OPINION NO. 81-097

Syllabus:

The Public Health Council's regulation of house trailer parks pursuant to R.C. 3733.01 through R.C. 3733.08 does not preempt the application of a county planning commission's rules, adopted pursuant to R.C. 711.10, regulating the development of house trailer parks, as long as the commission's rules do not come into direct conflict with those rules of general state-wide application lawfully implemented by the Public Health Council.

To: Anthony G. Pizza, Lucas County Pros. Atty., Toledo, Ohio
By: William J. Brown, Attorney General, December 21, 1981

I have before me your request for my opinion regarding the application of R.C. 3733.02. It is my understanding that you are asking whether R.C. 3733.02, which authorizes the Ohio Public Health Council to make regulations governing house trailer parks, preempts the application of a county planning commission's rules, adopted pursuant to R.C. 711.10, to house trailer parks. Such a determination requires an examination of R.C. 3733.02 and R.C. 711.10.

R.C. 711.10 provides in pertinent part:

> Whenever a county planning commission or a regional planning

> commission adopts a plan for the major streets or highways of the county or region, then no plat of a subdivision of land within the county or region, other than land within a municipal corporation or land within three miles of a city or one and one-half miles of a village as provided in section 711.09 of the Revised Code, shall be recorded until it is approved by the county or regional planning commission and the approval is endorsed in writing on the plat. . . .
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> Any such county or regional planning commission shall adopt general rules, of uniform application, governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the proper arrangement of streets or other highways in relation to existing or planned streets or highways or to the county or regional plan, for adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, air, and for the avoidance of congestion of population. The rules may provide for the modification thereof by the county or regional planning commission in specific cases where unusual topographical and other exceptional conditions require such modification. (Emphasis added.)

Under this provision, a county planning commission is authorized to adopt "a plan for the major streets or highways of the county" and "general rules, of uniform application, governing plats and subdivisions of land falling within its jurisdiction" for the enumerated reasons. Once adopted, such plan and rules, unless modified, must be complied with before a county planning commission will approve a plat of a subdivision falling within its jurisdiction. Without such approval, a plat of a subdivision, may not be recorded.[1]

A "subdivision" is defined in R.C. 711.001, which provides:

> (B) "Subdivision" means:
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> (1) The division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll, into two or more parcels, sites, or lots, any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership, provided, however, that the division or partition of land into parcels of more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall be exempted; or
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> (2) The improvement of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets, except private streets serving industrial structures; the division or allocation of land as open spaces for common use by owners, occupants or lease holders or as easements for the extension and maintenance of public sewer, water, storm drainage or other public facilities.

In 1972 Op. Att'y Gen. No. 72-020, at 2-79, I opined that the development of a mobile home park (or house trailer park) is a "subdivision" within the meaning of R.C. 711.001(B)(2), and, as such, must be submitted for approval as provided in R.C. 711.10. I conclude, therefore, that a county planning commission is authorized, pursuant to R.C. 711.10, to apply its rules to house trailer parks.

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[1] I note that, if such plat is recorded without approval of the county planning commission, the county recorder who records such plat will be subject to the forfeiture penalty as provided in R.C. 711.12. See 1949 Op. Att'y Gen. No. 717, p. 370. Further, R.C. 711.13 provides for a similar penalty against the owner or agent of the owner who "willfully transfers any lot, parcel, or tract of such land from or in accordance with a plat of a subdivision. . .before the plat has been recorded in the office of the county recorder."

Your concern is with the relationship between this authority and the authority granted to the Public Health Council, a body appointed by the governor pursuant to R.C. 3701.33 and given authority on matters concerning public health. See, e.g., R.C. 3701.34.[2] Of particular relevance to your question is R.C. 3733.02, which provides in pertinent part:

> (A) The public health council, subject to sections 119.01 to 119.13 of the Revised Code, shall make, and has the exclusive power to make, rules of general application throughout the state governing the issuance of licenses, location, layout, construction, drainage, sanitation, safety, tiedowns, and operation of house trailer parks. Such rules are not to apply to the construction, erection, or manufacture of any building to which section 3781.06 of the Revised Code is applicable. (Emphasis added.)

By this provision, the Public Health Council is given "exclusive power to make rules of general application throughout the state" governing various aspects of house trailer parks. Thus, it is the sole source of state-wide regulation of house trailer parks. However, I believe that a careful reading of R.C. 3733.02 clearly shows that the legislature did not intend that R.C. 3733.02 preempt a county planning commission from regulating the development of house trailer parks within its jurisdiction.

In 1981 Op. Att'y Gen. No. 81-065 I opined:

> Generally, by entering a field with laws of general application, the General Assembly preempts the particular field to the extent that local bodies cannot make laws that are in direct conflict with the state laws. The doctrine of preemption applies when a law or regulation on one level of government is found invalid because it is contrary to the will of another level of government.

See State v. Hess, 50 Ohio L. Abs. 129, 76 N.E.2d 300 (Ct. App. Franklin County 1947) (regulations of Franklin County District Board of Health regarding house trailers are valid if they are not in conflict with state law).

The legislature in 1978 Ohio Laws 3483 (Am. H.B. 820, eff. Sept. 25, 1978) amended R.C. 3733.02(A) to grant the Public Health Council the "exclusive power to make, rules of general application throughout the state." This amendment did not, however, give the Public Health Council the exclusive power to make rules pertaining to house trailer parks, but only the exclusive power to make rules pertaining to house trailer parks which are of "general application throughout the state." (Emphasis added.) Therefore, although the Public Health Council, within its sphere of authority, may make general rules of state-wide application regarding house trailer parks, it has no authority to make rules of a specific nature to govern situations more readily governed by local authorities.

As stated by one of my predecessors in 1958 Op. Att'y Gen. No. 2111, p. 297, at 300-01:

> Bearing in mind that the public health council is merely an arm of the state department of health, whose sole function is to conserve the public health, I cannot ascribe to the legislature an intention to make of the health council a zoning board, with power to override the authority of those agencies to which the legislature had long before given explicit authority to enact zoning regulations.

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[2] See 1972 Op. Att'y Gen. No. 72-033 (general discussion of the state regulation of house trailers and house trailer parks).

To authorize this public health agency to confer, by the grant of a license, the privilege of planting a crowded, unsightly and sometimes unsanitary conglomeration of more or less temporary housing quarters, in a portion of a municipality or township which had been carefully zoned for permanent residences only, would appear to be a gross betrayal of a public trust.

In my opinion the power given by Section 3733.02, supra, to "make regulations of general application throughout the state governing the location, layout, construction, drainage, sanitation, safety and operation of house trailer parks" was intended to preserve and conserve the health and welfare of the occupants of these house trailers and of the residents of the surrounding community by the adoption of such general regulations, and was never designed to permit the local health board to invade a territory which had been lawfully restricted against such house trailer parks, and to designate a spot where, merely by reason of a license to operate, the trailer park might be placed and, during the period of the license, permitted to remain, regardless of the zoning prohibition. (Emphasis in original.)

It is my opinion that the analysis of my predecessor is still applicable.[3] The amendment to R.C. 3733.02 did not grant the Public Health Council the power to override local zoning concerns, but only the power to exclusively make state-wide rules of general application. Of course, local regulation of house trailer parks may not directly conflict with those rules of general application which the Public Health Council is authorized to implement pursuant to R.C. 3733.01 through R.C. 3733.08. See Anderson v. Brown, 13 Ohio St. 2d 53, 233 N.E.2d 584 (1968) (municipal ordinances prohibiting operation of trailer parks, unless license is first obtained by paying a tax, are in direct conflict with the exclusive authority to so tax granted to the Public Health Council, and thus violative of R.C. 3733.06); Noland v. City of Sharonville, 4 Ohio App. 2d 7, 211 N.E.2d 90 (Hamilton County 1964). See generally Op. No. 81-065 (a township may enact resolutions to regulate surface mining so long as its resolutions do not come into direct conflict with the General Assembly's regulation of surface mining).

Therefore, it is my opinion, and you are advised, that the Public Health Council's regulation of house trailer parks pursuant to R.C. 3733.01 through R.C. 3733.08 does not preempt the application of a county planning commission's rules, adopted pursuant to R.C. 711.10, regulating the development of house trailer parks, as long as the commission's rules do not come into direct conflict with those rules of general state-wide application lawfully implemented by the Public Health Council.

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[3] Also of interest is Op. No. 72-033 at 2-129, where I interpreted a township's power to regulate house trailer parks, and concluded that a township may:

> under its authority to adopt zoning regulations, control the original establishment of a trailer park. . . . But it may not, under the guise of a zoning fee, collect an excise tax upon the operation of a duly established trailer park in addition to that already assessed against the operator by the State. (Citations omitted; emphasis in original.)