted in several areas or districts throughout Fulton County. *See, e.g., Fulton County Rural Zoning Code, Article 100-8 (agricultural district (AI))*, available at <http://www.fultoncountyoh.com/DocumentCenter/Home/View/32> (last visited June 30, 2017). Accordingly, Article 100-10 of the Fulton County Zoning Resolution is not preempted by R.C. 3733.41-.49.

ordinance that prohibited certain types of camps in a particular area of the township, but that did not attempt to license the camps in conflict with R.C. Chapter 3733, was not preempted by the provisions in that chapter); 1993 Op. Att’y Gen. No. 93-034, at 2-173 n.3 (“[b]ecause it is not the purpose of [R.C. 3733.41-.49] to govern land use,” it does not “preempt[] local zoning authority per se”). Cf. 2000 Op. Att’y Gen. No. 2000-022, at 2-142 (“it has been consistently held that” the state statutes that regulate manufactured home parks (R.C. 3733.01-.08) “do *not* preempt local zoning provisions so long as the local provisions are not in conflict with [those statutes]” (emphasis in original)). The Fulton County Zoning Resolution, which includes Article 100-10, regulates the original location of agricultural labor camps by designating particular zones or districts within which an agricultural labor camp may or may not operate. See generally Fulton County Rural Zoning Code, available at <http://www.fultoncountyoh.com/DocumentCenter/Home/View/32> (last visited June 30, 2017). As is demonstrated by the reasoning in *Miami Valley Associates*, such a zoning resolution is not preempted by state laws that regulate the licensure of agricultural labor camps.

While R.C. 3733.41-.49 and their corresponding administrative rules do not, as a general matter, preempt Article 100-10 of the Fulton County Zoning Resolution, you ask whether ODH’s issuance of an agricultural labor license to an owner of property located in a First Density Residential District preempts the county’s zoning regulation. The agricultural labor camp license authorizes the camp to house up to twelve unrelated persons, while the Fulton County Zoning Resolution authorizes buildings or structures located in a First Density Residential District to house up to five unrelated persons. We find an Ohio court of appeals case, *Hulligan v. Columbia Township Board of Zoning Appeals*, 59 Ohio App. 2d 105, 392 N.E.2d 1272 (Lorain County 1978), instructive in analyzing your question.

In *Hulligan*, the owners of real property desired to use their land as a sanitary landfill site. *Id.* at 106. The owners sought a permit to install the landfill from the Ohio Environmental Protection Agency (“Ohio EPA”) pursuant to the provisions in R.C. Chapter 3734. *Id.* R.C. Chapter 3734 and the rules promulgated thereunder authorized the Ohio EPA to regulate landfill operations and issue permits therefor. *Id.* at 107. The owners also sought permission to install the sanitary landfill from the township zoning inspector. *Id.* at 106. The township zoning inspector denied the owners’ application and the owners appealed, arguing, among other things, that the Ohio EPA had exclusive jurisdiction to decide whether the owners could operate the landfill on their property.⁵ *Id.* at 106-07.

⁵ Meanwhile, the Ohio EPA granted the owners’ permit to install the landfill, but was reversed on appeal by the Environmental Board of Review (“EBR”). *Hulligan v. Columbia Twp. Bd. of Zoning Appeals*, 59 Ohio App. 2d 105, 106, 392 N.E.2d 1272 (Lorain County 1978). The court of appeals, in a separate case, reversed the EBR’s decision and remanded the case to the Ohio EPA. *Id.* (citing *Columbia Twp. Trs. v. Williams*, App. Nos. 76AP-107, et al., 1976 WL 190118 (Franklin County Aug. 5, 1976)). In that reversal, the court advised the Ohio EPA to consider local zoning laws when reviewing the owners’ requested permit and stated that any

The court recognized that the owners' argument on appeal "presuppose[d] a conflict of authority between [the Ohio EPA and the township zoning inspector] regarding ... the permissive use of solid waste disposal sites." *Id.* at 107. The court rejected this presupposition, finding that the township's zoning regulations and the Ohio EPA's regulations were distinct, yet harmonious. *Id.* at 108. Under R.C. Chapter 519, the court explained, townships may regulate land use and planning and determine "the systematic and orderly development of specific areas, or zones ... for the purpose of insuring the health, welfare and safety of the local communities." *Id.* at 107 (quoting *Columbia Twp. Trs. v. Williams*, App. Nos. 76AP-107, et al., 1976 WL 190118, at *5 (Franklin County Aug. 5, 1976)). "In contrast, the goals of the [Ohio] EPA ... are to conserve, protect and enhance the environmental quality of the state in all respects including air and water quality, waste treatment procedures and standards, and solid waste handling and disposal." *Id.* at 108 (quoting *Williams*, 1976 WL 190118, at *5). The court adopted the proposition that the Ohio EPA "does not have jurisdiction to change or affect local zoning by the issuance of a permit. Instead the permitted use continues to be subject to local zoning." *Id.* (quoting *City of Garfield Heights v. Williams*, App. Nos. 77AP-449, et al., 1977 WL 200442, at *3 (Franklin County Sept. 29, 1977)). The court acknowledged that although the Director of the Ohio EPA "has the prerogative of granting a permit that is final so far as environmental considerations within his purview are concerned, ... [e]ven if not expressly stated in the director's order, the permit issued is subject to local zoning and remains subject thereto." *Id.* (quoting *Garfield Heights*, 1977 WL 200442, at *3); *see also Aluminum Smelting & Ref. Co., Inc. v. Denmark Twp. Zoning Bd. of Zoning Appeals*, Ashtabula App. No. 2001-A-0050, 2002-Ohio-6690, ¶21 (recognizing that local zoning regulations that control the use of land are different from "the Ohio EPA's authority over the methods utilized for the operation and maintenance of a landfill.... Therefore, compliance with Ohio EPA requirements will not necessarily result in a finding that [a] political subdivision may not enforce its zoning regulations"); *Sw. Montgomery Cnty. Env'tl. League v. Schregardus, Dir. of Env'tl. Prot.*, Case Nos. EBR 573283-573285, 573286, 1997 WL 174535, at *10 (Env'tl. Bd. of Rev. Mar. 26, 1997) ("[t]he courts have consistently recognized that the enforcement of local zoning ordinances lies within the province of local governments and courts, not with the Director as the permitting authority").

The court's reasoning in *Hulligan* is equally applicable here. Similar to the provisions in R.C. Chapter 519 applicable to townships, R.C. 303.02 authorizes a board of county commissioners to regulate land use and planning and divide the county into specific areas or zones for the purpose of insuring the health, safety, and welfare of the local communities. The goals of ODH in carrying out R.C. 3733.41-.49 are to ensure the habitability and safety of residents of agricultural labor camps. *See, e.g.*, rule 3701-33-03(E) (prohibiting a person from operating or maintaining an agricultural labor camp if sanitation, drainage, or habitability issues exist with respect to the camp's housing units). *Cf.* 2000 Op. Att'y Gen. No. 2000-022, at 2-142 (recognizing that the statutes that regulate manufactured home parks, R.C. 3733.01-.08, are

issuance of a permit by the Ohio EPA was subject to the approval of the local zoning authority.
Id.

intended to protect the safety of residents living in those parks). Issuance of a license pursuant to rule 3701-33-03 represents that the agricultural labor camp in question satisfies the sanitary and other habitability requirements in R.C. 3733.41-.49 and in the rules adopted pursuant to R.C. 3733.42.

The county's purpose in regulating land use through zoning is distinct and different from ODH's purpose in carrying out R.C. 3733.41-.49. Cf. 2000 Op. Att'y Gen. No. 2000-022, at 2-142 (“[w]hile the regulations of R.C. Chapter 3733 certainly help to protect the larger surrounding community, ... their focus is clearly on protecting the well-being, physical safety, and living conditions of the inhabitants of the park.... In contrast, the focus of a local zoning code is on land use and planning for the welfare of the larger community, regulating either the size and placement of buildings or other structures on property within specified areas, or the use to which the structures and property within specified districts may be put” (citations omitted)). Therefore, ODH does not have jurisdiction to change or affect local zoning by the issuance of a license pursuant to rule 3701-33-03.⁶ Cf. 2000 Op. Att'y Gen. No. 2000-022, at 2-145 (“the fact that the Public Health Council has the authority to adopt rules governing the operation of manufactured home parks and to license such parks, and may have, in fact, licensed a park within a particular township or village, does not mean that the township or village is precluded from enforcing its zoning regulations with regard to that park”).

Accordingly, we conclude that ODH's issuance of a license pursuant to rule 3701-33-03 to operate an agricultural labor camp that houses up to twelve unrelated individuals does not preempt a county zoning regulation that prohibits the construction and use of dwellings that house more than five unrelated individuals in the area or district in which the licensed agricultural labor camp is located, so long as the operation of an agricultural labor camp is permitted in other areas or districts within the county.

⁶ In *Osnaburg Township Zoning Inspector v. Eslich Environmental Inc.*, Stark App. No. 2008CA00026, 2008-Ohio-6671, ¶57, the court of appeals held that a county health department's issuance of a license to operate a construction and demolition debris disposal facility pursuant to R.C. Chapter 3714 preempted township zoning regulations that prohibited the operation of such facilities in the district in which the facility was located. The court relied upon *Sheffield*, 87 Ohio St. 3d 9, to support its decision. However, in *Sheffield*, the Ohio Supreme Court held that village zoning ordinances conflicted with provisions in R.C. Chapter 3714 that regulated the operation of construction and demolition debris facilities because the ordinances prohibited the operation of such facilities throughout the entire village. 87 Ohio St. 3d at 12. In so holding, the Court recognized that “[n]othing in [its] decision should be construed to suggest that [the village] cannot restrict state-authorized facilities to certain districts with appropriate zoning.” *Id.* Therefore, we believe that the court's analysis and decision in *Hulligan*, 59 Ohio App. 2d 105, more accurately reflects the law in Ohio relating to the preemption of local zoning regulations in this circumstance.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that the Ohio Department of Health's issuance of a license pursuant to [2016-2017 Ohio Monthly Record, Pamphlet No. 2, at p. 2-414] Ohio Admin. Code 3701-33-03 to operate an agricultural labor camp that houses up to twelve unrelated individuals does not preempt a county zoning regulation that prohibits the construction and use of dwellings that house more than five unrelated individuals in the area or district in which the licensed agricultural labor camp is located, so long as the operation of an agricultural labor camp is permitted in other areas or districts within the county.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a long, sweeping tail on the final letter.

MICHAEL DEWINE
Ohio Attorney General