

OPINION NO. 79-051**Syllabus:**

1. R.C. Chapter 519 does not require that the amount of fees to be charged for zoning permits be specified in the zoning resolution. If the zoning resolution authorizes the charging of fees, the township trustees may from time to time set the amount of the fees. Such fees must, however, bear a reasonable relation to the cost of inspection of the site and issuance of the permits.
2. A larger fee may be charged applicants who apply for a permit after construction has commenced, so long as the increased amount bears a reasonable relation to the extra costs involved in inspection of the site and issuance of the permit.

**To: The Honorable Ronald J. Mayle, Sandusky County Prosecuting Attorney,
Fremont, Ohio**
By: William J. Brown, Attorney General, August 7, 1979

I have before me your request for my opinion regarding the following questions:

1. Does Chapter 519 of the Revised Code require that the exact permit fees to be charged be specified in the zoning resolution or is it sufficient that the zoning resolution provide that reasonable permit fees shall be charged, the amount to be determined from time to time by the Township Trustees?
2. May a larger permit fee be charged in those cases where the applicant makes application after work is commenced? The zoning resolution requires application before work is commenced.

Your questions arose when a township enacted a zoning resolution which stipulated that payment of a fee should accompany an application for a zoning permit, but which left the amount of the fee to the discretion of the board of trustees. The fees have been set by motion adopted at a trustees' meeting without the formalities of an amendment to the resolution. Since you mention Chapter 519 specifically, I assume that you are referring only to "zoning permits" and not to "building permits" issued under R.C. 505.75.

The authority of a board of township trustees to charge a fee for the issuance of zoning permits under R.C. Chapter 519 has been dealt with in two previous Opinions of the Attorney General. The matter was considered first in 1956 Op. Att'y Gen. No. 7111, p. 667, and again in 1963 Op. Att'y Gen. No. 218, p. 307. In both instances, the authority of the township to charge reasonable fees, although not explicitly granted by statute, was found to be inherent in the power to inspect and regulate the use of property. This principle applies equally in the present situation. Thus, township trustees have the authority to charge fees for the issuance of permits which are reasonably related to the cost of regulation and inspection. See, Prudential Co-operative Realty Co. v. City of Youngstown, 118 Ohio St. 204, 214 (1928).

Since the power to charge fees is implicit rather than explicit, no particular scheme for setting up a fee schedule is mandated. I find no authority which would require that the exact amount of the fees be set out in the resolution, and do not read the opinions of my predecessors as mandating such specificity. Although it was stated in 1956 Op. Att'y Gen. No. 7111, p. 667 that a township could not enact zoning regulations either prescribing or changing fees in an informal way, the factual background in that opinion was as follows:

[T]he provisions for fees for the issuance of permits and for making inspections were not contained in the zoning resolution adopted by the township trustees under Section 519.02, Revised Code, but were adopted from time to time after the adoption of such zoning resolution and amendment of the zoning resolution. *Id.*, at 672.

It is important to note that in the foregoing opinion, the board acted without any authorization from the voters to charge fees. As I understand the present situation, the duly-adopted zoning resolution authorized the charging of fees, and purported to vest in the board of trustees the power to set the amount from time to time. The voters approved the collection of reasonable fees and merely left to the discretion of the board the determination of the amount to be charged.

In analogous situations, such delegations of the power to prescribe the details of licensing procedures have been held to comport with proper constitutional procedure. For example, in City of Akron v. Budiani, 52 Ohio App. 2d 116 (Summit Co., 1976), a municipal licensing ordinance was held valid despite the lack of any express limitation on the discretion of the mayor in the issuance of licenses. The court stated that the delegation could be interpreted as the granting of the power to exercise reasonable discretion. Similarly in Crawford v. Sideman, 89 Ohio St. 260 (1914), a statute which gave the mayor the power to determine the amount of license fees for itinerant vendors was held to be a valid exercise of legislative power absent a showing that the amount fixed was unreasonable, arbitrary, or prohibitive.

I conclude, therefore, that it is the initial consent of the voters to the imposition of permit fees, and not the amount, which must be manifest in the zoning resolution. Accordingly, so long as the amount set by the township trustees for a zoning permit bears a reasonable relation to the cost of inspection and issuance, the trustees are within their powers. Blower v. Alside Homes Corp., 90 Ohio L. Abs. 516 (C.P. Summit Co. 1963); cf. City of Cincinnati v. Bryson, 15 Ohio St. 625 (1846) (city ordinance requiring licensing of drays held valid; licensing fee held reasonable).

Your second question asks whether a larger fee may be charged applicants who apply for a permit after construction has begun. The answer to this question follows as a corollary to the answer to your first question. The issuance of permits must be carried out with equality. Thus, any variance in the amount charged must not be arbitrary but must, rather, reflect the increased cost of issuing the permit in the particular situation. See, City of Richmond Heights v. LoConti, 19 Ohio App. 2d 100 (Cuyahoga Co., 1969). It is not unreasonable to assume that the cost of inspecting a site at which construction has begun is greater than the cost of inspecting a site before construction. At any rate, should the amount of fees be questioned, the burden will be on the challenging party to show that the fee does not bear a reasonable relation to the cost of inspection and issuance. Goodman v. Youngstown, 24 Ohio L. Abs. 696 (Ct. App. Mahoning Co., 1937).

Therefore, it is my opinion, and you are advised, that:

1. R.C. Chapter 519 does not require that the amount of fees to be charged for zoning permits be specified in the zoning resolution. If the zoning resolution authorizes the charging of fees, the township trustees may from time to time set the amount of the fees. Such fees must, however, bear a reasonable relation to the cost of inspection of the site and issuance of the permit.
2. A larger fee may be charged applicants who apply for a permit after construction has commenced, so long as the increased amount bears a reasonable relation to the extra costs involved in inspection of the site and issuance of the permit.