

November 18, 2002

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SYLLABUS:

2002-032

A township that has adopted a zoning resolution pursuant to R.C. Chapter 519 and has adopted a limited home rule government pursuant to R.C. Chapter 504 may amend its zoning resolution solely under the authority and procedures of R.C. 519.12.

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OPINION NO. 2002-032

Charles D. Hall III  
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Dear Law Director Hall:

We have received your request for an opinion concerning the amendment of the Perry Township Zoning Resolution to address certain matters concerning the regulation of temporary signs. You have asked the following questions:<sup>1</sup>

1. Should an amendment to the Perry Township Zoning Resolution regulating temporary political signs be enacted solely under the authority and procedures of R.C. 519.12?

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<sup>1</sup> Your letter of request also included proposed language amending the Perry Township Zoning Resolution and asked if the proposed language was “narrowly drawn so as to impose reasonable time, place, and manner restrictions on the display of temporary signs, including political yard signs posted on private property, as to be constitutionally enacted.” We informed you that the power to determine whether the enactments of a legislative body comply with the provisions of the United States Constitution or the Ohio Constitution rests exclusively with the judiciary, and that such a determination cannot be made by means of a formal opinion of the Ohio Attorney General. *See Maloney v. Rhodes*, 45 Ohio St. 2d 319, 324, 345 N.E.2d 407, 411 (1976); *State ex rel. Davis v. Hildebrant*, 94 Ohio St. 154, 169, 114 N.E. 55, 59 (1916), *aff’d*, 214 U.S. 565 (1916); 1997 Op. Att’y Gen. No. 97-027, at 2-157; 1988 Op. Att’y Gen. No. 88-030, at 2-124 to 2-125. Accordingly, this opinion does not address the constitutionality of the proposed language. There are various court cases that might be instructive on this matter. *See, e.g., City of Painesville Bldg. Dep’t v. Dworken & Bernstein Co., L.P.A.*, 89 Ohio St. 3d 564, 733 N.E.2d 1152 (2000); *Davis v. City of Green*, 106 Ohio App. 3d 223, 665 N.E.2d 753 (Summit County 1995). This opinion considers only the procedure by which the township zoning resolution may be amended. It does not address the substance of the proposed amendment in any respect.

2. Should an amendment to the Perry Township Zoning Resolution regulating temporary political signs be enacted under the authority and procedures of the limited home rule form of township government appearing in R.C. 504.04, 504.10, and 504.11?
3. Should an amendment to the Perry Township Zoning Resolution regulating temporary political signs be enacted under a combination of the authority and procedures of R.C. Chapters 504 and 519?

As your letter indicates, Perry Township is a limited home rule township pursuant to R.C. Chapter 504, its electors having approved this form of government (then known as limited self-government) in 1992. *See* 1991-1992 Ohio Laws, Part II, 2902 (Sub. H.B. 77, eff. Sept. 17, 1991).<sup>2</sup> Perry Township has a general plan of zoning known as the Perry Township Zoning Resolution. The Perry Township Zoning Resolution was initially adopted in 1958 and has been in effect continuously since that time, with various modifications and revisions made from time to time. The township is now seeking to amend its zoning resolution to place restrictions on the display of temporary signs, including political yard signs, posted on private property.

To address your questions, let us begin by considering generally the nature of zoning. The adoption of a comprehensive plan that divides areas of real property into zones in which various uses are permitted is considered to be part of the exercise of the police power, when supported by legitimate governmental health, safety, and welfare concerns. *See Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387-88 (1926); *Rispo Realty & Dev. Co. v. City of Parma*, 55 Ohio St. 3d 101, 103, 564 N.E.2d 425, 427 (1990) (“the enactment of zoning laws ... is an exercise of ... police power”); *Garcia v. Siffrin Residential Ass’n*, 63 Ohio St. 2d 259, 269-70, 407 N.E.2d 1369, 1377 (1980); 2000 Op. Att’y Gen. No. 2000-022, at 2-141. The regulation of signs, in compliance with constitutional limitations, is commonly considered to be a proper subject of local zoning. *See, e.g., City of Ladue v. Gilleo*, 512 U.S. 43 (1994); *Davis v. City of Green*, 106 Ohio App. 3d 223, 665 N.E.2d 753 (Summit County 1995); *Sun Oil Co. v. City of Upper Arlington*, 55 Ohio App. 2d 27, 379 N.E.2d 266 (Franklin County 1977); 1987 Op. Att’y Gen. No. 87-081, at 2-538 to 2-539.

The authority to adopt a system of zoning has long been granted to townships by the provisions of R.C. Chapter 519. *See* R.C. 519.02. This chapter contains a variety of provisions

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<sup>2</sup> A limited home rule township is a township that has adopted the limited home rule form of township government pursuant to R.C. Chapter 504. It contrasts with a statutory township, which is a township that has not adopted this limited home rule form of township government. As a practical matter, R.C. Chapter 504 grants a limited home rule township authority to exercise a greater measure of authority, in a greater number of matters, than the authority granted to townships generally by the other provisions of R.C. Title 5. *See, e.g.,* R.C. 504.04.

concerning types of zoning regulations townships are permitted to adopt.<sup>3</sup> R.C. Chapter 519 also establishes detailed procedures for the adoption of township zoning resolutions and their subsequent amendment. R.C. 519.03-.121. The procedures set forth in R.C. Chapter 519 for adopting<sup>4</sup> and amending township zoning resolutions are integral parts of the zoning law.

Pursuant to R.C. 519.12, amendments to a township zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution by the board of township trustees, or by the filing of an application by one or more owners or lessees of property. The township zoning commission must schedule a public hearing, give appropriate notice, and invite the recommendation of the county or regional planning commission. R.C. 519.12(A) to (E). Following the public hearing, the township zoning commission must recommend to the board of township trustees the approval, denial, or modification of the proposed amendment. The board of township trustees must schedule a public hearing and give appropriate notice.

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<sup>3</sup> Pursuant to R.C. 519.02, township zoning must be accomplished in accordance with a comprehensive plan. It may be carried out only for the purpose of promoting the public health, safety, and morals. The township zoning resolution may regulate the location, height, size, and use of buildings and other structures, percentages of lot areas that may be occupied, sizes of open spaces, density of population, and uses of land for various purposes. It may divide unincorporated township territory into districts or zones. R.C. 519.02. A township zoning resolution is permitted to include planned-unit development regulations that apply to property only at the election of the property owner. R.C. 519.021. A township zoning resolution must classify outdoor advertising as a business use and permit it in all districts zoned for industry, business, or trade, and on lands used for agricultural purposes. R.C. 519.20.

<sup>4</sup> Before a township may adopt a zoning resolution, the board of township trustees must pass a resolution declaring its intention to proceed with zoning and then establish a township zoning commission. R.C. 519.03-.04. The township zoning commission prepares a zoning plan and, after at least one public hearing, submits that plan to the county or regional planning commission, if there is one, for approval, disapproval, or suggestions. R.C. 519.05-.07. In the case of disapproval or material changes, another public hearing must be held. Then the zoning commission certifies the plan to the board of township trustees. R.C. 519.07.

After receiving certification of a zoning plan from the township zoning commission, the board of township trustees must hold a public hearing. R.C. 519.08. Any changes in the zoning plan must be resubmitted to the zoning commission and, upon receipt of the commission's recommendations regarding the proposed changes, the board of trustees must hold another public hearing. If the commission disapproves the changes, the changes may be adopted only by the favorable vote of the entire membership of the board of trustees. R.C. 519.09.

Following the required hearings and recommendations, the board of township trustees votes upon the adoption of the zoning resolution, which must then be submitted to the electors residing in the unincorporated area of the township included in the proposed plan of zoning. R.C. 519.10-.11.

Following the public hearing, the board of township trustees must adopt or deny the recommendations of the zoning commission, or adopt a modification of the recommendations. R.C. 519.12(E) to (H).

An amendment adopted by the board of township trustees becomes effective in thirty days unless a petition for a zoning referendum is submitted. A referendum petition must be signed by sufficient electors and meet other requirements. An amendment that is submitted to referendum takes effect if it is approved by the voters. R.C. 519.12(H); *see* 2000 Op. Att’y Gen. No. 2000-034.

A township that adopts a zoning resolution pursuant to R.C. Chapter 519 must also appoint a board of zoning appeals. R.C. 519.13. The township board of zoning appeals hears appeals of zoning resolutions and actions taken under them, and it has authority to grant variances. R.C. 519.14.

Provisions authorizing township zoning thus provide a comprehensive system for land use management. They provide further that the construction or use of a building or land in violation of a township zoning resolution is a criminal offense. R.C. 519.23; R.C. 519.99.

Let us now look generally at the provisions of R.C. Chapter 504 and the authority they grant a limited home rule township. In addition to the powers granted generally to townships elsewhere in the Revised Code, R.C. 504.04 empowers a limited home rule township to adopt resolutions by which the township exercises powers of local self-government or police power.<sup>5</sup> R.C. 504.04(A)(1) authorizes a limited home rule township to “[e]xercise all powers of local self-government within the incorporated area of the township, other than powers that are in conflict with general laws,” with certain exceptions. The exceptions include the provision that a resolution under R.C. Chapter 504 may not encroach upon the powers, duties, and privileges of elected township officers or modify the form or structure of township government except as permitted by R.C. Chapter 504. R.C. 504.04(A)(1). R.C. 504.04(A)(2) authorizes a limited home rule township to “[a]dopt and enforce within the unincorporated area of the township local police, sanitary, and other similar regulations that are not in conflict with general laws or otherwise prohibited by division (B) of this section.” R.C. 504.04(A)(2).<sup>6</sup>

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<sup>5</sup> Specific provisions relate to resolutions to supply water or sewer services. R.C. 504.04(A); R.C. 504.18-.20. Because these provisions are not relevant to your questions, this opinion does not discuss them.

<sup>6</sup> R.C. 504.04 states, in relevant part:

(A) A township that adopts a limited home rule government may do all of the following by resolution, provided that any of these resolutions, other than a resolution to supply water or sewer services in accordance with sections 504.18 to

Resolutions under R.C. 504.04 are adopted by vote of the board of township trustees. R.C. 504.11. R.C. 504.10 and R.C. 504.11 govern the form and procedure for adopting such resolutions. R.C. 504.10 requires that a resolution under R.C. Chapter 504 be introduced in written form by a member of the board of township trustees. For a resolution to pass, there must be a concurrence of a majority of the members of the board of township trustees, except that an emergency resolution must receive the affirmative vote of all members of the board. As a general rule, resolutions become effective thirty days after they are filed with the township clerk. However, emergency resolutions, resolutions appropriating money, and certain other resolutions become effective ten days after they are filed. R.C. 504.11(A) and (B). R.C. 504.11(D) specifies: "The procedures provided in this section apply only to resolutions adopted pursuant to a township's limited home rule powers as authorized by this chapter."

R.C. 504.12 provides for the amendment or revision of a resolution adopted pursuant to R.C. Chapter 504. R.C. 504.14 provides for the submission of matters to the voters of a limited home rule township by initiative and referendum, under the same circumstances and in the same manner as provided for municipal corporations under R.C. 731.28-.40, with certain exceptions. R.C. 505.14; *see* R.C. 731.28-.40. Resolutions adopted by a home rule township pursuant to R.C. 504.04 may be enforced by the imposition of civil fines of up to one thousand dollars or by injunction, and appropriate action may be taken to collect judgments. R.C. 504.04(A); R.C. 504.05-.08.

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504.20 of the Revised Code, may be enforced only by the imposition of civil fines as authorized in this chapter:

(1) Exercise all powers of local self-government within the unincorporated area of the township, other than powers that are in conflict with general laws, except that the township shall comply with the requirements and prohibitions of this chapter, and shall enact no taxes other than those authorized by general law, and except that no resolution adopted pursuant to this chapter shall encroach upon the powers, duties, and privileges of elected township officers or change, alter, combine, eliminate, or otherwise modify the form or structure of the township government unless the change is required or permitted by this chapter;

(2) Adopt and enforce within the unincorporated area of the township local police, sanitary, and other similar regulations that are not in conflict with general laws or otherwise prohibited by division (B) of this section;

(3) Supply water and sewer services to users within the unincorporated area of the township in accordance with sections 504.18 to 504.20 of the Revised Code.

R.C. 504.04(A).

Division (B) of R.C. 504.04 lists a variety of things that a limited home rule township is not permitted to do by resolution.<sup>7</sup> Among them are creating a criminal offense or imposing criminal penalties, except in connection with water or sewer services; establishing or revising subdivision regulations, road construction standards, urban sediment rules, or storm water and drainage regulations; and establishing or revising building standards, building codes, and other standard codes, with limited exceptions.

R.C. 504.04(B) does not specifically mention zoning or matters that are subject to zoning. It is clear that a limited home rule township is permitted to have a zoning resolution adopted pursuant to R.C. Chapter 519.<sup>8</sup> It appears, however, that in adopting or amending a zoning resolution under R.C. Chapter 519, a township must comply with the procedures of R.C. Chapter 519.

This conclusion is evident from the fact that R.C. Chapter 519 provides a comprehensive system for adopting township zoning. It sets forth detailed requirements regarding the adoption and amendment of township zoning resolutions and imposes criminal penalties for their violation. R.C. 519.23, which provides for the criminal enforcement of a township zoning

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<sup>7</sup> R.C. 504.04(B) states:

(B) No resolution adopted pursuant to this chapter shall do any of the following:

(1) Create a criminal offense or impose criminal penalties, except as authorized by division (A) of this section;

(2) Impose civil fines other than as authorized by this chapter;

(3) Establish or revise subdivision regulations, road construction standards, urban sediment rules, or storm water and drainage regulations;

(4) Establish or revise building standards, building codes, and other standard codes except as provided in section 504.13 of the Revised Code;

(5) Increase, decrease, or otherwise alter the powers or duties of a township under any other chapter of the Revised Code pertaining to agriculture or the conservation or development of natural resources;

(6) Establish regulations affecting hunting, trapping, fishing, or the possession, use, or sale of firearms;

(7) Establish or revise water or sewer regulations, except in accordance with sections 504.18 and 504.19 of the Revised Code.

Nothing in this chapter shall be construed as affecting the powers of counties with regard to the subjects listed in divisions (B)(3) to (5) of this section.

<sup>8</sup> See, e.g., R.C. 709.50(A)(3); *City of Hamilton v. Fairfield Township*, 112 Ohio App. 3d 255, 678 N.E.2d 579 (Butler County 1996) (finding that R.C. 709.50 violates the Ohio Constitution for reasons apart from R.C. 709.50(A)(3)).

resolution, prohibits construction or land use “in violation of any resolution, or amendment or supplement to such resolution” adopted under R.C. Chapter 519. R.C. 519.23; *see also* R.C. 519.99. Thus, to be part of the township zoning code and subject to enforcement through criminal procedures, a zoning amendment must be adopted pursuant to the procedures of R.C. Chapter 519. *See* 1972 Op. Att’y Gen. No. 72-118 (syllabus, paragraph 1) (“[a]fter township zoning regulations have been enacted, any attempt to amend or supplement them should comply with the requirements of R.C. 519.12”); *see also* 2000 Op. Att’y Gen. No. 2000-034. A township is not empowered to use limited home rule resolutions to create criminal offenses or impose criminal penalties and thus cannot use them to modify a township zoning resolution under R.C. Chapter 519. Resolutions adopted pursuant to R.C. Chapter 504 may be enforced only through the imposition of civil fines, whereas township zoning provisions are subject to enforcement through the criminal law. *See* 2001 Op. Att’y Gen. No. 2001-027, at 2-160 n.10.

Therefore, it is my opinion, and you are advised, that a township that has adopted a zoning resolution pursuant to R.C. Chapter 519 and has adopted a limited home rule government pursuant to R.C. Chapter 504 may amend its zoning resolution solely under the authority and procedures of R.C. 519.12.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General