

OPINION NO. 69-136

Syllabus:

A township's zoning authority under Chapter 519, Revised Code, is not inconsistent with the requirement under Section 4737.07, Revised Code, of a license issued by the county auditor prior to the establishment of a junk yard. The county auditor's licensing power, with respect to junk yards, and the township's zoning authority are mutually independent and separately enforceable.

To: E. Raymond Morehart, Fairfield County Pros. Atty., Lancaster, Ohio
By: Paul W. Brown, Attorney General, October 9, 1969

I have before me your request for my opinion which asks the following questions:

"(1) Is the County Auditor authorized or required to issue a license for a junk yard under Sections 4737.05 to 4737.99 incl. of the Revised Code of Ohio if the application therefor contains the information required under Section 4737.07 and .08, regardless of the existence of a township zoning resolution forbidding junk yards in the area described in the application?"

"(2) If the County Auditor is required to, or does issue such license, are the appropriate township officials, under the Zoning Resolution, authorized to enforce such Zoning Resolution (as authorized in Chapter 519, and especially Section 519.24 of the Revised Code of Ohio), regardless of the fact that such junk yard license was issued?"

"(3) That is, has the State of Ohio preempted the entire field of 'junk yard' regulation by enacting the law requiring the licensing of junk yards so that they cannot be regulated or prohibited by township zoning?"

Section 4737.07, Revised Code, in providing for the issuance of licenses by the county auditor states in part as follows:

"No person shall operate and maintain a junk yard outside of a municipality without first obtaining a license to do so from the county auditor of the county in which such junk yard is located or in which such junk yard is to be established. * * *

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There is nothing in Chapter 4737, Revised Code, which expressly refers to or conflicts with the provisions in Chapter 519, Revised Code. Considering the duties of the county auditor, it becomes apparent that the licensing power of the county auditor is designed basically as a revenue measure. In effect, the county auditor's licensing power presents an independent condition precedent to the establishment of a junk yard, which is in no way affected by a township's capacity to prohibit junk yards in certain areas by adopting zoning resolutions.

It consequently becomes clear that the county auditor is authorized to issue a license for a junk yard under Chapter 4737, supra, if the application is proper, regardless of the existence of a township zoning resolution forbidding junk yards in the area described in the application. The responsibility lies with the applicant to ensure that there are no other restrictions which might prevent the establishment of the junk yard.

Your second and third questions focus on the effect of the county auditor's licensing power as to a township's ability to restrict the establishment of junk yards through zoning regulations. I would refer you to Opinion No. 1178, Opinions of the Attorney General for 1964, which concerned a similar problem, where the object of control through zoning regulations was the drilling for and production of gas and oil. The syllabus in that opinion stated in part that;

"1. Counties and townships may control the drilling for gas and oil and the production of gas and oil through comprehensive zoning regulations adopted pursuant to Chapter 303, Revised Code, and Chapter 519, Revised Code, respectively, so long as such zoning regulations do not conflict with state statutes on the subject or with administrative rules or regulations adopted pursuant to statutory authority.

"* * * * *"

In the present case, it has been established that a township's zoning regulation of junk yards does not conflict with a county auditor's power to license junk yards. Therefore, it is clear that the township's power to control junk yards through their zoning resolution is not affected by the licensing power granted to county auditors in Chapter 4737, supra.

It is, therefore, my opinion and you are hereby advised that a township's zoning authority under Chapter 519, Revised Code, is not inconsistent with the requirement under Section 4737.07, Revised Code, of a license issued by the county auditor prior to the establishment of a junk yard. The county auditor's licensing power, with respect to junk yards, and the township's zoning authority are mutually independent and separately enforceable.