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SECTIONS 303.11 AND 302.22 ARE IN *PARI MATERIA* AND THEIR PROVISIONS REQUIRE BUT ONE ISSUE TO BE PRESENTED FOR CONSIDERATION TO THE ELIGIBLE VOTER—WHEN COUNTY COMMISSIONERS ADOPT A ZONING RESOLUTION, IT MUST BE SUBMITTED FOR REJECTION OR APPROVAL TO ALL THE VOTERS—TO REPLACE TOWNSHIP ZONING BY COUNTY ZONING AN AFFIRMATIVE VOTE OF THE TOWNSHIP COVERED BY THE COUNTY ZONING AND A MAJORITY OF VOTE IN THE AREA OF TOWNSHIP ZONING IS NEEDED—REPEAL OF TOWNSHIP ZONING IS NOT A PREREQUISITE TO, NOR THE SAME AS, A CONSIDERATION OF THE QUESTION RAISED BY SECTIONS 303.11 AND 303.22, R.C.—§§303.22, 303.11, 519.25, R.C., OPINION 226 OAG 1951.

SYLLABUS:

1. Sections 303.11 and 303.22, Revised Code, are in *pari materia* and their provisions, when so construed, require but one issue to be presented pursuant to Section 303.11, Revised Code, for consideration, to the eligible voters.

2. When a board of county commissioners adopts a zoning resolution pursuant to Sections 303.01 to 303.25, inclusive, Revised Code, such resolution pursuant to Section 303.11, Revised Code, must be submitted for approval or rejection to all of the voters residing in the area included within the plan, regardless of whether there is at the time of such election township zoning in all or part of such township.

3. Where the question of the adoption of county rural zoning is submitted in a township and a part of such township is under township zoning, such township zoning will be replaced by the county zoning plan pursuant to Section 303.22, Revised Code, if such plan is adopted by an affirmative vote in the entire township covered by the county zoning plan and by a majority vote of voters in the area with township zoning within such township. (Opinion No. 226, Opinions of the Attorney General for 1951, page 80, approved and followed.)

4. Repeal of township zoning pursuant to Section 519.25, Revised Code, is not a prerequisite to, nor the same as, a consideration of the question raised by Sections 303.11 and 303.22, Revised Code.

Columbus, Ohio, April 28, 1962

Hon. James A. Berry, Prosecuting Attorney
Clark County, Springfield, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“The board of county commissioners for Clark County, Ohio, has adopted a county rural zoning resolution, which county plan includes entire townships, parts of which are covered by township zoning plans adopted prior to the county resolution in accordance with Sections 519.02 to 519.25, inclusive, of the Revised Code. The zoned parts of these townships to which we refer are unincorporated.

“Section 303.22, Revised Code, provides that: ‘the zoning resolution adopted by the board of township trustees shall take precedence over the zoning resolution adopted by the board of county commissioners, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the township plan of zoning replaced with the plan of county rural zoning.’

“Certain questions have arisen as to the proper manner of placing this issue on the ballot as well as to the effect of its adoption or rejection. Your opinion on the following questions is therefore requested.

“(1) Where the zoning resolution adopted by the board of county commissioners includes an entire township, when such plan of zoning is submitted to the electors in the township pursuant to Section 303.11, Revised Code, shall it be submitted to the electors in the previously zoned area of the township as well as in the unzoned areas?”

“(2) Are there prerequisites which must be met in zoned areas which are not necessary in unzoned areas prior to submission of this question?”

“(3) Must the township zoning plan be repealed in accordance with Section 519.25, Revised Code, before the issue may be submitted to the electors in zoned areas?”

“(4) If the issue is placed on the ballot pursuant to Section 303.11, Revised Code, is the same question submitted in the zoned areas of the township as in the unzoned areas or does Section 303.22 require that the question in the zoned areas call for not only approval or rejection of the county rural zoning plan but replacement of the township plan as well?”

“(5) In the event the county rural zoning plan is rejected in the unzoned areas of the township but is approved by a majority of the voters in the zoned area, will the county rural zoning plan be effective in the latter area?”

“(6) In the event the county rural zoning plan is approved by the township as a whole but rejected in the previously zoned areas, does the previously adopted township zoning in the latter areas remain in effect?”

“(7) To determine whether a county rural zoning plan has been approved by a township as a whole, are the ballots from the previously zoned areas counted for this purpose or are such previously zoned areas treated entirely as a separate entity in determining approval or rejection of the issue?”

The final determination of whether a zoning resolution adopted by a board of county commissioners will be effective in the unincorporated areas of a county included in such resolution is, pursuant to Section 303.11, Revised Code, left to the electors of such unincorporated area.

Section 303.11, Revised Code, reads as follows:

“If the zoning resolution is adopted by the board of county commissioners, such board shall cause the question of whether or not the proposed plan of zoning shall be put into effect to be submitted to the electors residing in the unincorporated area of the

county included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. Such resolution shall be filed with the board of elections not later than four p.m. on the ninetieth day before the day of the election. No zoning regulations shall be put into effect in any township, unless a majority of the vote cast on the issue in that township is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect in all townships which voted approval, eliminating from the plan any township which did not vote approval."

It is apparent from a reading of the above quoted statute that: (1) the question must be submitted to the electors residing in the unincorporated area included in the plan, (2) where all or part of more than one township is included in the plan so submitted to the electors, the votes cast in each said township or unincorporated part of a township must be considered separately in determining the result of the election and (3) the plan is not effective in any township or unincorporated part of a township included in the plan unless a majority of those who voted on the issue therein voted their approval of the plan. In this regard, your attention is called to Opinion No. 226, Opinions of the Attorney General for 1951, page 80, in which the then attorney general made substantially the same determination.

Section 303.22, Revised Code, reads as follows:

"Where the people of any township or part thereof have approved township zoning regulations in accordance with sections 519.02 to 519.25, inclusive, of the Revised Code, prior to the adoption by the board of township trustees, and the county plan includes any area covered by the township zoning plan, the zoning resolution adopted by the board of township trustees shall take precedence over the zoning resolution adopted by the board of county commissioners, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the township plan of zoning replaced with the plan of county rural zoning." (Emphasis added)

It should be noted that the provisions of Sections 303.11 and 303.22, Revised Code, were passed on June 9, 1947 by the 97th General Assembly as part of the same Act, House Bill No. 22, 122 Ohio Laws, 597. These two statutes obviously deal with the same subject matter and, in order to determine their meaning they should be considered as being in *pari materia*, and construed together. Your attention is called to 37 Ohio Jurisprudence, 599, Statutes, Section 332, which reads in part as follows:

“Statutes or sections which expressly refer to each other or which relate to the same person or thing or to the same class of persons or things or to the same subject or object may be regarded as in *pari materia*. Sections have been considered in *pari materia* which are parts of the same law or act or which were formerly parts of one section or of the same original statute.”

Also on this point, 37 Ohio Jurisprudence, 594, Statutes, Section 331, reads in part as follows:

“* * * It is therefore a fundamental rule of statutory construction that sections and acts in *pari materia* should be construed together as if they were a single statute. All correlated parts of a statute should be construed together. Reasons for these rules are that such statutes are considered as acting upon one system and as having a common object, policy, and spirit. This is especially true in regard to a code of statutes relating to one subject, which may be inferred, and even presumed, to be governed by one spirit and policy. Without these rules there would be neither system nor harmony in the statutes, and their construction would, in most cases, be a mere matter of arbitrary guessing.* * *”

It will be noted from the emphasized language in Section 303.22, *supra*, that the two types of zoning resolutions which are spoken of in that statute are township zoning approved by the people of the township or a part thereof pursuant to Chapter 519., Revised Code, and county rural zoning adopted by the board of county commissioners. A township zoning resolution (adopted by the board of township trustees) which has been approved by the people of the township entitled to vote on it is, pursuant to Section 519.11, Revised Code, an effective zoning regulation, while as shown earlier herein, a county rural zoning resolution adopted by a board of county commissioners is not effective in any township in the county until it has been adopted by a vote of the people in the unincorporated areas of the county included within its terms. Thus the issue raised by Section 303.22, Revised Code, of whether the county zoning resolution shall replace the township zoning resolution is to be determined at a time prior to the time that the county rural zoning resolution becomes effective. An examination of Section 303.11, *supra*, shows that such time would be prior to the certification by the board of elections of the vote taken on the county rural zoning resolution.

It is of course obvious that in a part of a township covered by the proposed county zoning plan which has previously adopted a township

zoning plan, the voter is faced primarily with a question of whether he wants to replace the existing township zoning with the proposed county zoning plan, whereas in an unzoned area of the same township, the voter is considering whether he desires to adopt the zoning plan. Considering Sections 303.11 and 303.22, *supra* as being in *pari materia*, I am of the opinion that these questions were intended to be presented to the eligible voters as one issue at an election held pursuant to Section 303.11, Revised Code. I am fortified in this opinion by the fact that if said questions were to be presented separately, then the issue of whether to replace the existing zoning with county zoning, which must be answered before the county zoning becomes effective could, pursuant to Section 3501.02, Revised Code, only be determined at a general election, because Section 303.22, Revised Code, is silent as to any other date. Such a conclusion would cause an unreasonable delay in almost every case and is thereby contrary to the applicable rules of statutory construction aforementioned.

Accordingly, in answer to your first question, a county zoning resolution adopted by the board of county commissioners, must be in an election called pursuant to Section 303.11, Revised Code, be submitted to all of the electors residing within the area covered by such zoning plan, regardless of whether there is at the time of such election, existing township zoning, and, in answer to your second question, the prerequisites which must be met before the submission of such question are the same in the zoned and unzoned unincorporated area covered by such plan.

In your third question you ask whether the township zoning plan must be repealed pursuant to Section 519.25, Revised Code, prior to the submission of the question of whether the county rural zoning plan will be adopted in such areas. Section 519.25, Revised Code, reads in part as follows:

“In any township in which there is in force a plan of township zoning, the plan may be repealed by the board of township trustees in the following manner:

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It will be noted that a *repeal* of existing zoning *may* be had in accordance with the provisions of the foregoing section. However, the question to be answered pursuant to Section 303.22, *supra*, is whether the eligible voters desire to *replace* their existing township zoning with a county rural zoning plan.

As will be seen later in this opinion, it is possible that the electors in the zoned area of a township can vote to replace their township zoning with county zoning and at the same time the county zoning plan can be defeated in the township. Such a result would have the effect of retaining the status quo in both the zoned and unzoned area of such township. In accordance with the above, I am of the opinion that the provisions of Section 519.25, Revised Code, provide for a method of repeal of township zoning resulting from a vote on the question raised pursuant to Section 303.11 and 303.22, Revised Code.

As to your fourth question, I have already concluded that Section 303.11 and 303.22, *supra*, raise but one issue to be presented to all of the voters in a township covered by the plan. The language of the issue so presented should, pursuant to Section 3505.06, Revised Code, make it clear to the voter in previously unzoned areas covered by the proposed county rural zoning plan that he may vote for acceptance or rejection of the plan, while in areas which are covered by township zoning which are also included within the proposed county rural zoning plan, a vote for acceptance of the latter plan carries with it and must also be considered as a vote to replace the existing township zoning with the county rural zoning plan.

As to your fifth question, the syllabus of Opinion No. 226, Opinions of the Attorney General for 1951, page 80, *supra*, reads as follows:

“1) The question of the approval or rejection of a proposed plan of rural zoning is, under the provisions of Section 3180.10, General Code, to be submitted only to the electors residing in the unincorporated area of the county included in the proposed plan of zoning.

“2) Where a proposed plan of rural zoning which is submitted for approval under the provisions of Sections 3180-10, General Code, includes part but not all of the territory of a township, only the electors residing in that portion of the township so included are entitled to vote.

(Section 3180-10, General Code is now Section 303.11, Revised Code)

It is of course obvious from the above quoted opinion, as well as from what I have said herein, that in order for a county zoning plan to be accepted in a township, a majority of the voters residing in the township area covered by the proposed plan, including zoned and unzoned portions, must vote acceptance of such plan.

As to your sixth question, if the county rural zoning plan were adopted by the majority vote of the entire township entitled to vote, including the zoned area, and at the same time if a majority of those voting in the zoned area voted to reject such county rural zoning plan, then such vote would be the same as a vote against replacement of its township zoning and such township zoning would remain in effect in that portion of the township.

In answer to your seventh question, as seen by the answer to question number five above, I am of the opinion that in determining whether or not county rural zoning has been accepted in a given township, all of the ballots voted in that township must be considered and counted together, there being no separation of ballots between the previously zoned and unzoned areas of the township for this purpose.

To summarize, it is my opinion and you are advised :

1. Sections 303.11 and 303.22, Revised Code, are in *pari materia* and their provisions, when so construed, require but one issue to be presented pursuant to Section 303.11, Revised Code, for consideration, to the eligible voters.

2. When a board of county commissioners adopts a zoning resolution pursuant to Sections 303.01 to 303.25, inclusive, Revised Code, such resolution pursuant to Section 303.11, Revised Code, must be submitted for approval or rejection to all of the voters residing in the area included within the plan, regardless of whether there is at the time of such election township zoning in all or part of such township.

3. Where the question of the adoption of county rural zoning is submitted in a township and a part of such township is under township zoning, such township zoning will be replaced by the county zoning plan pursuant to Section 303.22, Revised Code, if such plan is adopted by an affirmative vote in the entire township covered by the county zoning plan and by a majority vote of voters in the area with township zoning within such township. (Opinion No. 226, Opinions of the Attorney General for 1951, page 80, approved and followed.)

4. Repeal of township zoning pursuant to Section 519.25, Revised Code, is not a prerequisite to, nor the same as, a consideration of the question raised by Sections 303.11 and 303.22, Revised Code.

Respectfully,
MARK McELROY
Attorney General