

1829

1. ZONING RESOLUTION—LATEST DATE TO CERTIFY TO COUNTY BOARD OF ELECTIONS—BOARD OF TOWNSHIP TRUSTEES—SUBMISSION TO PRIMARY OR GENERAL ELECTION—CERTIFICATION SHOULD BE MADE AT A TIME TO GIVE BOARD OF ELECTIONS OPPORTUNITY TO PREPARE AND DISTRIBUTE BALLOTS—SECTION 3180-35 G.C.
2. CALLING OF SPECIAL ELECTION—LEFT TO DISCRETION OF TOWNSHIP TRUSTEES—NO STATUTORY PROVISION AS TO TIME—SUBMISSION OF TOWNSHIP ZONING RESOLUTION.

SYLLABUS:

1. The latest date upon which a zoning resolution may be certified by a board of township trustees to the county board of elections, in order that it may be submitted to the electors at a primary or general election as provided by Section 3180-35, General Code, not being fixed by statute, such certification should be made at such time as will give the board of elections reasonable opportunity to prepare and distribute the ballots.

2. The statutes make no provision as to the time at which a township zoning resolution may be submitted, pursuant to Section 3180-35, General Code, at a special election, and accordingly the calling of such election is left to the sound discretion of the township trustees.

Columbus, Ohio, September 9, 1952

Hon. Seabury H. Ford, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

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

“Two townships in this county have just started proceedings under General Code 3180-26 et seq. to adopt zoning and have passed their resolution of intent, appointed their zoning commission and have advertised for the first public hearing before the Board of Trustees, provided in G. C. 3180-32. It is obvious that the total period of time required will extend beyond the date such zoning proposal can be certified to the board of elections to be submitted at the general election November 4, 1952. That is true, providing, as I interpret it, the latest date for certifying

to the board of elections would be forty days prior to the election, although I do not find any specific limit, except the requirement to advertise for four consecutive weeks, which might be interpreted as meaning thirty days prior to the election, would be sufficient time for the resolution to be filed to the board of elections. There is nothing in the zoning laws stating specifically that the two public hearings required have to follow each other successively, except the common sense interpretation, that the board of trustees could not advertise and set their meeting until the zoning commission had certified the zoning proposal to them, which could not be done until after the public hearing before the zoning commission. Therefore, my questions are:

“1. What is the latest date a zoning resolution may be certified by the board of trustees to the county board of elections?”

“2. Can the board of trustees advertise for their public meeting and set the date for same before the zoning commission has had their public hearing and certified the resolution to the trustees?”

“It is obvious that the two townships in question would have to hold a special election if they cannot comply with the answers to the two above questions, from which arises my third question:

“3. Is there any limitation as to how soon after a general election such a special election can be held?”

1. Section 3180-35, General Code, 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.”

It will be noted that this section contains no provision as to the time when a resolution must be transmitted to the board of elections in order that it may be placed on the ballot at the forthcoming primary or general election.

Furthermore, I do not find any other provision of the law relating to either county or township zoning procedure which would throw any

light on this question. In my opinion, there is no question but that the general election laws govern as to the submission in so far as their provisions are found applicable. Provisions as to the form of ballot in submitted propositions are found in Section 4785-103, General Code.

A study of the general election laws does not, however, disclose any provision which appears to fix the time within which such zoning proposal must be certified to the board of elections in order that it may be submitted at a primary or general election. There are various provisions in the election laws as to the time within which various matters must be filed with the board of elections, in order that names of candidates may be put on the ballot, ranging from ninety days before a primary for declarations of candidacy, as per Section 4785-70, General Code, to five days before the general election in case of the filling of a vacancy on the ticket where a candidate dies after having been nominated. See Section 4785-94, General Code.

Thus, it will be seen that no definite rule can be deduced from these provisions as to the latest time when the zoning resolution may be certified to the county board of elections. Plainly the question becomes one of reason, dependent upon the time reasonably required by the board of elections to have proper ballots printed and distributed, and I know of no authority that could determine that question except the board of elections. Substantially the same question as you have submitted was presented to one of my predecessors, who answered it in an informal opinion, No. 402, under date of August 2, 1948. After quoting Section 3180-35 supra, it was said:

“From the above it is obvious that the resolution, after having been adopted by the township trustees, must be certified to the board of elections of the county in order that it may be placed on the ballot and submitted to the electors. Since the act contains no provision with respect to the time that such certification must be made, it would seem to me that if the certificate is made in ample time to permit the question to be printed on the ballot, the board of elections would be required to submit the question to the electors.”

Using as a guide, the period of forty days prescribed by Section 2293-19, General Code, for certification to the board of elections of a proposal to issue bonds, the then Attorney General advised that that would be a reasonable time to apply to the certification of a zoning resolution.

Accordingly, it is my opinion that the latest date upon which a zoning resolution may be certified by the board of township trustees to the county board of elections, in order that it may be submitted at a primary or general election is not fixed by the law but such resolution should be so certified at such time as will give the board of elections reasonable opportunity to prepare and distribute the ballots.

2. Your second question was under direct consideration in Opinion number 1828 which I am today releasing. The first syllabus of that opinion reads as follows:

“Section 3180-32, General Code, requires township trustees, after receiving the certification of a zoning plan from the township zoning commission, to hold a public hearing thereon, and that at least thirty days’ notice of the time and place of such hearing shall be given. The fact that said trustees set the date for such hearing and published notice thereof before the receipt by them of such plan will not invalidate their final action on such plan, provided the full period of thirty days has elapsed between such certification and such hearing.”

3. As I have already indicated, the statutes relative to county and township zoning simply provide that the zoning resolution may be submitted to the electors, for their ratification at a primary or general election, or “a special election may be called for that purpose.” I find no further provision in that law nor do I find any provision whatsoever in the general election laws which would govern the trustees in determining when a special election should be called, and such determination must, therefore, be left to their sound discretion.

Respectfully,

C. WILLIAM O’NEILL

Attorney General