

December 29, 1997

OPINION NO. 97-060

The Honorable William F. Schenck
Greene County Prosecuting Attorney
45 N. Detroit Street
Xenia, Ohio 45385

Dear Prosecutor Schenck:

You have requested an opinion concerning the provision of emergency medical and rescue services by Xenia Township to Central State University, which is located within the township. In your letter, you state that the township has created a fire district pursuant to R.C. 505.37(C) that does not encompass all the territory of the township. Central State University is located in a portion of the township that is not included within the fire district. You wish to know whether, if the township fire district provides emergency medical and rescue services to Central State University, the fire district is authorized to charge the university for these services.

You note that Central State University has taken the position that the township has no authority to charge a state institution for ambulance and emergency medical services. The university relies upon the language of R.C. 505.84 for this assertion.

In Ohio, a township is not required to provide emergency medical or rescue services to the citizens of the township. 1994 Op. Att'y Gen. No. 94-067 at 2-332; 1988 Op. Att'y Gen. No. 88-042 at 2-201. A township may provide such services, however. 1994 Op. Att'y Gen. No. 94-067 at 2-332; 1988 Op. Att'y Gen. No. 88-042 at 2-201; *see also* 1994 Op. Att'y Gen. No. 94-076. In this regard, R.C. 505.37(A) states in relevant part:

The board of township trustees may establish all necessary rules to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents, and may ... purchase or otherwise provide any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes that seems advisable to the board.

Although the language of R.C. 505.37(A) does not explicitly authorize a township to provide emergency medical or rescue services, prior opinions of the Attorneys General have determined that

R.C. 505.37(A) authorizes a township to provide emergency medical and rescue services "through the township fire department or a volunteer fire department regardless of whether the emergency involves a fire."¹ 1994 Op. Att'y Gen. No. 94-076 at 2-383; *see* 1989 Op. Att'y Gen. No. 89-028 at 2-119; 1962 Op. Att'y Gen. No. 3332, p. 793; 1953 Op. Att'y Gen. No. 2416, p. 114; *see also* R.C. 9.60; R.C. 5705.19(I).

A township that provides emergency medical or rescue services pursuant to R.C. 505.37(A) must provide such services to all the territory within the township unless the township has created a fire district. 1988 Op. Att'y Gen. No. 88-042 at 2-201; 1987 Op. Att'y Gen. No. 87-040 at 2-266 and 2-267. The authority for a township to create a fire district is set forth in R.C. 505.37(C), which states in relevant part:

The board of township trustees of any township may, by resolution, whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence, *create a fire district of any portions of the township that it considers necessary*. The board may purchase or otherwise provide any fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes, or may contract for the fire protection for the fire district as provided in section 9.60 of the Revised Code. The fire district so created shall be given a separate name by which it shall be known. (Emphasis added.)

See Richfield Township v. Toledo Area Metro. Park Bd., No. L-81-034 (Ct. App. Lucas County June 19, 1981) (a township may establish a fire district that excludes tax exempt parcels); 1952 Op. Att'y Gen. No. 1101, p. 50 (a township may create one or more fire districts); 1943 Op. Att'y Gen. No. 5798, p. 44, 49 (a board of township trustees "can legally set up part of a township into a fire district and leave part thereof excluded").

The language of R.C. 505.37(C) is similar to R.C. 505.37(A) in that it does not explicitly authorize a township fire district to provide emergency medical or rescue services. However, for the reasons that follow, it is reasonable to interpret this division as granting a township fire district such authority.

It is axiomatic that statutes that relate to the same subject are to be construed together so as to give full force and effect to the legislative intent. As stated in *State v. Moaning*, 76 Ohio St. 3d 126, 128, 666 N.E.2d 1115, 1116 (1996):

¹ In addition to providing emergency medical and rescue services through a township fire department or a volunteer fire department organized under R.C. 505.37(A), a township may also provide such services to its citizens through the creation of a joint ambulance district, R.C. 505.71, or pursuant to a contract with an entity authorized to provide such services to the township, R.C. 9.60, R.C. 505.44.

It is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law. Statutes which relate to the same subject are *in pari materia*. Although enacted at different times and making no reference to each other, they should be read together to ascertain and effectuate the legislative intent. (Citations omitted.)

With respect to the provision of emergency medical and rescue services by a township fire district, R.C. 5705.19(I) authorizes a township fire district to levy a tax "to purchase ambulance equipment, or to provide ambulance, paramedic, or other emergency medical services." *See also* R.C. 505.39. In addition, R.C. 9.60, which authorizes a firefighting agency to provide fire protection services to a county, political subdivision, or state agency or instrumentality, provides that "[f]ire protection_ includes the provision of ambulance, emergency medical, and rescue service by the fire department of a firefighting agency." R.C. 9.60(A)(4). As used in R.C. 9.60, the term "firefighting agency" includes a township fire district. R.C. 9.60(A)(1). Thus, R.C. 5705.19(I) and R.C. 9.60 indicate that a township fire district may provide emergency medical and rescue services.

Moreover, as noted above, R.C. 505.37(A) has been interpreted as authorizing a township to provide emergency medical and rescue services. 1994 Op. Att'y Gen. No. 94-076 at 2-383; 1989 Op. Att'y Gen. No. 89-028 at 2-119; 1962 Op. Att'y Gen. No. 3332, p. 793; 1953 Op. Att'y Gen. No. 2416, p. 114. If a township may provide, pursuant to R.C. 505.37(A), emergency medical and rescue services through its fire department throughout the entire territory of the township, it follows that a township that has created a fire district pursuant to R.C. 505.37(C) may provide such services to only that territory of the township that is located within the fire district. *See generally State v. Park*, 13 Ohio App. 3d 85, 86, 468 N.E.2d 104, 107 (Franklin County 1983) (sections of a statute that relate to the same subject are to be construed together so as to give full force and effect to the legislative intent).

In light of R.C. 9.60, R.C. 505.37(A), and R.C. 5705.19(I), it is apparent that the General Assembly recognizes that the provision of emergency medical and rescue services are legitimate functions of the fire department of a township fire district. Therefore, a township fire district created pursuant to R.C. 505.37(C) is authorized to provide emergency medical and rescue services.

The duty of a township fire district to provide emergency medical and rescue services, however, extends only to the boundaries of the district. As stated in 1988 Op. Att'y Gen. No. 88-042 at 2-201:

If a fire district is created, *expenses of the district are borne by the district and services are provided to the territory within the district. See* R.C. 505.37(C); R.C. 505.39; R.C. 505.40; R.C. 5705.01; R.C. 5705.19; R.C. 5705.191; Op. No. 87-040; 1976 Op. Att'y Gen. No. 76-057; 1944 Op. Att'y Gen. No. 6682, p. 53; 1943 Op. Att'y Gen. No. 5798, p. 44. Services of such a district may be extended beyond the district pursuant to contract. R.C. 9.60. Fire and rescue services may be provided either directly by the township or the fire district or by contract with a firefighting agency or fire company. *See* R.C. 9.60; R.C. 505.37. (Emphasis added and footnote omitted.)

See 1990 Op. Att'y Gen. No. 90-048 at 2-204 (only residents of a fire district are entitled to vote on, and benefit from, a district tax for fire protection). A township fire district thus is only required to provide emergency medical and rescue services within the territory of the fire district. Accordingly, a township fire district is not required to provide emergency medical and rescue services to a state university not located within the territory of the fire district.

However, pursuant to R.C. 9.60, a township fire district may provide emergency medical or rescue services to a state instrumentality located outside the territory of the fire district. R.C. 9.60 provides as follows:

(A) As used in this section:

(1) "Firefighting agency" means a ... township fire district....

....

(4) "Fire protection" includes the provision of ambulance, emergency medical, and rescue service by the fire department of a firefighting agency or by a private fire company and the extension of the use of firefighting apparatus or firefighting equipment.

(B) Any firefighting agency or private fire company may contract with any state ... instrumentality ... to provide fire protection, whether on a regular basis or only in times of emergency, upon the approval of the governing boards of the ... firefighting agencies ... or the administrative heads of the state ... instrumentalities that are parties to the contract.

(C) Any ... state ... instrumentality may contract with a firefighting agency of this state ... to obtain fire protection, whether on a regular basis or only in times of emergency, upon the authorization of the governing boards of the ... firefighting agencies ... or the administrative heads of the state ... instrumentalities that are parties to the contract.

(D) Any firefighting agency of this state ... may provide fire protection to any state ... instrumentality ... without a contract to provide fire protection, upon the approval of the governing board of the firefighting agency ... and upon authorization of an officer or employee of the firefighting agency providing the fire protection designated by title of their office or position pursuant to the authorization of the governing board of the firefighting agency.

No provision within R.C. 9.60 expressly authorizes a township fire district to charge a state instrumentality for the provision of emergency medical and rescue services. However, "[u]nless a statute provides to the contrary, the contracts of a governmental entity are governed by the same principles that apply to contracts between individuals." 1988 Op. Att'y Gen. No. 88-076 (syllabus, paragraph one). Under general contract law principles, there must be consideration for every promise to provide a service. See *Canter v. Tucker*, 110 Ohio App. 3d 421, 423, 674 N.E.2d 727, 729 (Franklin County 1996), *appeal dismissed*, 77 Ohio St. 3d 1412, 670 N.E.2d 1001 (1996); *Brads v. First Baptist Church of Germantown*, 89 Ohio App. 3d 328, 336, 624 N.E.2d 737, 743 (Montgomery County 1993), *motion to certify denied*, 67 Ohio St. 3d 1506, 622 N.E.2d 654 (1993).

Accordingly, a contract or agreement entered into by a township fire district and state institution pursuant to R.C. 9.60 for the provision of emergency medical and rescue services must be supported by consideration.

Because consideration is a necessary element for a binding contract or agreement entered into under R.C. 9.60, it reasonably follows that R.C. 9.60 authorizes a township fire district to require a state institution that enters into a contract or agreement with the township fire district for emergency medical and rescue services to pay a fee for those services as its consideration under the contract or agreement. See *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875) (township trustees have only those powers which are prescribed by statute or necessarily implied therefrom, in order to perform the duties entrusted to them); 1984 Op. Att'y Gen. No. 84-048 at 2-157 ("when a statute clearly confers a grant of power to do a certain thing without placing any limitations on the manner of doing it, it is presumed that the grantee of such power is naturally and necessarily vested with discretion to do things incidental to the exercise of that power"); see, e.g., 1990 Op. Att'y Gen. No. 90-025 at 2-94 ("the allocation of costs incurred by the township in permitting village police personnel the use of the township's dispatching network is properly a matter that should be negotiated by the village and the township as a part of the contract for police protection that they enter into pursuant to R.C. 505.43"). Therefore, if Central State University is a state instrumentality, a township fire district that does not include the territory of the university is authorized by R.C. 9.60 to provide, for a fee, emergency medical and rescue services to the university.

The term "state instrumentality" is not defined by statute for purposes of R.C. 9.60. Thus, the commonly accepted meaning of the term is to be applied. R.C. 1.42; *Carter v. City of Youngstown*, 146 Ohio St. 203, 207, 65 N.E.2d 63, 65 (1946). Prior courts which have examined whether a state university² is an arm or instrumentality of the state for purposes of either the immunity from suit conferred upon the state by the Eleventh Amendment to the United States Constitution, or the jurisdictional provisions of the Ohio Court of Claims Act, which is set forth in R.C. 2743.01-.20, have indicated that the usual approach is to look for indicia of a lack of autonomy from the state. *Hall v. Medical College of Ohio at Toledo*, 742 F.2d 299 (6th Cir. 1984), cert. denied, 469 U.S. 1113 (1985); *Bailey v. Ohio State Univ.*, 487 F. Supp. 601, 604 (S.D. Ohio 1980).

² R.C. 3345.011 defines a state university as "a public institution of higher education which is a body politic and corporate." The statute also recognizes as a state university the following institutions of higher education: University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University. Additionally, R.C. 3345.12(A)(1) states that, in addition to the institutions identified in R.C. 3345.011, the Northeastern Ohio Universities College of Medicine and the Medical College of Ohio at Toledo are included within the definition of "state university," for purposes of R.C. 3345.12, R.C. 3345.07, R.C. 3345.11, other statutes that reference R.C. 3345.12 unless the context does not permit, and related bond proceedings unless otherwise expressly provided.

Where it is determined that a state university lacks autonomy from the state, the university is an arm or instrumentality of the state. See *Hall v. Medical College of Ohio at Toledo* (the Medical College of Ohio at Toledo is an instrumentality of the state); *Bailey v. Ohio State Univ.* (Ohio State University is an instrumentality of the state); see also *Collins v. University of Cincinnati*, 3 Ohio App. 3d 183, 444 N.E.2d 459 (Hamilton County 1981) (under R.C. Chapter 2743 (the court of claims act), a state university is considered to be an instrumentality of the state). See generally R.C. 4115.31(E) (for purposes of R.C. 4115.31-.35, the term "instrumentality of the state" means any "university, ... or any other entity supported in whole or in part by funds appropriated by the general assembly").

Thus, for purposes of the Eleventh Amendment to the United States Constitution and R.C. 2743.01-.20, courts have indicated that the term "state instrumentality" includes a state university that is not an independent entity, separate and apart from the state itself. It is our view that the meaning accorded the term "state instrumentality" by the courts in the foregoing context reasonably may be applied to that term as it is used in R.C. 9.60. Accordingly, in this instance we will apply the same criteria for the purpose of determining whether Central State University is a "state instrumentality" under R.C. 9.60.³

Central State University was created by the General Assembly in R.C. Chapter 3343. The university is governed by a board of trustees that is appointed by the Governor. R.C. 3343.02. Pursuant to R.C. 3343.05, the Board of Trustees of Central State University is authorized to "provide courses of study in accordance with the standards of the department of education, and create, establish, provide for, and maintain such industrial, vocational, agricultural, home economics, commercial, business administration, technical, and collegiate subjects leading to the bachelors degree in arts and sciences."

Even though the board of trustees is vested with the authority to provide programs for the pursuit of higher education, the state, through the Ohio Board of Regents, retains considerable control over Central State University's programs and operations. See R.C. 3333.04; R.C. 3333.07. R.C. 3333.04 provides, in part:

The Ohio board of regents shall:

....

³ Although some courts in Ohio have determined that particular state universities are state instrumentalities, see *Hall v. Medical College of Ohio at Toledo*, 742 F.2d 299 (6th Cir. 1984), cert. denied, 469 U.S. 1113 (1985), *Bailey v. Ohio State Univ.*, 487 F. Supp. 601 (S.D. Ohio 1980), the decisions of these courts are not dispositive with respect to the issue of whether Central State University is a state instrumentality since "[e]ach state university exists in a unique governmental context, and ... must be considered on the basis of its own peculiar circumstances." *Hall v. Medical College of Ohio at Toledo*, 742 F.2d at 302 (quoting *Soni v. Board of Trustees*, 513 F.2d 347, 352 (6th Cir. 1975), cert. denied, 426 U.S. 919 (1976)).

(C) Approve or disapprove the establishment of new branches or academic centers of state colleges and universities;

....

(E) Recommend the nature of the programs, undergraduate, graduate, professional, state-financed research, and public services which should be offered by the state colleges, universities, and other state-assisted institutions of higher education in order to utilize to the best advantage their facilities and personnel;

(F) Recommend to the state colleges, universities, and other state-assisted institutions of higher education graduate or professional programs....

(G) Recommend to the state colleges, universities, and other state-assisted institutions of higher education programs which should be added to their present programs;

....

(J) Review the appropriation requests of ... the state colleges and universities and submit to the office of budget and management and to the chairpersons of the finance committees of the house of representatives and of the senate its recommendations in regard to the biennial higher education appropriation for the state, including appropriations for the individual state colleges and universities....

....

(N) Approve or disapprove all new degrees and new degree programs at all state colleges, universities, and other state-assisted institutions of higher education....

Similarly, R.C. 3333.07 states, in part, as follows:

(B) No state institution of higher education shall establish a new branch or academic center without the approval of the board [of regents].

(C) No state institution of higher education shall offer a new degree or establish a new degree program without the approval of the board [of regents].

Thus, pursuant to R.C. 3333.04 and R.C. 3333.07, the state exercises significant control over the operations of Central State University.

In addition, Central State University is "supported by such sums and in such manner as the general assembly provides," R.C. 3343.10, and subject to state oversight with respect to fiscal matters. *See, e.g.*, R.C. 3333.071 ("no expenditure shall be made for land for higher education purposes by public institutions of higher education or agents of such institutions from any fund without the approval of the board of regents and the controlling board"); R.C. 3345.03 (the expenditure of all moneys under R.C. 3345.01-.07 or for the purpose of carrying out such sections is subject to an audit by the Auditor of State); R.C. 3345.05 (the Ohio Board of Regents shall require annual reporting by each state university receiving state aid in such form and detail as determined by the board). Finally, land acquired under R.C. 3345.07, R.C. 3345.11, and R.C. 3345.12 by Central State University is to be taken in the name of the state. R.C. 3345.12(O).

In light of the foregoing, it must be concluded that Central State University lacks operational autonomy from, and is financially dependent upon, the state. Thus, Central State University is a state instrumentality for purposes of R.C. 9.60. Therefore, a township fire district created pursuant to R.C. 505.37(C) is authorized by R.C. 9.60 to provide, for a fee, emergency medical and rescue services to Central State University, provided the university is not located within the fire district.

You state in your letter, however, that Central State University has adopted the position that R.C. 505.84, rather than R.C. 9.60, governs the provision of emergency medical and rescue services to the university. R.C. 505.84 authorizes a township to charge for ambulance and emergency medical services, and thus provides, in pertinent part, as follows:

A board of township trustees may establish reasonable charges for the use of ambulance or emergency medical services. The board may establish different charges for township residents and nonresidents, and may at its discretion waive all or part of the charge for any resident. The charge for nonresidents shall be an amount not less than the authorized medicare reimbursement rate, except that if prior to the effective date of this amendment the board had different charges for residents and nonresidents and the charge for nonresidents was less than the authorized medicare reimbursement rate, the board may charge nonresidents less than the authorized medicare reimbursement rate.

Central State University believes that the application of the provisions of R.C. 9.60 and R.C. 505.84 in this matter presents a question of statutory construction that must be resolved by reference to R.C. 1.51. The rule of statutory construction set forth in R.C. 1.51 is as follows:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

The university asserts that R.C. 505.84 is a special provision that addresses the fee a township may charge for ambulance and emergency medical services provided by the township. R.C. 9.60, on the other hand, is a general provision that permits a township fire district to contract with a governmental entity for the purpose of providing fire protection services to that entity. The university believes that R.C. 505.84, being a special provision, governs the provision of ambulance and emergency medical services by the township fire district to the university, to the exclusion of R.C. 9.60.

We are unable to concur in the position thus espoused by the university, however. A review of R.C. 9.60 and R.C. 505.84 discloses that these two statutes address distinctly different subjects, and cannot be characterized as conflicting in any material way. Specifically, the purpose of R.C. 9.60 is to permit a township fire district to provide emergency medical or rescue services outside the territory of the fire district. *See* 1988 Op. Att'y Gen. No. 88-042 at 2-201 (pursuant to R.C. 9.60,

"[s]ervices of a [township fire district] may be extended beyond the district pursuant to contract"). In contrast, the purpose of R.C. 505.84 is to authorize a board of township trustees to charge township residents and nonresidents for the use of ambulance or emergency medical services furnished by the township. *See* 1981 Op. Att'y Gen. No. 81-023 at 2-86 (R.C. 505.84 "authorizes a board of township trustees to establish reasonable charges for persons who use ambulance or emergency medical services"). R.C. 505.84 confers no authority upon a township fire district to provide emergency medical or rescue services to a state university located outside the territory of the fire district.

The objects sought to be attained by R.C. 9.60 and R.C. 505.84 thus are not the same. It follows, therefore, that the statutes are not in conflict. Accordingly, it is unnecessary to apply the rule of statutory construction set forth in R.C. 1.51 when interpreting the provisions of R.C. 9.60. As such, R.C. 505.84 may not be read to prohibit a township fire district from entering into a contract or agreement pursuant to R.C. 9.60 to provide emergency medical and rescue services to a state university located outside the territory of the fire district.

Finally, Central State University has suggested that the township acted improperly in establishing a fire district that excludes the university's property. As stated above, a board of township trustees may "whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence, create a fire district *of any portions of the township* that it considers necessary." R.C. 505.37(C) (emphasis added). R.C. 505.37(C) thus unequivocally vests a board of township trustees with the authority to create a fire district that excludes a portion of the township. *See Richfield Township v. Toledo Area Metro. Park Bd.*, No. L-81-034 (Ct. App. Lucas County June 19, 1981); 1952 Op. Att'y Gen. No. 1101, p. 50; 1943 Op. Att'y Gen. No. 5798, p. 44. Accordingly, if the board of township trustees in question determined that it was expedient and necessary to create a fire district that excludes the territory on which Central State University is situated, R.C. 505.37(C) authorized the township to create the fire district. *See Richfield Township v. Toledo Area Metro. Park Bd.* (the trustees of Richfield Township were authorized to exclude the territory of a park district from a fire district because it was necessary and expedient); 1952 Op. Att'y Gen. No. 1101, p. 50 (syllabus, paragraph one) (pursuant to G.C. 3298-54, now R.C. 505.37, "the township trustees of any township may create one or more fire districts of such portions of the township as they may deem necessary"); 1943 Op. Att'y Gen. No. 5798, p. 44, 48 (there is nothing in the language of G.C. 3298-54, now R.C. 505.37, "which would make it mandatory that the trustees should organize into one or more districts all of the area of a given township lying outside of a municipality. It is entirely consistent with the language used that they should organize only such portion of the township as in their judgment is in need of fire protection and is so situated as to be capable of maintaining a fire department or contracting with a municipality for such protection").

Based on the foregoing, it is my opinion, and you are advised that a township fire district created pursuant to R.C. 505.37(C) is authorized by R.C. 9.60 to provide, for a fee, emergency medical and rescue services to Central State University, provided the university is not located within the fire district.

The Honorable William F. Schenck

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Respectfully,

BETTY D. MONTGOMERY
Attorney General

December 29, 1997

The Honorable William F. Schenck
Greene County Prosecuting Attorney
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SYLLABUS:

97-060

A township fire district created pursuant to R.C. 505.37(C) is authorized by R.C. 9.60 to provide, for a fee, emergency medical and rescue services to Central State University, provided the university is not located within the fire district.