December 30, 1994

OPINION NO. 94-098

The Honorable Steven C. LaTourette
Lake County Prosecuting Attorney
Courthouse
P.O. Box 490
Painesville, Ohio 44077

Dear Prosecutor LaTourette:

You have requested an opinion concerning the authority of a township to regulate the drainage of surface water in residential subdivisions in the unincorporated territory of townships. In accordance with a conversation with a member of your staff, your specific questions[1] have been rephrased as follows:

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[1] Your request sets forth a series of ten questions that ask about (1) the authority and responsibility of a township to regulate surface water drainage through the exercise of its zoning power; (2) the authority of a county engineer and soil and water conservation district to regulate surface water drainage within a township, and to preempt the authority of the township in that regard; (3) the use of a township site plan review process to preempt a county engineer's site plan review authority; (4) the authority of a soil and water conservation district, county engineer, county building inspection department, or county planning commission to require land use or deed restrictions of a developer to prevent builders from constructing basements in poor soil types or in areas of poor drainage, or in areas designated as wetlands; (5) the authority of a county planning commission to require a developer to present proof of a National Pollution Discharge Elimination System (NPDES) permit as a prerequisite to the approval of a proposed subdivision; and (6) the roles of a county planning commission, board of township trustees, and board of county commissioners in the adoption of a comprehensive zoning plan for purposes of R.C. 519.02.

Preliminary research and analysis of the law relevant to your various inquiries and their resolution indicate that a clear and comprehensive answer to each question you have asked will result in a single formal opinion of considerable length. Accordingly, rather than address all ten questions by way of a single opinion, this particular opinion will address those questions that relate primarily to a township's zoning powers and responsibilities with respect to surface water drainage within the unincorporated areas of the township. The remaining questions you have asked will be addressed in a second opinion to be issued at a later date.

1. May a township adopt zoning regulations which will operate to control the drainage of surface water from residential subdivisions?

2. Does a township have responsibility for the drainage of surface water from roads within a platted residential subdivision that is located in the unincorporated territory of a township when the plat of the subdivision has been properly approved by the county planning commission as required by R.C. 711.10?

3. If a township adopts a zoning regulation that regulates land use in such a manner as to control the drainage of surface water from residential subdivisions, what are the responsibilities of the township with respect to the enforcement of that regulation?

4. Does a township zoning regulation that grants a township the authority to review an approved plat of a residential subdivision preempt a county engineer's site plan review authority?

Township Zoning Authority

Your first question is whether a township may adopt zoning regulations that will operate to control the drainage of surface water[2] from residential subdivisions. Because you have not asked about the propriety of a specific township zoning regulation, this opinion only considers the general authority of a township to adopt zoning regulations that regulate land use in such a manner as to control surface water drainage from residential subdivisions.

In Ohio, "townships have only the zoning power delegated to them by the General Assembly." *Ketchel v. Bainbridge Township*, 52 Ohio St. 3d 239, 241, 557 N.E.2d 779, 781 (1990), *cert. denied*, 498 U.S. 1120 (1991); *accord Yorkavitz v. Board of Township Trustees*, 166 Ohio St. 349, 351, 142 N.E.2d 655, 656 (1957). Pursuant to R.C. Chapter 519, the General Assembly has delegated local zoning authority to townships. R.C. 519.02, authorizing a board of township trustees to adopt zoning regulations, provides:

> *For the purpose of promoting the public health, safety, and morals, the board of township trustees may in accordance with a comprehensive plan regulate by resolution* the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures

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[2] For the purpose of this opinion, "[s]urface waters are those waters which are diffused over the surface of the ground, derived from falling rains and melting snows or which rise to the surface in springs, and continue to be such until it reaches some well-defined channel." *Frost v. Bank One of Fremont*, 7 Ohio App. Unrep. 179, 182 (Sandusky County 1990).

> including tents, cabins, and trailer coaches, and *the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such township*, and for such purposes may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones. (Emphasis added.)

R.C. 519.02 thus authorizes a board of township trustees, for the purpose of promoting the public health, safety, and morals, and in accordance with a comprehensive plan, to regulate the uses of land for various purposes in the unincorporated territory of the township.

A township's zoning power is not unrestricted, however. R.C. 519.21(A) states that the provisions of R.C. 519.02-.25 (township zoning) do not confer upon a township the power "to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located." R.C. 519.211 provides that, with certain limitations, a township has no power to zone property used by a public utility or railroad for the operation of its business.

Neither R.C. 519.21 nor R.C. 519.211 is directly applicable to the control of water drainage from residential subdivisions. It thus appears that R.C. Chapter 519 authorizes a township to regulate the uses of land in such a manner as to control the drainage of surface water from residential subdivisions, provided that such regulation is performed by resolution, in accordance with a comprehensive plan, and for the purpose of promoting the public health, safety, and morals. *See* 1985 Op. Att'y Gen. No. 85-053 (a township may adopt zoning regulations, pursuant to R.C. Chapter 519, that regulate the uses of land in such a manner as to control sediment and stormwater runoff from urban development); *cf. Miesz v. Village of Mayfield Heights*, 92 Ohio App. 471, 111 N.E.2d 20 (Cuyahoga County 1952) (the zoning power of a municipal corporation includes the power to regulate the removal and stripping of topsoil, provided that the regulations adopted bear a reasonable relation to the public health, safety, morals, and general welfare; zoning regulations governing the removal and stripping of topsoil upheld on the basis that such activities may affect erosion and drainage patterns and have a detrimental effect on the public health).

Although a township is authorized to regulate the uses of lands in the unincorporated territory of the township, the township may not enact zoning regulations that conflict with provisions of state law governing surface water drainage from residential subdivisions. As stated in *Yorkavitz v. Board of Township Trustees*, 166 Ohio St. at 351, 142 N.E.2d at 657, it is an "inescapable conclusion that the General Assembly can not be held to have delegated to township officials the authority to adopt zoning [regulations] which are in contravention of general laws previously enacted by the General Assembly." *Accord Fox v. Johnson*, 28 Ohio App. 2d 175, 275 N.E.2d 637 (Mahoning County 1971); *see* Op. No. 85-053; 1981 Op. Att'y Gen. No. 81-065. Also, a township may not enact zoning regulations on matters that are affected by other state or federal regulation. *See* 1994 Op. Att'y Gen. No. 94-040. Therefore, a township may not enact zoning regulations that

conflict with provisions of state or federal law.

With regard to your specific inquiry, research discloses at least two state statutes that bear upon a township's authority to enact regulations regarding surface water drainage from residential subdivisions. R.C. 1511.02 grants the Chief of the Division of Soil and Water Conservation within the Department of Natural Resources certain authority to adopt rules relating to urban sediment pollution abatement. R.C. 1511.02(E) provides in relevant part:

> The chief of the division of soil and water conservation, subject to the approval of the director of natural resources, shall do all of the following:
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> ....
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> (E) Subject to the approval of the Ohio soil and water conservation commission, adopt, amend, or rescind rules pursuant to Chapter 119. of the Revised Code. *Rules adopted pursuant to this section:*
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> ....
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> (2) *Shall establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by soil sediment in conjunction with land grading, excavating, filling, or other soil-disturbing activities on land used or being developed for nonfarm commercial, industrial, residential, or other nonfarm purposes, and establish criteria for determination of the acceptability of such management and conservation practices.* The standards shall be designed to implement applicable areawide waste treatment management plans prepared under section 208 of the "Federal Water Pollution Control Act," 86 Stat. 816 (1972), 33 U.S.C.A. 1288, as amended. The standards and criteria shall not apply in any municipal corporation or county that adopts ordinances or rules pertaining to sediment control....
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> (3) *May recommend criteria and procedures for the approval of urban sediment pollution abatement plans and issuance of permits* prior to any grading, excavating, filling, or other whole or partial disturbance of five or more contiguous acres of land owned by one person or operated as one development unit and require implementation of such plan. Areas of less than five contiguous acres are not exempt from compliance with other provisions of this chapter and rules adopted under them.
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> (4) *Shall establish procedures for administration of rules for* agricultural pollution abatement and *urban sediment pollution abatement* and for enforcement of rules for agricultural pollution abatement;
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> ....
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> (12) *Insofar as the rules relate to urban sediment pollution, shall not be applicable in a municipal corporation or county that adopts ordinances or rules for urban sediment control.* (Emphasis added.)

Similarly, R.C. 307.79 authorizes a county to adopt rules concerning the abatement of urban sediment pollution. This section states, in part:

> *The board of county commissioners may adopt, amend, and rescind rules establishing technically feasible and economically reasonable standards to achieve a level of management and conservation practices which will abate wind or water erosion of the soil or abate the degradation of the waters of the state by soil sediment in conjunction with land grading, excavating, filling, or other soil disturbing activities on land used or being developed for nonfarm commercial, industrial, residential, or other nonfarm purposes, and establish criteria for determination of the acceptability of such management and conservation practices.* The rules shall be designed to implement the applicable areawide waste treatment management plan prepared under section 208 of the "Federal Water Pollution Control Act," 86 Stat. 816, 33 U.S.C. 1288, as amended....
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> The rules may require persons to file sediment control and water management plans incident thereto, before clearing, grading, excavating, filling, or otherwise wholly or partially disturbing five or more contiguous acres of land owned by one person or operated as one development unit for the construction of nonfarm buildings, structures, utilities, recreational areas, or other similar nonfarm uses. Areas of less than five contiguous acres shall not be exempt from compliance with other provisions of this section or rules adopted pursuant to this section....
>
> No permit or plan shall be required for a public highway, transportation, or drainage improvement or maintenance thereof undertaken by a government agency or political subdivision in accordance with a statement of its standard sediment control policies that is approved by the board or the chief of the division of soil and water districts. (Emphasis added.)

R.C. 1511.02 and R.C. 307.79 thus authorize the Chief of the Division of Soil and Water Conservation and counties to adopt rules to regulate urban sediment pollution abatement.

Op. No. 85-053, which concerned the authority of townships to regulate sediment and stormwater runoff from urban development, examined the provisions of R.C. 307.79 and R.C. 1511.02 in relation to a township's zoning authority, and concluded as follows:

> The General Assembly has, by the enactment of R.C. 307.79 and R.C. 1511.02(E), established a scheme under which rules which establish standards and criteria for the regulation of sediment and stormwater runoff from urban development and which are designed to implement applicable areawide waste treatment management plans prepared under the FWPCA [(Federal Water Pollution Control Act)] are to be in effect throughout the state, either in the form of rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), or in the form of municipal or county regulations, see R.C. 1511.02(E)(9).[3] The General Assembly has, thus, indicated its intent that the FWPCA be implemented in the state. In order to harmonize the various state provisions it must, therefore, be concluded that no township zoning regulation may interfere with this scheme. (Footnote added.)

[3] The provisions of R.C. 1511.02(E)(9) now appear in R.C. 1511.02(E)(12).

Op. No. 85-053 at 2-200. Accordingly, a township may not enact zoning regulations that regulate land use in such a manner as to control the drainage of surface water from residential subdivisions if the regulations are in conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), with rules pertaining to urban sediment control which are adopted by a county under R.C. 307.79, or with other state or federal laws.

In addition, a township zoning resolution also must be consistent with constitutional provisions. As stated in Op. No. 94-040 at 2-207, "[a] township's zoning authority is subject to the constitutional limits on exercise of the police power and government interference with private property established by the due process and takings clauses of the state and federal constitutions." *See also* U.S. Const. amend. V (no person shall "be deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation"); Ohio Const. art. I, §16 (no person shall be deprived of his property without due process of law); Ohio Const. art. I, §19 (compensation must be made for private property taken for public use). The determination of whether a particular zoning regulation is consistent with constitutional provisions is dependent upon the factors existing in a particular township at a particular time. Op. No. 94-040 at 2-208.

In light of the foregoing, it is clear that R.C. Chapter 519 authorizes a township to enact zoning regulations that regulate the use of land in the unincorporated territory of the township, provided that the regulations promote the public health, safety, and morals as required by R.C. 519.02, and do not violate constitutional principles or conflict with provisions of state or federal law. Therefore, pursuant to R.C. Chapter 519, a board of township trustees may, for the purpose of promoting the public health, safety, and morals and in accordance with a comprehensive plan, enact zoning regulations that regulate land use in such a manner as to control the drainage of surface water from residential subdivisions, provided the regulations conform to constitutional limitations and do not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), with rules pertaining to urban sediment control that are adopted by a county under R.C. 307.79, or with other state or federal laws.

Township Responsibility for the Drainage of Surface Water from Roads Within an Unincorporated Platted Residential Subdivision

Your second question is whether a township has responsibility for the drainage of surface water from roads within a platted residential subdivision that is located in the unincorporated territory of a township when the plat of the subdivision has been properly approved by the county planning commission as required by R.C. 711.10.[4] Information provided by a member of your staff

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[4] R.C. 711.10 governs the platting of residential subdivisions in the unincorporated territory of a county. This section provides, in pertinent part:

> Whenever a county planning commission or 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

indicates that the residential subdivision is not within three miles of a city or one and one-half miles of a village.

Prior opinions of the Attorney General have determined that a township's duty to provide for the drainage of roads is concomitant to its duty to maintain those roads. 1994 Op. Att'y Gen. No. 94-061 at 2-298; 1981 Op. Att'y Gen. No. 81-039 at 2-156; *see also* 1958 Op. Att'y Gen. No. 2775, p. 579 (syllabus, paragraph three) ("township trustees have no authority to construct drains or sewers to carry off surplus water except to the extent incidental to and necessary in the improvement of a township road"). Resolution of your question thus requires a determination whether a township is responsible for the maintenance and repair of the roads in a platted residential subdivision that is not within a municipal corporation or within three miles of a city or one and one-half miles of a village.

Roads must be properly dedicated and accepted for public use, and thus established as public roads, before any public authority becomes responsible for their maintenance. 1994 Op. Att'y Gen. No. 94-036 at 2-186; 1976 Op. Att'y Gen. No. 76-014 at 2-41; 1949 Op. Att'y Gen. No. 1209, p. 835 at 837; *see also* 1958 Op. Att'y Gen. No. 1646, p. 46 at 47 ("township trustees have neither authority nor duty as to the improvement or maintenance of any highway unless and until it has become a public highway by due process of law"). The approval of a plat by a county planning commission is not "an acceptance by the public of the dedication of any street, highway, or other way or open space shown upon the plat." R.C. 711.10. Accordingly, roads shown on an approved plat of a residential subdivision remain under the care and control of the developer until such roads are accepted for use as public ways by the county. Op. No. 94-036 at 2-186; *see* Op. No. 76-014.

> 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....
>
> 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. The rules may require the county department of health to review and comment on a plat before the county or regional planning commission acts upon it and may also require proof of compliance with applicable township zoning resolutions regarding lot size, frontage, and width as a basis for approval of a plat.

As stated in Op. No. 94-036 at 2-187, "[w]hen a street is dedicated as part of the platting process, acceptance of the street as a public way is governed by R.C. 711.091."[5] This section provides:

> The city or village engineer in the case of lands within a city or village, and *the county engineer in the case of lands outside of a city or village,* shall, upon written request by the owner of the land upon which the street has been constructed check the construction and if the engineer finds that such street has been constructed in accordance with the specifications set forth on the approved plat, and that such street is in good repair, then such finding, endorsed on the approved plat, shall constitute an acceptance of the street for public use by the city, village or county as the case may be, provided such street has been theretofore duly dedicated. (Emphasis added.)

Thus, it is the duty of the county engineer to inspect the roads constructed in a residential subdivision located outside of a municipal corporation upon request of the owner, and the engineer's endorsement on the approved plat that the roads meet the applicable specifications constitutes an acceptance of the roads for public use, provided such roads have been duly dedicated. *See generally* Op. No. 94-036 at 2-187 n.5 ("[t]he dedication to public use must be expressly indicated on the plat").

Once roads in a residential subdivision located outside a municipal corporation have been accepted for public use, the responsibility for the maintenance and repair of such roads is governed by R.C. 5535.01. This statute provides as follows:

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[5] 1994 Op. Att'y Gen. No. 94-036 noted that a tract of land may also be dedicated by a private owner and accepted for use as a public way pursuant to R.C. 5553.31, which authorizes a board of county commissioners to accept the dedication of a road, and R.C. 723.03, which authorizes a municipal corporation to accept dedication of a street inside its corporate limits. *Id.* at 2-187 n.4. The opinion further stated at 2-187 n.4:

> When a road is dedicated and accepted as provided in the platting statutes, a formal acceptance by the county or municipality under R.C. 5553.31 or R.C. 723.03 is not necessary. *See Eggert v. Puleo,* 67 Ohio St. 3d 78, 84, 616 N.E.2d 195, 200 (1993) ("R.C. Chapter 711 contemplates creation of a street through the platting process, a separate type of _dedication_ from that provided in R.C. 723.03"). Although the court in *Eggert* considered only the relationship between R.C. 723.03 and R.C. 711.091, the reasoning used by the court is equally applicable to the relationship between R.C. 5553.31 and R.C. 711.091. *See also* 1949 Op. Att'y Gen. No. 1209, p. 835 (syllabus, paragraph one).
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> Other methods by which a road can be established as a public road include statutory appropriation, common law dedication, and prescription. *See generally* 1988 Op. Att'y Gen. No. 88-080 at 2-396 and 2-397; 1987 Op. Att'y Gen. No. 87-046.

> The public highways of the state shall be divided into three classes: state roads, county roads, and township roads.
> (A) State roads include the roads and highways on the state highway system.
> (B) County roads include all roads which are or may be established as a part of the county system of roads as provided in sections 5541.01 to 5541.03, inclusive, of the Revised Code, which shall be known as the county highway system. Such roads shall be maintained by the board of county commissioners.
> (C) *Township roads include all public highways other than state or county roads.* The board of township trustees shall maintain all such roads within its township. The board of county commissioners may assist the board of township trustees in maintaining all such roads. This section does not prevent the board of township trustees from improving any road within its township. (Emphasis added.)

Pursuant to R.C. 5535.01, roads in a platted residential subdivision located outside a municipal corporation are township roads unless the board of county commissioners takes affirmative action to incorporate them into the county highway system pursuant to R.C. 5541.01-.03 or the state incorporates them into the state highway system. Op. No. 94-036 at 2-188. Accordingly, if the roads in a platted residential subdivision located outside a municipal corporation are township roads, the township in which the roads are located is responsible for their maintenance and repair. R.C. 5535.01(C). As stated above, a township's duty to maintain and repair a road includes providing for the drainage of that road. Therefore, when a county planning commission has adopted a plan for the unincorporated territory within the county and approved a plat of a residential subdivision therein, as provided in R.C. 711.10, and when, pursuant to R.C. 711.091, roads dedicated in that plat have been properly accepted for public use but no additional action has been taken to establish such roads as state or county roads, the township in which the roads are located is responsible for the drainage of surface water from the roads.

Enforcement of a Township Zoning Regulation

Your third question concerns a township's responsibilities with respect to the enforcement of a zoning regulation that regulates land use in such a manner as to control the drainage of surface water from residential subdivisions. R.C. 519.23 prohibits the use of land in violation of a township regulation:

> No building shall be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used, and *no land shall be used in violation of any resolution, or amendment or supplement to such resolution, adopted by any board of township trustees under sections 519.02 to 519.25, inclusive, of the Revised Code.* Each day's continuation of a violation of this section may be deemed a separate offense. (Emphasis added.)

In addition, R.C. 519.24 provides:

> In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used or *any land is or is proposed to be used in violation of sections 519.01 to 519.99, inclusive, of the Revised Code, or of any regulation or provision adopted by any board of township trustees under such sections, such board,* the prosecuting attorney of the county, the township zoning inspector, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other remedies provided by law, *may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful* location, erection, construction, reconstruction, enlargement, change, maintenance, or *use.* The board of township trustees may employ special counsel to represent it in any proceeding or to prosecute any actions brought under this section. (Emphasis added.)

R.C. 519.23 and R.C. 519.24 thus indicate that no land is to be used in violation of any township zoning regulation that regulates land use in such a manner as to control the drainage of surface water from residential subdivisions. Further, pursuant to R.C. 519.24, if land is or is proposed to be used in violation of any township zoning regulation that regulates land use in such a manner as to control the drainage of surface water from residential subdivisions, a board of township trustees may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful use.

A Township Zoning Regulation Does Not Preempt the Responsibility of a County Engineer to Review An Approved Plat of a Residential Subdivision

Your fourth question is whether a township zoning regulation that grants a township the authority to review an approved plat of a residential subdivision preempts a county engineer's site plan review authority. As stated above, a township may not enact a zoning regulation that conflicts directly with a state or federal law. Accordingly, if a county engineer is statutorily required to review and approve a plat of a residential subdivision, a township may not enact a zoning regulation that conflicts with that statutory requirement.

When a street is dedicated as part of the platting process, R.C. 711.091 requires a county engineer to check the construction of the street. If the county engineer finds that the street has been constructed in accordance with the specifications set forth on the approved plat and that such street is in good repair, he shall endorse his finding on the approved plat. *Id.* The endorsement of his finding on the approved plat constitutes an acceptance of the street for public use by the county, "provided such street has been theretofore duly dedicated." *Id.* In addition, if a county planning commission requests the county engineer for assistance, the engineer is required, within the scope of his resources and without interference with his regular duties, to render such assistance to the commission. R.C. 713.26. A county engineer thus may be required, pursuant to R.C. 713.26, by the county planning commission to review the plat of a residential subdivision.

It is, therefore, apparent that a county engineer is statutorily required to review and approve the plat of a residential subdivision before the streets in that subdivision may be accepted for public

use, R.C. 711.091, and to review the plat of a residential subdivision when a county planning commission requests such review, R.C. 713.26. Accordingly, a township zoning regulation that grants a township the authority to review an approved plat of a residential subdivision does not preempt a county engineer's duty to review and approve the plat of a residential subdivision before the streets in that subdivision may be accepted for public use, and to review the plat of a residential subdivision when a county planning commission requests such review.

Conclusion

For reasons discussed above, it is my opinion and you are hereby advised as follows:

1. Pursuant to R.C. Chapter 519, a board of township trustees may, for the purpose of promoting the public health, safety, and morals and in accordance with a comprehensive plan, enact zoning regulations that regulate land use in such a manner as to control the drainage of surface water from residential subdivisions, provided the regulations conform to constitutional limitations and do not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), with rules pertaining to urban sediment control that are adopted by a county under R.C. 307.79, or with other state or federal laws.

2. When a county planning commission has adopted a plan for the unincorporated territory within the county and approved a plat of a residential subdivision therein, as provided in R.C. 711.10, and when, pursuant to R.C. 711.091, roads dedicated in that plat have been properly accepted for public use but no additional action has been taken to establish such roads as state or county roads, the township in which the roads are located is responsible for the drainage of surface water from the roads.

3. Pursuant to R.C. 519.24, if land is or is proposed to be used in violation of any township zoning regulation that regulates land use in such a manner as to control the drainage of surface water from residential subdivisions, a board of township trustees may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful use.

4. A township zoning regulation that grants a township the authority to review an approved plat of a residential subdivision does not preempt a county engineer's duty to review and approve the plat of a residential subdivision before the streets in that subdivision may be accepted for public use, and to review the plat of a residential subdivision when a county planning commission requests such review.

Respectfully,

LEE FISHER
Attorney General

December 30, 1994

The Honorable Steven C. LaTourette
Lake County Prosecuting Attorney
Courthouse
P.O. Box 490
Painesville, Ohio 44077

SYLLABUS: 94-098

1. Pursuant to R.C. Chapter 519, a board of township trustees may, for the purpose of promoting the public health, safety, and morals and in accordance with a comprehensive plan, enact zoning regulations that regulate land use in such a manner as to control the drainage of surface water from residential subdivisions, provided the regulations conform to constitutional limitations and do not conflict with rules adopted by the Chief of the Division of Soil and Water Conservation under R.C. 1511.02(E), with rules pertaining to urban sediment control that are adopted by a county under R.C. 307.79, or with other state or federal laws.

2. When a county planning commission has adopted a plan for the unincorporated territory within the county and approved a plat of a residential subdivision therein, as provided in R.C. 711.10, and when, pursuant to R.C. 711.091, roads dedicated in that plat have been properly accepted for public use but no additional action has been taken to establish such roads as state or county roads, the township in which the roads are located is responsible for the drainage of surface water from the roads.

3. Pursuant to R.C. 519.24, if land is or is proposed to be used in violation of any township zoning regulation that regulates land use in such a manner as to control the drainage of surface water from residential subdivisions, a board of township trustees may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful use.

4.A township zoning regulation that grants a township the authority to review an approved plat of a residential subdivision does not preempt a county engineer's duty to review and approve the plat of a residential subdivision before the streets in that subdivision may be accepted for public use, and to review the plat of a residential subdivision when a county planning commission requests such review.