

OPINION NO. 93-034**Syllabus:**

When a migrant labor camp is constructed and used for the direct and immediate purpose of housing migrant workers to harvest the land on which the camp is located, the camp is exempt from township zoning pursuant to R.C. 519.21(A), even if the migrant workers subsequently harvest crops on other land that the camp owner leases or if the camp owner subsequently "leases" the workers to other farmers in the area while allowing the workers to stay in the camp. The question of whether the harvesting of land on which the camp is located is the direct and immediate purpose of the camp or only an indirect and secondary purpose is a question of fact which cannot be determined by means of an Attorney General opinion.

To: Robert A. Fry, Hancock County Prosecuting Attorney, Findlay, Ohio
By: Lee Fisher, Attorney General, November 16, 1993

You have requested an opinion regarding the agricultural use exemption from township zoning in R.C. 519.21(A) as applied to migrant labor camps. Specifically you ask:

1. Is a migrant labor camp constructed by a farmer on his own land still exempt from township zoning regulations pursuant to Ohio Revised Code, Section 519.21(A) and Ohio Attorney General Opinion 67-049 (May 25, 1967), if the farmer subsequently uses the migrant workers to harvest the farmer's crops raised on farm land that he leases, but does not own?
2. If a farmer establishes a migrant labor camp on his own land for the purpose of removing crops from his land, either owned or

leased, during the summer harvest, and subsequently the farmer leases the migrant workers to other farmers in the area to work their land while continuing to allow the migrant workers to stay at his migrant labor camp, is that farmer engaged in agriculture or a commercial enterprise for purposes of enforcing the township zoning regulations under Ohio Revised Code, Section 519.21(A)?

Township Zoning Authority

Township zoning authority is granted in R.C. 519.02, which states that "the board of township trustees may, in accordance with a comprehensive plan regulate by resolution...the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such township...." R.C. 519.21(A) limits this general grant of authority as follows:

Except as otherwise provided in division (B) of this section,¹ sections 519.02 to 519.25 of the Revised Code confer *no power* on any township zoning commission, board of township trustees, or board of zoning appeals *to 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...* and no zoning certificate shall be required for any such building or structure. (Emphasis and footnote added.)

Land on which the Camp Is Located Must Be Used for Agricultural Purposes

R.C. 519.21 specifically requires that the use of buildings must be related to the agricultural use "of the land on which such buildings or structures are located...." In *Keynes Bros., Inc. v. Pickaway Township Trustees*, No. 86 CA 27, 1988 Ohio App. LEXIS 1028 (Pickaway County March 25, 1988) (unreported), a commercial grain elevator used only to store grain raised by other nearby property owners was held not entitled to an exemption from township zoning. The court noted that, although the operation of a grain elevator is a use incident to agricultural purposes generally, the operation of that particular elevator was not related to any agricultural use of the land on which it was located. More recently, in *Weber v. Clinton Township Bd. of Zoning Appeals*, No. 91FU 000027, 1992 Ohio App. LEXIS 4046, *5 (Fulton County Aug. 7, 1992), the court stated that "as a matter of law" the agricultural use exception of R.C. 519.21 did not apply to a manufactured home used as a dwelling under circumstances where "the evidence is uncontroverted that the manufactured home at issue houses a person who is engaged in an agricultural business in the vicinity of the property, but that the actual one acre parcel itself is not used for agricultural purposes...."

Applying the reasoning of the courts in *Weber* and *Keynes*, buildings used to house farm laborers who work exclusively on land other than that where the buildings are located would not be entitled to the zoning exemption provided in R.C. 519.21(A). This would be true regardless of whether the other land was farmed under lease by the owner of the camp or belonged to and was farmed by other farmers. You have indicated that the migrant labor camp involved in your request, however, is not used to house farm laborers who work exclusively on other land. The migrant workers living in the camp harvest both the land on which the camp is located and other

¹ R.C. 519.21(B) allows limited zoning regulation of "buildings or structures incident to the use of land for agricultural purposes" on lots of one to five acres in certain platted or approved subdivisions. You have not indicated that this exception applies to your request.

lands. Neither the interpretation of the courts nor the plain language of R.C. 519.21(A) requires, in order for a structure to be exempt from township zoning, that its use be limited exclusively to the land on which it is located. The question presented, therefore, is whether the use of the camp under the conditions described in either of your questions can still be considered "incident" to the agricultural use of the land on which it is located.

"Incident" Use

The standard for determining whether the use of buildings as dwellings is incident to the agricultural use of land is that the "structure-use must be 'directly and immediately' related to agricultural use. It must be either 'usually or naturally and inseparably' dependent upon agricultural use." *State v. Huffman*, 20 Ohio App. 2d 263, 269, 253 N.E.2d 812, 817 (Hancock County 1969). The court noted that the use of structures on a farm as dwellings for temporary help is not naturally or inseparably related to agricultural use in any absolute sense. Whether such an arrangement is usual is a question of fact dependent on custom and usage. *Id.* at 270, 253 N.E.2d at 817.

The determinative issue, however, as defined by the court in *Huffman*, is whether the use of the mobile homes as dwellings is "directly and immediately" related to agricultural use. As explained by the court:

Whether the connection is "direct and immediate" or indirect and secondary depends on the total situation as a matter of degree as involved. The use of a building as a dwelling is not per se a direct and immediate connection with the farming of adjacent land. Whether the incidental and occasional labor of those living in a dwelling is sufficient to connect the dwelling directly to a farming use is a question of fact dependent upon all the circumstances.

The question necessarily involves a determination as to whether the structure was primarily used as a dwelling and secondarily used as an abode for farm workers, or whether it was used primarily and directly to provide, for the landlord, easily-available farm labor.

Id. at 270, 253 N.E.2d at 817.

The *Huffman* court held that the mobile homes involved in that case were not entitled to the agricultural use exemption of R.C. 519.21(A). The farmer had not provided the structures to attract farm labor. The mobile home owner was primarily seeking a place to establish his residence. His promise to perform occasional and "relatively minor" farm labor in exchange for permission to park the mobile homes on the farmer's land was secondary to his primary purpose of acquiring a dwelling.

The court expressly distinguished the factual situation in *Huffman* from cases involving tenant farmers or seasonal migrant workers. *Id.* at 270, 253 N.E.2d at 817.² The reasoning of *Huffman* is, therefore, consistent with that of an earlier opinion of the Attorney General, which held:

²See also *Suffield Township Bd. of Trustees v. Rufener*, No. 1186 (Ct. App. Portage County May 21, 1982) (unreported); *Board of Chippewa Township Trustees v. Tester*, No. 1467 (Ct. App. Wayne County Feb. 23, 1977) (unreported). In these cases, mobile homes used as

Harvesting is clearly a part of the agricultural use of land and if a farmer is unable to harvest his crop without providing housing for the migrant workers who are required for the harvest, then those buildings are incident to the agricultural use of land under Section 519.21, Revised Code.

1967 Op. Att'y Gen. No. 67-049 (syllabus). In view of the test set out in *Huffman*, this holding that the housing of migrant labor may be incident to the agricultural use of land is not limited to situations of absolute necessity, but extends to any situation where there is a "direct and immediate" connection between the camp and the agricultural use of the land on which it is located. See generally 1989 Op. Att'y Gen. No. 89-067 (reading *Huffman* as requiring a "primarily and directly related to" test for the R.C. 519.21(A) exemption).

Thus, when migrant workers continue to live in a camp while harvesting additional lands, the applicable analysis requires a determination of whether the use of the camp to house the workers remains "directly and immediately" related to the agricultural use of the land on which the camp is located or whether the connection then becomes only "secondary and indirect" because of the additional activities of the workers. It may be necessary or usual for a farmer to make work on additional lands available to the migrant workers in order to attract workers to harvest the land on which the camp itself is located. For example, if the farmer's offer of employment throughout the harvest season, on additional lands leased by the farmer or by "leasing" the workers to other farmers, is part of the package that serves to attract laborers to harvest the land on which the camp is located, thus tending to establish a direct and immediate connection, the camp may be exempt from township zoning. If, however, the facts show that the "direct and immediate" purpose of the camp is to support the farmer in the business of contracting out farm labor and that the harvesting of the land on which the camp is located is only a secondary purpose, the camp would not be exempt from township zoning. Like the manufactured homes in *Huffman*, the camp use would not be incidental to the agricultural use of the land on which it is located.³ Thus, the determination as to any particular camp "depends on the total situation as a matter of degree involved," *Huffman* at 270, 253 N.E.2d at 817, and may turn on such factors as the nature and amount of work that is done on the land on which the camp is located as compared to the nature and amount of work that is done elsewhere. The

residences for tenants who worked on the farm were held exempt from township zoning under R.C. 519.21(A).

³ It should be noted, however, that even if the exemption of R.C. 519.21 does not apply to a particular camp, the camp may be exempt from township zoning for other reasons. For example, the camp may be entitled to operate as a preexisting use.

It is also possible that other applicable regulations have preempted certain aspects of township zoning. For example, you have indicated that the camp in question is a licensed agricultural labor camp under R.C. 3733.41-.49 and Ohio Admin. Code Chapter 3701-33. You have also provided materials concerning the federal Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§1801-1872 (formerly the Farm Labor Contractor Registration Act, 7 U.S.C. §2041, et seq.). Because it is not the purpose of either of these statutory schemes to govern land use, neither preempts local zoning authority per se. To the extent, however, that what is nominally a township zoning regulation is directed to a matter other than land use, the regulation may be preempted by specific state or federal regulations governing that subject. See, e.g., 1991 Op. Att'y Gen. No. 91-081 (dealing with the relationship between certain state and federal regulations and local zoning authority); 1993 Op. Att'y Gen. No. 93-002 (same).

authority to make this determination, with reference to the test described above, rests initially with the township board of zoning appeals, subject to judicial review. It is not the function of this office to make such factual determinations. *See generally* 1991 Op. Att'y Gen. No. 91-051 at 2-262.

Conclusion

It is, therefore, my opinion and you are hereby advised that when a migrant labor camp is constructed and used for the direct and immediate purpose of housing migrant workers to harvest the land on which the camp is located, the camp is exempt from township zoning pursuant to R.C. 519.21(A), even if the migrant workers subsequently harvest crops on other land that the camp owner leases or if the camp owner subsequently "leases" the workers to other farmers in the area while allowing the workers to stay in the camp. The question of whether the harvesting of land on which the camp is located is the direct and immediate purpose of the camp or only an indirect and secondary purpose is a question of fact which cannot be determined by means of an Attorney General opinion.