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ZONING PLAN—TOWNSHIP—EFFECTED UNDER SECTION 3180-27 ET SEQ., G. C.—PART OR ALL OF AREA IN SUCH PLAN INCORPORATED INTO MUNICIPALITY OR ANNEXED TO MUNICIPALITY—REGULATIONS AFFECTING SUCH ZONE SHALL CEASE TO APPLY TO SUCH AREA WHEN INCORPORATION OR ANNEXATION IS EFFECTED.

SYLLABUS:

Where a township zoning plan has been effected under the provisions of Section 3180-27 et seq. of the General Code, and a part or all of the area in such plan is incorporated into a municipality or is annexed to a municipality, the regulations affecting such zone shall cease to apply to such area incorporated or annexed when such incorporation or annexation is effected.

Columbus, Ohio, November 13, 1950

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Bedford Township has zoning regulations which were adopted by the Township Trustees as provided in the General Code. The Township Trustees desire an answer to the following questions and inasmuch as they are of state-wide application we are submitting them to you:

1. ‘What would be the effect upon our existing zoning regulations if all or a portion of the new unincorporated territory within our township limits were annexed to the City of Bedford?

2. What would be the legal effect if the said territory were incorporated into a separate municipality?

In other words, they wish to know whether their zoning regulations cease the moment any portion of the unincorporated area is annexed to a village or a city or is incorporated into a village.

We shall appreciate having your opinion in this matter for the benefit of Bedford Township.”

Section 3180-35, General Code, and preceding sections outline the procedure to be followed to establish township zoning plans. Section 3180-35 reads as follows:

“If the zoning resolution is adopted by the board of township trustees, the board of township trustees 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 township 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. No zoning regulations shall be put into effect unless a majority of the vote cast on the issue is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect if the plan was so approved.”

Thus it appears that the majority of electors residing in the unincorporated area of the township included in the proposed plan voting on the issue is required to establish the plan, and when such majority is so certified the plan goes into immediate effect.

The question you ask is what happens if after the plan is so effected, part of the area within the effected zone is incorporated into a municipality or is annexed to another municipality. It is interesting to note that if such part of the effected zone is incorporated into a municipality it necessarily must be such a part as contains some of the inhabitants of such effected zone. I say this for the reason that in order to create a municipality there must be residents within the corporate limits. However, if part of the effected zone is annexed to another municipality already in existence such annexed territory may or may not include residents or electors. I merely point this out in order to see a situation that might exist in the event of annexation where there would be no reason for a change in the results of an election if a repeal of the effected plan was voted on.

I believe it is unnecessary to go into the question of the application of regulations of an established zone to territory taken therefrom and annexed to a municipality or incorporated into a new municipality. Section 3180-42 of the General Code appears to answer that question, and such section reads as follows:

“Regulations enacted by a board of township trustees under the authority of this act shall not apply within municipal corporations.”

Since the Act clearly provides for the establishment of a zone in territory outside of municipalities, the legislature certainly had in mind the possibility of the annexation of part of the zoned territory to a municipality being created during the period such zone was being effected or after same had been effected.

Some assistance and light is thrown on the subject by the court in the case of *Burnett v. Wooster, et al.*, 54 O.L.A. 225, wherein the second branch of the syllabus reads as follows:

“Sec. 3180-33, G. C., providing that no change in or departure from the text of maps of a township zoning plan as certified to election authorities may be made without approval of the township zoning commission, is not applicable where a portion of the area sought to be zoned becomes incorporated and is withdrawn prior to the election.”

The court in the body of the opinion, at the bottom of page 229 and top of page 230 states:

“From the contents of this section and those preceding and following it, the Court is of the opinion that it is clearly the intent and meaning of the legislature that no change in or departure from the text and maps shall be made by the Board of Township Trustees, but this is the only change or departure in the text and maps that is contemplated in this section, and has no application to the situation where a portion of the unincorporated area of the township is withdrawn by operation of law by forming a corporation, since this withdrawal could be effected at any time before, during, or after the adoption of zoning by the incorporation of any area in the township. * * *”

Therefore it appears quite clear and it is my opinion that regardless of whether part of the area within an effected township plan of zoning is annexed to a municipality, or is incorporated into a municipality the zoning regulations affecting such zone cease to apply to such area so annexed or incorporated as the case may be. This cannot be interpreted, however, to mean that such regulations would not continue to apply to the remaining area in the zone lying outside of such municipality.

Since a township zoning plan is a creature of the legislature it can be created, modified, amended or repealed only in accordance with the provisions of such legislature. In this connection I direct your attention to Section 3180-36, General Code, which outlines the procedure for

amendments or supplements to zoning resolutions, and to Section 3180-50, General Code, which outlines the procedure required to effect a repeal of a township zoning plan.

Therefore, in recapitulation and in answer to both specific questions asked, it is my opinion that where a township zoning plan has been effected under the provisions of Section 3180-27 et seq. of the General Code, and a part or all of the area in such plan is incorporated into a municipality or is annexed to a municipality, the regulations affecting such zone shall cease to apply to such area incorporated or annexed when such incorporation or annexation is effected.

Respectfully,

HERBERT S. DUFFY,
Attorney General.