

Note from the Attorney General's Office:

1973 Op. Att'y Gen. No. 73-116 was overruled in part by
1998 Op. Att'y Gen. No. 98-018.

OPINION NO. 73-116**Syllabus:**

Pursuant to R.C. 519.16, a township zoning inspector may, for the purpose of investigating an alleged zoning violation, enter the site in question, despite objection by the owner or occupant, provided he does so at a reasonable hour, presents proper identification, and conducts his inspection in a reasonable manner.

To: Ronald J. Kane, Portage County Pros. Atty., Ravenna, Ohio
By: William J. Brown, Attorney General, November 20, 1973

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

Please be advised that I am writing on behalf of the Rootstown Township Trustees, Rootstown, Ohio, pursuant to section 519.16, Ohio Revised Code, wherein the following question is proposed:

Does a township zoning inspector, pursuant to 519.16, Ohio Revised Code, have the authority to go over and upon the lands of a resident of the township where the zoning inspector is so employed, for purposes of investigating thereon violations of the zoning regulation, against the expressed wishes of the owner or occupant?

On the surface it appears to be a moot question in that the authority obviously is implied that the zoning inspector is permitted to make his inspection. However, in researching the question there does not appear to be any statute nor Attorney General's opinion specifically setting forth that said authority is inherent in the office of township zoning inspector.

I agree with your conclusion that the right of a zoning inspector to go on the land to investigate alleged violations is implicit in the specific provisions of R.C. Chap. 519. The board of township trustees is given broad powers to regulate the use of land under R.C. 519.02. The right of a board to enforce its regulations through a zoning inspector is set forth in R.C. 519.16 which reads in part as follows:

For the purposes of enforcing the zoning regulations, the board of township trustees may provide for a system of zoning certificates, and for this purpose may establish and fill the position of township zoning inspector, together with such assistants as the board deems necessary, fix the compensation for such positions, and make disbursements for them. The township clerk may be appointed * * * zoning inspector, and he may receive compensation for such services in addition to other compensation allowed by law.

And R.C. 519.161, provides in pertinent part:

The township zoning inspector, before entering upon the duties of his office, shall give bond, * * * and the bond shall be conditioned upon the faithful performance of such zoning inspector's official duties.

These Sections authorize the appointment of a township zoning inspector and refer to his duties without specifying what they are to be.

An inspector cannot determine whether land is being used in violation of the zoning regulations unless he can examine the site. The duty to do so is clearly implied in the above Sections. "That which is plainly implied in the language of a statute, is as much a part of it as that which is expressed." Doyle v. Doyle, 50 Ohio St. 330, 341 (1893); Cincinnati v. Oliver, 31 Ohio St. 371, 377 (1877). In a similar case involving the investigative powers of the Superintendent of Insurance, State, ex rel. National Mutual Ins. Co. v. Conn, 115 Ohio St. 607 (1927), the Court said (at 620):

* * *These statutes are remedial in character and enter a field of human endeavor and enterprise not theretofore regulated by governmental agencies. It must therefore be assumed that the Legislature believed that there were abuses to be corrected and that the public interests needed safeguarding. The Legislature, in creating the office of superintendent of insurance, and in providing numerous statutes regulating the insurance business, recognized a public need and purposed to remedy a public evil. The nature and extent of the evil and the urgency of the need are not the subjects of the present inquiry. It is sufficient merely to state that they were evident and that the Legislature has recognized them and has provided a remedy. Being remedial, the statutes must be liberally construed with a view to carry out the legislative purpose and intent. The powers of the superintendent are necessarily limited and those limits are not to be transcended, yet in determining those limits the court should look to the object and purpose of the legislation and the mischief to be prevented, and so enlarge by implication the letter of the law as effectually to accomplish the ends to be attained. * * *

And in conclusion the Court said (at 625):

* * *the superintendent must be held to have some implied powers necessary to carry out the purposes stated in the express provisions of the statutes. * * *

In Opinion No. 7111, Opinions of the Attorney General for 1956, dealing with the fees to be charged for a township zoning inspection, my predecessor said at page 670:

You inquire whether the township trustees have the right to charge a fee for a zoning permit. I have already pointed out the provisions of law which require any person before locating, erecting or constructing any building within the territory included within a zoning resolution, to obtain a zoning certificate, and as a condition precedent to obtaining such certificate to submit plans for the proposed building which must be found to comply with the zoning regulations. I have also called

attention to the power of the township trustees to establish and fill the position of township zoning inspector. Plainly, the purposes of these positions could not be carried out without an inspection not only of the plans but also of the structures erected pursuant thereto. These services must certainly involve an expenditure on the part of the township.
(Emphasis added.)

Clearly, he assumed that inspections on the site were to take place and believed this to be the obvious purpose of the statutes involved. Of course, everything a governmental body undertakes does not have to be specifically spelled out in a statute. In Realty Company v. Youngstown, 118 Ohio St. 204, 214 (1928), the Court stated:

* * *It is not necessary that the statute should specifically give to the municipality power to charge and collect a fee to cover the cost of inspection and regulation. Where the authority is lodged in the municipality to inspect and regulate, the further authority to charge a reasonable fee to cover the cost of inspection and regulation will be implied. * * *

And in McGowan v. Shaffer, 65 Ohio L. Abs. 138 (1953), a controversy involving the validity of a sanitary code of a county board of health, the court assumed the power to inspect without a specific statute to that effect. The Court held that where authority is given the board of health of a general health district to regulate plumbing, it follows that to regulate they must inspect, and impliedly, the right to inspect gives the board the right to charge for that inspection.

In commenting upon that case in Opinion No. 7111, supra, my predecessor said at pages 671-672:

While it is true that that case involved regulations of the board of health, the principle stated is equally applicable to regulations contained in the zoning resolution, because, as already pointed out, zoning regulations are also based upon considerations of public health, safety and welfare, and are adopted as a part of the exercise of the police power.

I conclude, therefore, that it is within the power of the township trustees in adopting zoning regulations to impose reasonable fees to cover the costs of issuing permits and making inspections contemplated by the law. (Emphasis added.)

See also, Tax Commission v. Lamprecht, 107 Ohio St. 535, 537 (1923); and Opinion No. 218, Opinions of the Attorney General for 1963, in which the then Attorney General said at page 309:

* * *I must assume that some inspection of plans or sites would be necessary before the application could reasonably be acted upon and a certificate of variance or special exception either granted or denied. * * * (Emphasis added.)

The question remains whether such an inspection of the site can be made despite the protest of the owner or occupant. In

State, ex rel. Eaton v. Price, 168 Ohio St. 123 (1958), the Court held that a statute which authorized a housing inspector to enter and inspect a dwelling at any reasonable hour upon showing appropriate identification, even over objection by the occupant, was not a violation of the constitutional prohibition against unreasonable searches and seizures. Although the statute granting authority to the township zoning inspector is less specific, similar restrictions should be read into it in view of the principle that a statute must be so construed as to preserve it from constitutional infirmities. Wilson v. Kennedy, 151 Ohio St. 485, 491-493 (1949); Chambers v. Owens-Ames-Kimball Co., 146 Ohio St. 559, 566-571 (1946); State ex rel. Mack v. Guckenberger, 139 Ohio St. 273, 277-286 (1942).

The decision in the Eaton case was reviewed by the Supreme Court of the United States and was affirmed by an equally divided Court. Ohio, ex rel. Eaton v. Price, 364 U.S. 263 (1960). Subsequently, however, the Supreme Court held that a warrantless search of a locked storeroom during business hours, as part of an inspection authorized by the Gun Control Act of 1968, was not violative of the Fourth Amendment because the language of the statute reasonably limited the time, place and scope of the search. United States v. Biswell, 406 U.S. 311 (1972). See also, Colonnade Catering Corp. v. United States, 397 U.S. 541 (1970), Camera v. Municipal Court, 387 U.S. 523 (1967), and See v. City of Seattle, 387 U.S. 541 (1967), in all of which searches were found improper because the statutes under which they were made did not contain restrictions protective of constitutional rights.

In specific answer to your question it is my opinion, and you are so advised that, pursuant to R.C. 519.16, a township zoning inspector may, for the purpose of investigating an alleged zoning violation, enter the site in question, despite objection by the owner or occupant, provided he does so at a reasonable hour, presents proper identification, and conducts his inspection in a reasonable manner.