

January 14, 2008

The Honorable Jonathan D. Blanton
Jackson County Prosecuting Attorney
295 Broadway Street, Suite 100
Jackson, Ohio 45640

SYLLABUS:

2008-001

Pursuant to R.C. 505.84, a board of township trustees that contracts with a village to obtain fire protection services may charge township residents who avail themselves of the fire protection services provided by the village.



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

January 14, 2008

OPINION NO. 2008-001

The Honorable Jonathan D. Blanton
Jackson County Prosecuting Attorney
295 Broadway Street, Suite 100
Jackson, Ohio 45640

Dear Prosecutor Blanton:

You have requested an opinion whether a board of township trustees that contracts with a village to obtain fire protection services¹ may charge township residents who avail themselves of the fire protection services provided by the village.² Pursuant to R.C. 505.84, a board of township trustees has this authority.

¹ The contract between the township and village requires the village fire department to fight fires and respond to emergencies within the township. The contract does not, however, include the provision of ambulance or emergency medical services by the village fire department. Therefore, for the purpose of this opinion, fire protection services are those services offered by a village fire department to fight fires and respond to emergencies.

² As explained in your letter, financial pressures have created a need for a board of township trustees that contracts with a village to obtain fire protection services to consider billing township residents who use the services provided under the contract, with the intention of collecting any private insurance benefits that may be available. Because you have specifically asked about the authority of a board of township trustees to bill its residents for fire protection services, this opinion does not discuss who else may be billed by the board for using such services or the method by which the board may bill and collect moneys from township residents who avail themselves of the fire protection services provided by the village. *See generally, e.g.*, 2005 Op. Att'y Gen. No. 2005-036 (a board of township trustees may not charge the board of mental retardation and developmental disabilities for use of the township's fire and rescue

A board of township trustees may, but is not required to, provide fire protection services to safeguard lives and property within the township. R.C. 505.37; 2005 Op. Att’y Gen. No. 2005-036 at 2-371. If a board of township trustees decides to do so, the board may choose from numerous options,³ including contracting with a village to obtain fire protection services within the township. *See* R.C. 9.60; R.C. 505.37(C); 1937 Op. Att’y Gen. No. 153, vol. I, p. 226; *see also* 2003 Op. Att’y Gen. No. 2003-017 at 2-126; 1943 Op. Att’y Gen. No. 5798, p. 44.

To finance the provision of fire protection services by a village, a board of township trustees may do the following:⁴

services); 2003 Op. Att’y Gen. No. 2003-017 (discussing various issues relating to billing that arise when a board of township trustees contracts with a village to procure ambulance or emergency medical services from a village); 1988 Op. Att’y Gen. No. 88-042 (syllabus, paragraph four) (overruled, in part, on other grounds by 2005 Op. Att’y Gen. No. 2005-036) (charges for ambulance and emergency medical services may not be collected from an institution operated by the Ohio Department of Youth Services); 1984 Op. Att’y Gen. No. 84-048 (modified on other grounds by 2003 Op. Att’y Gen. No. 2003-017) (an arrangement to charge nonresidents for the use of ambulance or emergency medical services but provide free services for residents will satisfy the rational basis test for equal protection if it bears a reasonable relationship to the achievement of a legitimate governmental purpose).

³ A board of township trustees may provide fire protection services directly, R.C. 505.37, or acquire the services from a public or private fire fighting agency, R.C. 9.60; R.C. 505.37(C). 2005 Op. Att’y Gen. No. 2005-036 at 2-371. In addition, a board may choose from a number of organizational schemes set forth in statute. *See, e.g.,* R.C. 505.37(B) (taking joint action with other townships and political subdivisions to acquire and operate fire-fighting equipment and prorate expenses); R.C. 505.371 (creation of joint fire district); R.C. 505.375 (creation of fire and ambulance district).

⁴ Other options for paying a village for providing fire protection services to a township include levying a tax on the real property within the township, R.C. 505.39, issuing bonds and other securities, R.C. 505.40; R.C. 505.401, and levying one or more taxes in excess of the ten-mill limitation, R.C. 5705.19(I), (JJ). *See* 2005 Op. Att’y Gen. No. 2005-036 at 2-372 n.2. *See generally* 1989 Op. Att’y Gen. No. 89-010 at 2-40 (“moneys derived from a levy under R.C. 5705.19(I) may be paid by a township to a private fire company in exchange for fire and rescue services”); 1983 Op. Att’y Gen. No. 83-069 (syllabus, paragraph one) (“[a] board of township trustees may use funds derived from a tax levy adopted under R.C. 5705.19(I) to pay a private volunteer fire company to operate fire apparatus and appliances which are owned by the private volunteer fire company”); 1943 Op. Att’y Gen. No. 5798, p. 44 (syllabus, paragraph three) (“[t]he cost of acquiring and maintaining such fire equipment or of obtaining such fire protection in any such fire district ... must be obtained by a levy of taxes on the taxable property in the district, pursuant to the provisions of [G.C. 3298-55 (now R.C. 505.39)] or by the issuance of

A board of township trustees may establish reasonable charges for the use of fire and rescue services, ambulance services, or emergency medical services. The board may establish different charges for township residents and nonresidents, and may, in its discretion, waive all or part of the charge for any resident....

Charges collected under this section shall be kept in a separate fund designated as “the fire and rescue services, ambulance services, and emergency medical services fund,” and shall be appropriated and administered by the board. *The fund shall be used for the payment of the costs of the management, maintenance, and operation of fire and rescue services, ambulance services, and emergency medical services in the township.* If the fire and rescue services, ambulance services, and emergency medical services are discontinued in the township, any balance remaining in the fund shall be paid into the general fund of the township. (Emphasis added.)

R.C. 505.84.

Thus, R.C. 505.84 plainly and unequivocally authorizes a board of township trustees to establish and collect charges for the use of fire and rescue services, ambulance services, or emergency medical services. *See* 2005 Op. Att’y Gen. No. 2005-036 at 2-373; 1984 Op. Att’y Gen. No. 84-048 at 2-152 (modified on other grounds by 2003 Op. Att’y Gen. No. 2003-017); 1981 Op. Att’y Gen. No. 81-023 at 2-86.

In addition, prior opinions of the Attorneys General have concluded that the authority to establish and collect charges for the use of ambulance services or emergency medical services exists when a board of township trustees “obtains the services by contract, as well as when the township provides the services directly.” 2003 Op. Att’y Gen. No. 2003-017 at 2-127; *accord* 1984 Op. Att’y Gen. No. 84-048 at 2-152; 1981 Op. Att’y Gen. No. 81-023 at 2-86; *see also* 1990 Op. Att’y Gen. No. 90-065 at 2-274. At the time these opinions were issued, “boards of township trustees had the authority under R.C. 505.84 to collect charges for the use of ambulance and emergency medical services, but had no statutory authority to charge users of fire and rescue services.” 2005 Op. Att’y Gen. No. 2005-036 at 2-373 n.4; *see* 1987-1988 Ohio Laws, Part II, 3092 (Am. H.B. 256, eff. Sept. 9, 1988); 1979-1980 Ohio Laws, Part I, 301 (Am. S.B. 82, eff. Oct. 31, 1979).

Since the issuance of these opinions, however, the General Assembly has amended R.C. 505.84 so as to grant a board of township trustees the authority to establish charges for the use of fire and rescue services as well as for ambulance and emergency medical services. Sub. H.B.

bonds pursuant to [G.C. 3298-56 (now R.C. 505.40)]”); 1928 Op. Att’y Gen. No. 2955, vol. IV, p. 2736 (syllabus) (“[t]ownship trustees may lawfully pay from township funds for the use of a fire department maintained by a neighboring political subdivision for the purpose of protecting the lives and property of citizens of the township against damages resulting from fires”).

255, 125th Gen. A. (2004) (eff. March 31, 2005). Based on this amendment and the prior conclusion of Attorneys General that a board of township trustees has the authority under R.C. 505.84 to establish and collect charges for the services listed therein when the services are obtained by contract, it reasonably follows that a board of township trustees that contracts with a village to obtain fire protection services may charge township residents who avail themselves of the fire protection services provided by the village.

In conclusion, it is my opinion, and you are hereby advised that, pursuant to R.C. 505.84, a board of township trustees that contracts with a village to obtain fire protection services may charge township residents who avail themselves of the fire protection services provided by the village.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc Dann", with a stylized flourish at the end.

MARC DANN
Attorney General