



# NEWS

RAMONA FRANCESCONI ROGERS

Prosecutor's Newsletter

February, 2010

## From the Desk of The Prosecutor

### **A Message from the Prosecutor ~ RAMONA FRANCESCONI ROGERS ~**

Our office recently moved into a new facility in the County Office Building, located at 110 Cottage Street, Third Floor, in the former administrative offices for the City-County Health Department. Our telephone and fax numbers remain unchanged. Since we were the only tenant in the old building, which has now been vacated, we hope that this move results in cost savings for the county.

In this edition of our newsletter, you'll find summaries of opinions that we issued during the year 2009, with special emphasis on topics of interest to our township clients. Also read about our upcoming zoning seminar, to be held on June 17, 2010, at the County Service Center (former Heartland Home), when we will provide a refresher course on the process for updating and enforcing zoning resolutions and also discuss some current issues in township zoning.

As always, I welcome your comments on this newsletter. Please let me know what I can do in future editions to make it as helpful as possible to you.

~ *Ramona Francesconi Rogers* ~

## For Your Information

### 2009 CIVIL OPINION UPDATE

	216 formal written opinions
	<u>84</u> advisory opinions
Total	300

The year 2009 was the second busiest year on record for civil opinions, eclipsed only slightly by the year 2008.

## NEWS

### FROM THE CIVIL DIVISION

#### ZONING SEMINAR SET FOR JUNE 17

The Prosecutor's Office will present a township zoning seminar on June 17 at 7:30 p.m., at the Ashland County Service Center (former Heartland Home). Township trustees, zoning inspectors, BZA members, and zoning commission members are all invited to attend. Topics to be covered include:

- **Updating and enforcing your zoning resolution:** A brief primer for new township officials – and a refresher for the more experienced ones – on the role of the township trustees, the zoning commission, the zoning inspector, and the board of zoning appeals, including a step-by-step discussion of the process for updating your zoning resolution.
- **Getting the most from your junkyard provisions:** Nearly all of the zoned townships in Ashland County have “junkyard” provisions in their zoning resolutions that are based on old state laws which are no longer in effect. This is particularly true with respect to restrictions on unlicensed and inoperable motor vehicles. Furthermore, in a number of townships, apparent proofreading errors have resulted in junkyard provisions that are so vague that they may not be enforceable as currently written. In other cases, the existing junkyard provisions may still be enforceable, but an overhaul of the language might make junk vehicle lawsuits stronger. We are preparing model language for your township to consider when enacting new zoning resolutions and will provide copies at the seminar.

*Continued on page 3*

- **Blowin' in the Wind:** Wind turbines have become a hot topic for township zoning officials. A new law allows zoning officials to regulate small wind farms that produce no more than five megawatts of power and have a single connection to the electrical grid. (Larger wind farms are regulated by a state power siting board.) While turbines can provide a cheap, clean source of energy for township residents, improperly placed turbines can be unsightly, annoying, and even dangerous. We are studying turbine regulations enacted in other counties and are also developing a model turbine regulation to provide at the seminar.
- **Questions and Answers**

Mark your calendar now! Reminders will also be sent out at a later date.

### **SUPREME COURT: ZONING REGULATIONS MUST BE BASED ON A COMPREHENSIVE PLAN**

...and yes, *countywide* plans count!

R.C. 519.02 requires townships that adopt zoning regulations to do so “in accordance with a comprehensive plan.” In *B.J. Alan Co. v. Congress Twp. Bd. of Zoning Appeals*, which the Ohio Supreme Court decided in November 2009, the Court held that a township may rely on a *county* comprehensive plan to meet this requirement. The plan must: 1) Cover the entire region; 2) Make recommendations for both the short and long-term future; and 3) Cover urban, rural, agricultural, and natural resource aspects.

In short, when reviewing zoning resolutions for possible amendments, the zoning commission and the trustees must first adopt a comprehensive plan that meets the three criteria above. The township may either have a plan created specifically for the township (preferably by a firm that specializes in community planning) or it may use the Ashland County Comprehensive Plan. In any event, the plan must set specific goals and recommendations for the township.

After deciding which plan to use, the zoning commission and the trustees should read the plan carefully and look for any recommendations or goals that are applicable to the township. (Common goals for a rural county such as Ashland County include preserving the rural character of the community, maintaining natural resources, encouraging orderly economic development, etc.) If the township uses a county plan, the zoning commission and the trustees should pay special attention to any portions that apply specifically to their township or to the area of the county where the township is located.

The regulations should be designed to implement at least some of the goals in the selected plan, *and the trustees and the zoning commission members should be able to explain how the proposed zoning regulations will promote the goals in the comprehensive plan.* As each township updates its zoning regulations, we also suggest including some language in the revised resolution – possibly as a preamble or an introduction – identifying which comprehensive plan was used and which goals within that plan the township is trying to achieve.

## **OPINIONS OF THE PROSECUTING ATTORNEY**

*These are summaries of selected legal opinions issued by this office during the year 2009 that we believe may be useful to our clients, especially townships. While these summaries may provide you with helpful guidance, they should not be used as substitutes for legal advice that is tailored to your specific situation. A small difference in the facts of a case can greatly change the outcome. When in doubt, you should contact the prosecutor's office to request an opinion based on the facts of your case.*

### **ACPA Opinion No. 2009-168-CIV**

### ***CABLE TV FRANCHISE FEE***

Under a new law, if a cable company intends to start providing cable television services in a township, the company must notify the township. Within ten days of receiving notice, the township must notify the cable company of the percentage that the township intends to collect as a franchise fee, up to five percent. (If the township already collects franchise fees from other cable companies, the same percentage must be charged to the new company. If fees are collected from multiple companies, the fee charged to the new company must be equal to the lowest fee already collected from other cable franchises.) If the Trustees will not meet during the ten-day period, we recommend that the fiscal officer send a letter to the cable company reserving the right to collect up to a five percent fee, but stating that the exact amount will have to be determined by the trustees at their next public meeting. The cable company may pass the cost on to subscribers and list the franchise fee as a separate line item on each subscriber's monthly bill, so subscribers will know what portion of the monthly bill is attributable to the township franchise fee.

### **ACPA Opinion No. 2009-145-CIV**

### ***CEMETERIES – FUNDS***

Funds from the sale of cemetery lots should be kept in a separate fund, which may be used solely for maintaining, improving, beautifying, and embellishing cemetery grounds. The trustees may, on *unanimous* consent, also use the funds to purchase or appropriate additional land for cemetery purposes. This fund differs from the "Cemetery Endowment Fund," which may also be used for maintaining, improving, and beautifying cemeteries and burial lots, the money for which comes from various sources including gifts, devises, or bequests for maintaining the entire cemetery *or* specific burial lots. Townships may also add charges to the purchase price of a burial lot for the purpose of beautifying township cemeteries or enter into an agreement with the purchaser of a burial lot providing for part of the purchase price to be applied to the maintenance, improvement, or beautification of any burial lot designated by the purchaser, and deposit those funds in the Cemetery Endowment Fund.

### **ACPA Opinion No. 2009-011-CIV**

### ***CEMETERIES – LOT SIZES***

The Trustees have the authority to determine the size of plots in township cemeteries. There is no state law prescribing a minimum size.

### **ACPA Opinion No. 2009-121-CIV**

### ***CONDEMNATION – UNSAFE BUILDINGS***

A township may provide for the removal, repair, or securance of buildings or other structures that have been declared insecure, unsafe, or structurally defective by any fire department under contract with the township, or buildings or other structures that have been declared unfit for human habitation by the board of health. Notice must be given to all owners and all lienholders

of record, by certified mail, at least thirty days before the building is to be removed, repaired, or secured.

**ACPA Opinion No. 2009-084-CIV**

***CONSTRUCTION – AMISH WORKERS***

A township may contract with Amish builders to build a small structure for the township, even though the builders do not pay into the workers' compensation fund because of their religion. However, the employee and the employer must sign a waiver form, or else the *township* may be considered the employer of the workers and may be subject to worker's compensation liability. Additionally, R.C. 4123.01(A)(1)(c) contains a list of twenty criteria that should be examined to ensure that the workers will not be deemed to be township employees, which would again subject the township to potential workers' compensation liability.

**ACPA Opinion No. 2009-110-CIV**

***EMPLOYMENT – COBRA COVERAGE***

An employer is not required to offer health insurance coverage under COBRA for an employee whose employment was terminated due to "gross misconduct." Gross misconduct involves "more than negligence or incompetence or unsatisfactory performance," but rather misconduct that is "intentional, wanton, willful, deliberate, reckless, or in deliberate indifference to an employer's interest." An honest belief of gross misconduct is not enough to deny benefits; the record must demonstrate that the employee did indeed engage in gross misconduct.

**ACPA Opinion No. 2009-131-CIV**

***EMPLOYMENT – SICK LEAVE***

A township must specify the circumstances under which an employee will be paid for unused vacation or sick leave, e.g. retirement, death, or other separation from employment. A township may change its policy, but may not make the changes retroactive.

**ACPA Opinion No. 2009-058-CIV**

***EMPLOYMENT – TEENAGERS***

A township may employ a sixteen-year-old youth to mow grass in a township cemetery. While minors are generally prohibited from employment in "motor vehicle occupations," there is an exception for the *incidental and occasional* operation during *daylight hours only* of a motor vehicle not exceeding *six thousand pounds gross vehicle weight*. The vehicle must be equipped with seat belts, and the youth must be instructed that seat belts must be used, and the youth may not tow vehicles or trailers. As long as these requirements and limitations are met, the youth may also use a township vehicle to transport the lawn mower.

**ACPA Opinion No. 2008-009-CIV**

***EMPLOYMENT -- TRUCK DRIVER PHYSICALS***

While a township employer is not required to employ a person with a disability under circumstances that would significantly increase occupational hazards, it is possible that if a township truck driver were subjected to physical examinations, and employment action was taken as a result of such an examination, the truck driver could file a lawsuit against the township. Whether the township would have successful defenses would depend upon the facts of the case.

**ACPA Opinion No. 2009-061-CIV**

***EMPLOYMENT – UNEMPLOYMENT  
COMPENSATION***

If a public employer pays into the state unemployment compensation fund on a *reimbursement basis*, rather than paying into the state mutualized account, and an employee who quits without just cause or is terminated with just cause takes a different job and is terminated from that job *without* just cause, and the public employer is still within the base period, the public employer will have to pay a share of the unemployment compensation.

**ACPA Opinion No. 2009-076-CIV**

***EMPLOYMENT – UNEMPLOYMENT  
COMPENSATION & EMPLOYEE DISCIPLINE***

An employee who quits his job may be held to have quit with just cause if he quits after being disciplined, if the employer fails to follow its own progressive discipline policy in disciplining the employee. Thus, if the discipline policy only calls for an employee to be suspended for the infraction that was committed, and the employer not only suspends the employee, but also demotes him and commensurately reduces his pay, and the employee quits as a result, the Bureau of Unemployment Compensation might grant unemployment benefits to the employee.

**ACPA Opinion No. 2009-149-CIV**

***FIRE DEPARTMENTS***

A township may place gravel in front of a dry hydrant, located on private property, to prevent fire engines from sinking into the mud, even if the hydrant is owned by a joint fire district rather than the township, provided that the property owner consents to the placement of the gravel.

**ACPA Opinion No. 2009-112-CIV**

***FIRE AND EMS BILLING PRACTICES***

A township may establish reasonable charges for the use of fire and rescue services, ambulance services, or emergency medical services. Funds collected from these fees must be kept in a separate fund known as the “fire and rescue services, ambulance services, and emergency medical services fund.” The township may hire a firm to provide billing or collection services, but the firm may not withhold its commission from the funds collected; it must turn over all funds to the township for deposit into the aforementioned fund and the township may then pay the firm out of that fund.

**ACPA Opinion No. 2009-064-CIV**

***FOOD SERVICE LICENSES***

A township sometimes rents out its town hall to nonprofit organizations for fundraiser dinners and allows those organizations to use the township’s food service license rather than requiring the organizations to obtain their own temporary licenses. The fact that organizations hosting such dinners use the township’s food service license could be used as an argument against the township in court, if a patron at one of the dinners is sickened by the food and sues both the organization hosting the dinner and the township.

**ACPA Opinion No. 2009-087-CIV**

***GIFTS – TOWNSHIP PARKS***

A Board of Township Trustees may receive donations “in furtherance of the use and enjoyment of park lands controlled by it.” The terms of each donation must be approved by the Court of Common Pleas. This includes testamentary gifts, i.e., bequests from wills.

**ACPA Opinion No. 2009-179-CIV**

***HIPAA – AUTHORIZATION TO RELEASE  
MEDICAL RECORDS***

If a patient transported by a township ambulance service executes the appropriate forms to authorize the release of medical records under HIPAA, that form is valid even after the patient's death, *provided* that no expiration date or event has been given in the completed form.

**ACPA Opinion No. 2009-163-CIV**

***JUNK MOTOR VEHICLES***

Various avenues are available to cause the removal of junk motor vehicles and other accumulated junk, including township zoning resolutions, lawsuits for injunctive relief under R.C. 505.173, and "self-help" remedies under R.C. 505.87 and R.C. 505.871. The most appropriate solution or solutions will depend on the facts of each case. Additionally, if only a few neighboring property owners are affected, it may be more appropriate for the neighbors to hire a private attorney and bring a private nuisance action.

**ACPA Opinion No. 2009-001-CIV**

***NONEMERGENCY PATIENT  
TRANSPORT SERVICES***

Townships have authority to contract with municipal corporations, other political subdivisions, or nonprofit corporations to furnish or receive ambulance services, but not *nonemergency* patient transfer services.

**ACPA Opinion No. 2009-066-CIV**

***ONLINE BILL PAY***

A township may directly deposit an employee's paycheck into the employee's bank but may not use an online bill pay system operated by the township's bank to pay other township bills.

**ACPA Opinion No. 2009-097-CIV**

***PARTITION FENCE***

When a property owner files a complaint alleging that a neighboring property owner has neglected to build or maintain a partition fence, the Trustees must provide the neighbor with a form containing certain information. The complaining property owner must sign and date the form before the Trustees have jurisdiction. The Trustees must hold a public viewing, with at least ten days' notice given in writing to all adjoining property owners, and the Trustees must determine whether a partition fence exists (regardless of its condition) or whether there is evidence that a partition fence previously existed. The Trustees must also hold a hearing at their next regular public meeting. If there is no agreement or affidavit recorded in the county recorder's office, the Trustees must determine whether the property owners are required to build or maintain a fence, and if so, the Trustees divide those duties equitably among the property owners based on certain statutory criteria. Additionally, under the new fence law, the complaining property owner has the option of bringing a complaint in the Court of Common Pleas instead of going through the Trustees.

**ACPA Opinion No. 2009-122-CIV**

***PUBLIC RECORDS – BROAD REQUESTS***

The requester may be asked to narrow an overly broad record request. For example, the requester may be asked if he would like to narrow the request down to certain years, or if large quantities of records are requested, the requester may be given an approximate cost for copying and given an opportunity to narrow the request. A copy of the record retention schedule may be given to the requester as a "menu" to show what records are available.

**ACPA Opinion No. 2009-072-CIV; 2009-086-CIV**

***PUBLIC RECORDS:  
INDEXING***

A public office has no duty to provide records if the request is ambiguous or overly broad, or if the records cannot be reasonably identified. Thus, if the requester asks for a set of records classified in one manner, but the public office cannot reasonably retrieve the records based on that classification, the request may be denied, as long as the requester is informed of the manner in which records are maintained and given an opportunity to revise the request. *Example: A law enforcement office receives a request for reports of all car accidents that occurred at a certain intersection during the year. The office only maintains accident records indexed by last name of the persons involved, not by the location of the accident. There are hundreds of these records in the filing cabinet. The office cannot reasonably identify or retrieve the records by the location of the accident. The office should tell the requester that the records are only organized by last name and allow the requester to resubmit his request with specific last names.*

**ACPA Opinion No. 2009-100-CIV; 2009-101-CIV**

***PUBLIC RECORDS –  
NONEXISTENT RECORDS AND  
MISDIRECTED REQUESTS;  
REQUESTS FOR RECORDS IN  
AN ELECTRONIC FORMAT***

A public office is not required to create records if a requester asks for records that do not exist. If a requester asks for records that are not maintained by the office, the office should state that the office does not have such records and, if it is known what office would have such records, the requester should be directed to that office. Also, if records are requested in an electronic format, and the public office only keeps the records in paper format and cannot convert them to electronic format, the public office should provide them in a paper format and may require the requester to pay copying and mailing costs.

**ACPA Opinion No. 2009-090-CIV**

***PUBLIC RECORDS –  
RETENTION & DESTRUCTION***

A township may not destroy any records except in accordance with a record retention schedule. The Ohio Historical Society posts the necessary documents for adopting such a schedule on its website. The Historical Society also provides the “Ohio Township Records Manual,” which gives suggested retention periods for various kinds of township records. Once such a schedule has been adopted and approved by the appropriate state officials, the township must submit a form to the Historical Society at least fifteen days in advance of destroying such records.

**ACPA Opinion No. 2009-026-CIV**

***PUBLIC RECORDS: WORKERS’  
COMPENSATION CLAIM FILES***

Workers’ compensation claim files, other files pertaining to claim files, and any information directly or indirectly identifying the address or telephone number of a claimant are not public records. R.C. 4123.88(B); R.C. 149.43(A)(1).

**ACPA Opinion No. 2009-021-CIV**

***REAL ESTATE: REVERSION CLAUSES***

Title to a parcel of real estate given to a township years ago, but containing a clause providing for title to the property to revert automatically to the heirs of the grantor when the township ceased to use it for the purpose stated in the deed, was automatically vested in the grantor's heirs. Therefore, the township did not need to execute a deed to convey the property back to the grantor's heirs, but only needed to file an affidavit with the Recorder's Office under R.C. 5301.252.

**ACPA Opinion No. 2009-041-CIV**

***ROADS – DITCHES***

For ditches that are not located within the right-of-way of a road, but are used for roadway drainage, the county engineer may enter immediately onto lands adjacent to the highway for the purpose of opening an existing ditch or drain. The engineer must reach an agreement with the landowner as to the amount of damages, and if it is a township road, the township must pay such compensation to the landowner. There are other remedies available for clogged ditches that cause roads to flood, including ditch petitions filed with the county commissioners, agreements with private property owners for ditch improvements.

**ACPA Opinion No. 2009-032-CIV**

***ROADS – EXCAVATION PERMITS***

The Trustees may require any person to obtain a permit before excavating in the road or the right-of-way and may place certain restrictions on the excavation, but the Board must first pass a resolution requiring such excavations, and the person seeking to make the excavation must do so on forms to be furnished by the Board. However, for certain facilities being installed in the road – such as electrical wires, water and sewer pipes, and gas – the Revised Code requires utility companies to obtain the Trustees' permission, regardless of whether the Trustees normally require permission for excavations in the road.

**ACPA Opinion No. 2009-063-CIV**

***ROADS – SIGNS AND BARRICADES***

Specifications for road signs and barricades are prescribed by the Ohio Manual of Uniform Traffic Control Devices, available from ODOT. Compliance with the Manual is the best defense against lawsuits that may result from improper signage or barricades, and the County Engineer may also be able to provide some assistance with respect to signs and barricades.

**ACPA Opinion No. 2009-114-CIV**

***ROADS – SPEED LIMITS***

The Revised Code generally sets the speed limits for streets and highways outside municipal corporations at fifty-five miles per hour. However, in a residential or commercial subdivision (e.g. an unincorporated village where, for a distance of three hundred feet or more, the frontage is improved with residences or buildings in use for commercial purposes), the Trustees may have an engineering and traffic investigation completed. If the Board finds on the basis of this investigation that fifty-five miles per hour is greater than is reasonable and safe, *and if the majority of traffic on the road must yield the right-of-way to traffic from intersecting roads*, the Board may declare, by resolution, a reasonable and safe speed limit of not less than twenty-five miles per hour. However, *if the majority of traffic from intersecting roads must yield the right of way to traffic on the highway*, the Trustees may not set the speed limit, but may only request the state director of transportation to set the speed limit, also after having an engineering and traffic investigation completed.

**ACPA Opinion No. 2009-055-CIV**

***ROADS – STEEL-  
WHEELED TRACTORS***

It is a minor misdemeanor to operate tractors with tires or wheels equipped with “ice picks, spuds, spikes, chains, or other projections of any kind extending beyond the cleats.” The county sheriff has the authority to enforce this law as with any other traffic law. Also, the Trustees may bring suit to recover damages against any person who causes damage to a township road.

**ACPA Opinion No. 2009-054-CIV**

***SALE OF TOWNSHIP EQUIPMENT***

A township may sell surplus, unsuitable, or obsolete equipment *without* any advertisement or notification if, in the opinion of the board, the property has a fair market value of \$2,500 or less. If, in the opinion of the board, the property has a fair market value exceeding \$2,500, the property must be sold at auction or by sealed bid. There are certain exceptions to these requirements, but the township is required, in any case, to make the determination that the property is unneeded or unsuitable for public use and to determine the market value of the equipment by *formal written resolution*.

**ACPA Opinion No. 2009-181-CIV; 2009-192-CIV**

***UNMOWED LAWNS***

A township may use the procedures in R.C. 505.87 to provide an opportunity for notice and a hearing to the owner (and any lienholders of record) of a property with an unmowed lawn, if the unmowed lawn constitutes a nuisance. If the owner fails to mow the lawn or show cause why the Township should not do so, the Township may cause the lawn to be mowed and certify the costs thereof to the county auditor to be added as a lien upon the property and collected with property taxes.

**ACPA Opinion No. 2009-017-CIV; 2009-194-CIV**

***ZONING – AGRICULTURE***

The operation of dog kennels and horse farms are both considered to be agricultural uses for zoning purposes and, therefore, are generally exempt from zoning under R.C. 519.21, subject to certain exceptions applicable to lots of five acres or less.

**ACPA Opinion No. 2009-171-CIV**

***ZONING – EXEMPTION FORMS***

We advise township trustees and zoning inspectors not to sign “exemption forms” often sent to them by cellular providers before the construction of a cellular tower. Such forms often contain crucial misstatements of law, and they require the zoning inspector to issue an advisory opinion as to state zoning law, which the zoning inspector does not have the authority to do. The zoning inspector’s duties are limited to issuing certificates and issuing citations. It is the responsibility of the builder to ensure that he is in compliance with any necessary zoning requirements.

**ACPA Opinion No. 2009-047-CIV**

***ZONING – EXPANSION  
OF NONCONFORMING USE***

A used car lot was grandfathered in under a township zoning resolution. The zoning resolution allowed up to twenty percent expansion of the “original floor or ground area” for such a nonconforming use. The owner had two cars on the lot when the zoning resolution took effect and subsequently started keeping eight to sixteen vehicles on the lot. However, since there was no change in the floor or ground area, but only a change in the amount of inventory kept in the original ground area, there was no zoning violation.

**ACPA Opinion No. 2009-160-CIV**

**ZONING FEES**

A township zoning resolution need not set forth the fees for zoning certificates or appeals to the BZA, but may authorize the Trustees to set such fees from time to time. As such, the Trustees may waive all or part of a fee, provided that the waiver is not arbitrary. *Example: A zoning certificate is erroneously granted, even though the use is a conditional use that would require a BZA hearing. Years later, the error is discovered and the property owner applies for the conditional use certificate. The Trustees may waive the fee for the BZA hearing to save the applicant from additional fees that he would otherwise incur due to the township's mistake.*

**ACPA Opinion No. 2009-162-CIV**

**ZONING INSPECTOR**

A township fiscal officer may also serve as the township zoning inspector. If the regular zoning inspector is unable to fulfill his duties for an extended period of time, the fiscal officer may be appointed to serve as the temporary zoning inspector or as an assistant zoning inspector. However, a member of the township zoning commission may *not* serve as a zoning inspector, whether on a temporary or permanent basis.

**ACPA Opinion No. 2009-161-CIV**

**ZONING – POWERS OF  
ZONING OFFICIALS;  
VARIANCES**

The zoning inspector has the general enforcement power for township zoning resolutions and therefore issues citations and grants or denies zoning certificates in the first instance. The zoning commission does not normally take part in the enforcement of existing zoning regulations, but rather oversees development of the zoning map and text and makes recommendations to the Trustees. The board of zoning appeals hears appeals from decisions of the zoning inspector and also hears applications for variances and conditional uses. Also, variances should only be granted if the conditions set forth in the township zoning resolution for variances are met, and the zoning resolution must comport with the general law concerning variances. This usually requires some showing that a hardship will result if the variance is denied.

**ACPA Opinion No. 2009-181-CIV; 2009-192-CIV**

**ZONING – REMEDIES**

A hearing before the Board of Zoning Appeals should not be delayed, nor should the zoning inspector deny a permit for a lawful use, because an entirely separate zoning violation already exists on the property, unless the township zoning resolution authorizes the BZA and/or the zoning inspector to do so.

**ACPA Opinion No. 2009-049-CIV; 2009-142-CI**

**ZONING – WIND TURBINES**

Wind turbines may be accessory uses, but the ultimate determination is up to the township zoning authorities and must be based on the content of the township zoning resolution. Absent any provision to the contrary in the zoning resolution, general provisions in the zoning resolution such as height limits and setback requirements apply to wind turbines. The township only has the authority to regulate wind farms with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than five megawatts. Larger capacity wind farms are regulated by a state board.

## **HELPFUL HINTS FOR OPINION REQUESTS**

Remember, it is the general policy of this office to accept opinion requests from townships only in writing, and only with the fiscal officer's certification that a majority of the Board consents to requesting the opinion. This prevents miscommunications among Board members and with our office. We encourage clients to call ahead and make an appointment before coming to the office to discuss a legal issue. This helps to ensure that we will be available to meet with our clients and also allows us to do preliminary research so that we can be better prepared to discuss the matter.

Since the Board of Trustees is our client, and the zoning inspector is an employee of the Board, the zoning inspector should forward any zoning questions to the Trustees, and the Trustees may pose the question to us as they would with any other request. We will contact the Trustees or the zoning inspector with follow-up questions.

Of course, in an emergency (especially if your township has been sued or if there is a threat to public safety), you should get in touch with us right away by any means possible and we will give the matter immediate attention.

## **DID YOU KNOW?**

The largest township in Ohio, according to the 2000 Census, is Colerain Twp. in Hamilton County, near Cincinnati, with more than 60,000 residents. That's bigger than all of Ashland County (which has about 52,000 residents) or the city of Mansfield (with about 49,000 residents). Jefferson Twp. in Guernsey County (near Cambridge) may be the smallest surviving township in Ohio. It has 94 residents. (Source: Ohio Township Association)