

**OPINION NO. 67-049****Syllabus:**

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.

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**To: Donald D. Simmons, Wood County Pros. Atty., Bowling Green, Ohio**  
**By: William B. Saxbe, Attorney General, May 25, 1967**

Your request for my opinion reads as follows:

" \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

"Does migrant housing come under the exception to zoning as provided for under Section 519.21, Revised Code, thus prohibiting a township from establishing zoning regulations pertaining to the migrant housing.\* \* \*

"Sections 519.02 to 519.25, inclusive, of the Revised Code confer no power on any 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.

"Such sections confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.

"Such sections confer no power on any township zoning commission, board or township trustees, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted."

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"In our situation it is necessary for farmers to construct housing for the migrant labor because this most definitely is incident to producing of the crops. If the farmer is unable to provide housing due to zoning regulations he would be unable to harvest his crops by himself."

The question for determination is whether houses constructed for occupancy by migrant workers during the time they are participating in the harvest come within the meaning of "buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located."

Assuming that the migrant housing is constructed on the land to be harvested, and that it is to be used solely for the purpose of migrant housing, it is my opinion that such houses do fall within the meaning of Section 519.21, Ohio Revised Code, and therefore, are not subject to township zoning regulations.

Opinion No. 3440, Opinions of the Attorney General for 1962, states that a dwelling house for a person engaged in agriculture is not a structure incident to an agricultural use of land so as to be exempt under Ohio Revised Code 519.21. However, that opinion is not applicable to the present situation because it involved a permanent dwelling house for a resident farmer who owned the farm: clearly a situation where the agricultural use of the building was subordinate to its use as a dwelling. As such, the opinion does not rule out the possibility of a dwelling being incident to an agricultural use.

Quoting from the opinion at page 952:

"\* \* \* \* \* \* \* \*"

"\* \* \* The application of any zoning ordinance, including the exemption therefrom, must be determined based upon the facts and circumstances of each case. While I am unable to conceive of an agricultural use of land which would establish sufficient facts and circumstances to cause a residence erected \* \* \* to be incident to such use, I do not in this opinion rule out such possibility. \* \* \*

"\* \* \* \* \* \* \* \*"

The present situation does establish facts sufficient to cause a residence to be incident to an agricultural use.

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.