

February 23, 2010

The Honorable Kevin J. Baxter  
Erie County Prosecuting Attorney  
247 Columbus Avenue, Suite 319  
Sandusky, Ohio 44870-2636

SYLLABUS:

2010-008

A board of trustees of a non-home rule township has no authority under R.C. 4511.07, R.C. 4511.11, R.C. 5571.02 or other statute to prohibit “thru trucks” from operating on all roads that the township is responsible for maintaining in order to prevent excessive traffic and damage to the road surface. (1981 Op. Att’y Gen. No. 81-008, overruled.)



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RICHARD CORDRAY  
OHIO ATTORNEY GENERAL

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OPINION NO. 2010-008

The Honorable Kevin J. Baxter  
Erie County Prosecuting Attorney  
247 Columbus Avenue, Suite 319  
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Dear Prosecutor Baxter:

You have asked whether a board of trustees of a non-home rule township has the authority to prohibit “thru trucks” from all of the roads that the township is responsible for maintaining. You state that the purpose of the prohibition “is to prevent excessive traffic and loaded trucks from damaging the road surface.” Boards of township trustees are creatures of statute and may exercise only those powers that are specifically conferred by statute or that may be necessarily implied therefrom. *In re Petition for Incorporation of the Village of Holiday City*, 70 Ohio St. 3d 365, 639 N.E.2d 42 (1994). Therefore, a board of township trustees may prohibit thru trucks on township roads only if it has the statutory authority to do so.<sup>1</sup>

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<sup>1</sup> A “thru” (or “through”) vehicle is not defined by statute, and the term can be somewhat ambiguous. For example, in *City of Brook Park v. Short*, 61 Ohio App. 3d 519, 522, 573 N.E.2d 168 (Cuyahoga County 1989), the majority held that, with regard to defining the phrases “thru vehicles” or “through vehicles” in a municipal ordinance prohibiting on roads other than state routes “thru vehicles” over a certain weight, the plain meaning, “initiated at and destined for points *outside* a local zone,” should be applied. The court ruled, accordingly, that the defendant who drove his vehicle, which exceeded the maximum weight, through a residential area to stop at his home and then continued on was not operating a “thru” vehicle. The dissenting judge, however, contended that “[t]he ‘thru’ designation should properly be read as a word of limitation that incorporates the Ordinance’s exception for vehicles engaged in business deliveries, pick-ups or some emergency purpose,” and “vehicles not engaged in a purpose excepted by the Ordinance would therefore be ‘thru’ vehicles.” 61 Ohio App. 3d at 525. The dissent believed, therefore, that the defendant was operating a “thru” vehicle.

A member of your staff has indicated that the township’s primary concern is with trucks that have no business purpose for stopping within the township, although there is also some concern with trucks that are traveling across township roads to reach a quarry located within the township. As we will see, the distinction is insignificant with regard to the statutory authority of

Briefly stated, Ohio's public highways are divided into state roads, county roads, and township roads. R.C. 5535.01. Under division (C) of R.C. 5535.01, township roads "include all public highways other than state or county roads" (as they are defined in divisions (A) and (B) of R.C. 5535.01). *See also* 1988 Op. Att'y Gen. No. 88-036 (syllabus, paragraph 2) ("[a] road that has been established as part of the township road system is considered a city street, rather than a township road, whenever it exists within a city"). A board of township trustees is charged with maintaining "all such roads within its township." *Id.* *See also* R.C. 5535.08(A) ("[t]he state, county, and township shall each maintain its roads, as designated in section 5535.01 of the Revised Code"); R.C. 5571.01(A) ("[a] board of township trustees may construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction, or any county road, intercounty highway, or state highway within its township.... The board of township trustees may widen, straighten, or change the direction of any part of a road in connection with the proceedings for its improvement"); R.C. 5571.02 ("[t]he board of township trustees shall have control of the township roads of its township and, except for those township roads the board places on nonmaintained status pursuant to section 5571.20 of the Revised Code, shall keep them in good repair").<sup>2</sup> With few exceptions, however, a board of township trustees lacks the authority to regulate the flow of traffic on township roads.<sup>3</sup> *See* 1999 Op. Att'y Gen. No. 99-050

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the board of township trustees. (Such a distinction, however, may have constitutional implications. Pertinent case law is cited, *infra.*).

<sup>2</sup> Although the State, counties, and townships are generally responsible for maintaining, repairing, and improving their own roads and highways, the Revised Code is replete with instances in which they are authorized to cooperate with one another in carrying out these responsibilities. *See, e.g.,* R.C. 5535.01(C) ("[t]he board of county commissioners may assist the board of township trustees in maintaining" township roads); R.C. 5535.08; R.C. 5571.01; 1981 Op. Att'y Gen. No. 81-039.

<sup>3</sup> One exception is the authority enjoyed by a board of township trustees under R.C. 505.17 to regulate parking within that part of the township outside the limits of a municipal corporation, including, under prescribed circumstances, parking along streets and highways. *See* 2005 Op. Att'y Gen. No. 2005-040 (authority of a board of township trustees to prohibit vehicle parking in a residential subdivision). Other enabling statutes include: R.C. 4511.21(J) (boards of township trustees and other local authorities may authorize higher speeds than those set forth in statute, including speeds on through highways); R.C. 4511.21(K)(2) (a board of township trustees may lower the speed limit on unimproved roads to one that is "reasonable and safe"); R.C. 4511.65(D) ("[l]ocal authorities with reference to highways under their jurisdiction may designate additional through highways ... or may designate any intersection as a stop or yield intersection"); and, R.C. 4513.34 (with regard to the highways under their jurisdiction, local authorities may issue special permits authorizing the applicants "to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified" in R.C. 5577.01-.09 or not in conformity with certain provisions of R.C. Chapter 4513 relating to

at 2-308 (“[t]he General Assembly has not conferred upon a board of township trustees general authority to regulate the flow of motor vehicle traffic on public roads located within the unincorporated area of the township”); 1978 Op. Att’y Gen. No. 78-021 at 2-49 (“[g]eneral authority to regulate the flow of traffic is not specifically granted to boards of township trustees by the Revised Code”).

We are unaware of any statute that expressly authorizes a board of township trustees to ban certain vehicles from township roads. As you mention in your request for an opinion, R.C. 4511.07 was, for a time, interpreted as providing boards of township trustees the authority to regulate traffic on township roads. R.C. 4511.07 states that state traffic laws “do not prevent local authorities from carrying out the following activities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power.”<sup>4</sup> The statute then proceeds to set forth various activities, such as regulating the stopping, parking, and speed of vehicles, designating certain highways as one-way or through highways, and “[r]egulating the use of certain streets by vehicles.” R.C. 4511.07. In *Slicker v. Board of Education*, 90 Ohio L. Abs. 108, 187 N.E.2d 392 (App. Mahoning County 1961), the court described the language in R.C. 4511.07 (now in division (A)(4))—“[d]esignating particular highways as one-way highways and requiring that all vehicles, trackless trolleys, and streetcars thereon be moved in one specific direction”—as giving a board of township trustees powers “unlimited in manner, other than such powers may not be abused or the result of arbitrary judgment on the part of the board of trustees.” 90 Ohio L. Abs. at 110. The court found, accordingly, that the board of township trustees had acted properly, in the interest of public safety, when it designated a township road as one-way. *See also, e.g., City of Oakwood v. Kappeler*, 1987 Ohio App. Lexis 8727 (Montgomery County) (R.C. 4511.07 (now division (A)(6)), which provides that local authorities are not prevented from designating intersections as stop intersections, authorized a city to post stop signs); 1989 Op. Att’y Gen. No. 89-011 at 2-43 (“R.C. 4511.07 addresses the power of local authorities to adopt certain types of traffic regulations with respect to roads, streets, and highways that are within their respective jurisdictions,” and thus, “under R.C. 4511.07 [now division (A)(10)], a board of township trustees may adopt a regulation pertaining to the use of streets and roads that are within the board’s jurisdiction”); 1987 Op. Att’y Gen. No. 87-098 at 2-648 (“while R.C. 4511.07 is phrased in terms of ‘not prevent[ing] local authorities from carrying out’ the listed activities, it has been construed as a grant of authority to perform those activities”); 1981 Op. Att’y Gen. No. 81-008 at 2-27 (“[c]ertainly R.C. 4511.07 is the source for the power of a township to formulate a regulation to protect its streets”); 1979 Op. Att’y Gen. No. 79-058 at 2-197 (reading R.C. 4511.07 as a whole “indicates that it was the intent

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vehicle equipment, weights, and loads, and “may limit or prescribe conditions of operation for the vehicle”).

<sup>4</sup> A board of township trustees is a “local authority” for purposes of R.C. Chapters 4511 and 4513. *See* R.C. 4511.01(A)(A) (“[l]ocal authorities’ means every county, municipal, and other local board or body having authority to adopt police regulations under the constitution and laws of this state”); *Royce v. Smith*, 68 Ohio St. 2d 106, 429 N.E.2d 134 (1981).

of the General Assembly to grant local authorities the power to carry out the activities listed therein”).<sup>5</sup>

In *Geauga County Bd. of Commissioners v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 621 N.E.2d 696 (1993), however, the court rejected the interpretation of R.C. 4511.07 as a source of authority for local authorities to regulate traffic. “R.C. 4511.07, by stating that certain statutes ‘do not prevent’ local authorities from regulating, effectively provides on its face that those statutes do not stand in the way of regulation in these areas,” but “[t]his is not the same as providing that a county is authorized to regulate. Because the statute is phrased in the negative, it does not affirmatively grant powers to a county, which exercises only limited authority.” 67 Ohio St. 3d at 583-84. The court accordingly concluded that R.C. 4511.07 did not grant a board of county commissioners “the power to ban through trucks on county roads.” 67 Ohio St. 3d at 586.<sup>6</sup> Again, a board of township trustees is like a board of county commissioners that is “powerless to enact legislation” “in the absence of a specific statutory grant of authority,” 67 Ohio St. 3d at 583, and thus, like a board of county commissioners, a board of township trustees has no authority under R.C. 4511.07 to prohibit trucks on the roads under its jurisdiction.<sup>7</sup>

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<sup>5</sup> Even these opinions, however, interpreted narrowly the powers granted to boards of township trustees by R.C. 4511.07. 1989 Op. Att’y Gen. No. 89-011 (R.C. 4511.07 does not authorize a board of township trustees to contract for the services of a professional traffic engineer); 1987 Op. Att’y Gen. No. 87-098 (a board of county commissioners is not authorized by R.C. 4511.07 to regulate truck traffic on a state highway within the county); 1981 Op. Att’y Gen. No. 81-008 (syllabus) (in order to be a valid exercise of police power under R.C. 4511.07, a township regulation of the use of township streets or highways may not “conflict with standards set by statute or specific powers vested in other authorities,” and must be reasonable, non-discriminatory, of uniform operation, have “a real and substantial relation to its purpose,” and may not “interfere with private rights beyond the necessities of the situation”); 1979 Op. Att’y Gen. No. 79-058 at 2-199 (R.C. 505.17, *see* note 3, *supra*, “prevails in the conflict between it and R.C. 4511.07”).

<sup>6</sup> In *Munn*, the court explained that the “do not prevent” language in R.C. 4511.07 “obviously is phrased with regard to the powers which may be exercised by a municipality.... The statute, by this language, takes a home rule approach, and is stated in home rule terms.” 67 Ohio St. 3d at 583. The court further noted, however, that while R.C. 4511.07 “could be viewed as very much like a grant of authority to the municipality, the municipality does not need the grant of authority because it already possesses it pursuant to its home rule powers. The power comes from the Ohio Constitution; it does *not* come from R.C. 4511.07.” 67 Ohio St. 3d at 584. The court interpreted the “do not prevent” language as “effectively the same as specifically providing that no conflict exists with general laws of the state when a municipality regulates in the enumerated areas.” *Id.*

<sup>7</sup> In light of *Munn*, we overrule 1981 Op. Att’y Gen. No. 81-008, which concluded that R.C. 4511.07 authorized a board of township trustees to prohibit commercial trucks over a

Other statutory provisions have also been rejected as a source of substantive power or broad discretionary authority for local authorities to enact traffic regulations. For example, the scope of R.C. 4511.11, which authorizes local authorities to place and maintain traffic control devices,<sup>8</sup> was examined in 1955 Op. Att’y Gen. No. 5437, p. 310 with regard to whether a board of township trustees had “the right to promulgate traffic regulations which provide for varying speeds in different road areas.” *Id.* at 313. The opinion concluded that R.C. 4511.11 “does not by its terms purport to authorize local authorities to *promulgate* traffic regulations, but merely authorizes the placement and maintenance of such signs as are necessary to warn road users of such traffic regulations as are currently in effect in particular road areas.” *Id.* at 313. 1955 Op. Att’y Gen. No. 5437, p. 310 was cited with approval by 1978 Op. Att’y Gen. No. 78-021 at 2-49 to 2-50, which stated that “under R.C. 4511.11, boards of township trustees serve merely as an administrative body with respect to regulation of traffic, their only powers being limited to the placement and maintenance of traffic control devices”; and, “[c]onsidering the limited statutory authority over traffic which township trustees possess, there is little doubt that their authority to retain a traffic consultant cannot be characterized as necessarily implied” from R.C. 4511.11, R.C. 4511.21, or R.C. 4511.65.<sup>9</sup> We agree that the statutory authority of a board of township trustees to place signs and traffic control devices does not necessarily imply the power to ban trucks from township roads.

We must also examine R.C. 5571.02, which states that a “board of township trustees shall have *control of the township roads* of its township and, except for those township roads the board places on nonmaintained status pursuant to section 5571.20 of the Revised Code, shall keep them in good repair.” (Emphasis added.) In *Royce v. Smith*, 68 Ohio St. 2d 106, 429 N.E.2d 134 (1981), the court, although not specifically interpreting the word “control,” concluded that R.C. 5571.02, “which requires that a board of township trustees keep its roads in ‘good repair’” does not impose a duty on townships to trim trees obstructing the visibility of a

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specified length from using a township road to reach a commercial tract of real estate (so long as the regulation met constitutional standards).

<sup>8</sup> R.C. 4511.11(A) states: “Local authorities in their respective jurisdictions shall place and maintain traffic control devices in accordance with the [state] department of transportation manual and specifications for a uniform system of traffic control devices, adopted under section 4511.09 of the Revised Code, upon highways under their jurisdiction as are necessary to indicate and to carry out sections 4511.01 to 4511.76 and 4511.99 of the Revised Code, local traffic ordinances, or to regulate, warn, or guide traffic.” *See also* R.C. 5571.01(E).

<sup>9</sup> R.C. 4511.65(D) authorizes local authorities to designate additional through highways, or intersections as stop or yield intersections, and R.C. 4511.21 authorizes local authorities to vary *prima facie* speed limits established by statute. *See* note 3, *supra*. *See also* 1989 Op. Att’y Gen. No. 89-011 (R.C. 4511.21 confers limited power on local authorities to alter speed limits, and the power of a township to contract with a traffic engineer to conduct the investigation required by R.C. 4511.21 prior to altering the speed limits cannot be implied therefrom).

stop sign on a township road because it “is not an element of repair of the roads but rather an element of traffic control” (citation omitted).<sup>10</sup> 68 Ohio St. 2d at 113.

1990 Op. Att’y Gen. No. 90-029 examined whether the authority of a board of township trustees to “control” township roads under R.C. 5571.02 includes the authority to temporarily close a township road “when the road is impassable or dangerous to the travelling public or when continued use of the road would cause excessive damage to the road resulting in the road being closed to the public for extensive repair.” *Id.* at 2-112. The Attorney General noted that, “[w]hile the cases construing the language in R.C. 5571.02 requiring the township trustees to keep township roads in good repair are numerous ... I have been unable to find any discussion by any Ohio court construing the duty to control township roads, *other than in the context of maintenance and repair of such roads.*”<sup>11</sup> (Emphasis added.) *Id.* at 2-110. Finding use of the term “control” in R.C. 5571.02 to be “ambiguous, especially in the context raised by your question,” and that R.C. 5571.02 lacked “any provision that expressly limits or gives guidance on the extent and methods of control,” *id.* at 2-110, or “prescribed methods by which ‘control’ is to be exercised,” the opinion concluded that the legislative intent was that control “be exercised in a reasonable manner,” *id.* at 2-111. Citing the mandate in Ohio Const. art. I, § 19 that public roads be “open,”<sup>12</sup> the opinion found that the “purpose of the ‘control’ of township roads by a board of

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<sup>10</sup> In *Royce v. Smith*, the court did find, however, that a board of township trustees had the duty to maintain the stop sign under R.C. 4511.11. R.C. 4511.11 requires a local authority to place and maintain traffic control devices in accordance with the state Department of Transportation’s manual for a uniform system of traffic control devices. *See* note 8, *supra*. The manual requires that traffic signs be kept visible, unobscured by weeds, shrubbery, or foliage. *Royce v. Smith*, 68 Ohio St. 2d at 108-111.

<sup>11</sup> Reading the term “control,” as used in R.C. 5571.02, within the context of maintenance and repair is consistent with the maxim of statutory construction, *noscitur a sociis*—“the meaning of a word may be ascertained by reference to the meaning of words associated with it; and again, according to a similar rule, the coupling of words together shows that they are to be understood in the same sense.” *Myers v. Seaberger*, 45 Ohio St. 232, 236, 12 N.E. 796 (1887). Not only are the specifics of R.C. 5571.02 concerned solely with the maintenance and repair of township roads, but R.C. Chapter 5571 as a whole has nothing to do with traffic control save the authority in R.C. 5571.01 for a board of township trustees to erect signposts and traffic control devices and signals at intersecting roads.

<sup>12</sup> Ohio Const. art. I, § 19 states: “Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and

township trustees is to keep the roads open to the public,” and “[o]ne of the facets of the duty to control township roads is the protection of the public.... Because the objective of the ‘control’ required by R.C. 5571.02 is the keeping open of township roads for the safe travel of the public, any exercise of control by the township trustees must be examined in light of this goal.” *Id.* at 2-111. The opinion concluded that “[s]ince the constitutional mandate requires township roads to be open, a closing may be ordered in circumstances in which the road is impassable or dangerous to the travelling public.” *Id.* at 2-111. With regard to closing township roads when the board of township trustees “considers it ‘necessary to prevent excessive damage to the road’ due to heavy rains,” however, “[a]ny decision to close a road under such circumstances must be guided by the constitutional dictate to keep roads ‘open to the public.’” *Id.* at 2-111. In such an instance, “[i]f the possibility of damage to a road is such that continued use of the road would cause excessive damage to the road resulting in the road being closed to the public for extensive repair, a temporary closing to prevent such damage may be a proper exercise of the duty under R.C. 5571.02 to control and maintain township roads and keep them safe for public travel.” *Id.* at 2-111. We have no basis upon which to extend the scope of a township’s authority to “control” its roads by closing them beyond the limited parameters set forth in 1990 Op. Att’y Gen. No. 90-029, and conclude that R.C. 5571.02 does not authorize a board of township trustees to permanently close all township roads to trucks (whether traveling through the township or locally) in order to prevent excessive traffic and damage to the surface of the roads.

Our conclusion that there is no statute from which the authority for a board of township trustees to ban trucks from township roads may be implied is supported by the concept that if the General Assembly had indeed intended to bestow this rather significant authority on boards of township trustees, it would have done so explicitly and unmistakably. *See Gibbons v. Ogden*, 22 U.S. 1 (1824) (“men, whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey.... The phrase [“among the several States”] is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose”); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). *See, e.g.*, R.C. 737.022(E) (municipalities may create, abolish, and regulate through routes and truck routes).

There are steps a board of township trustees is statutorily authorized to take in order to protect township roads and minimize damage thereto. *See, e.g.*, R.C. 4513.33 (requesting lower weight limits); R.C. 5571.09 (a board of township trustees “may bring and maintain all suits involving an injury to any township road ... and for the prevention of injury thereto”); R.C. 5577.12 (“[a]ny person violating any law relating to or regulating the use of the improved public roads shall be liable for all damage resulting to any such street, highway, bridge, or culvert by reason of such violation.... in the case of an injury to an improved public street, road, bridge, or

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such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.”

culvert of a township, the damages shall be recovered by a civil action prosecuted by the board of township trustees”). Ultimately, however, the General Assembly must act in order to provide boards of township trustees the power to ban trucks from township roads and highways. *See Geauga County Bd. of Commissioners v. Munn Road Sand & Gravel*, 67 Ohio St. 3d at 586 (“[i]f the General Assembly wishes to affirmatively grant the authority to *all* local governments to regulate in some or all of the areas enumerated in R.C. 4511.07, that is its prerogative, either by amending this statute or by enacting a new one”).

As you note in your letter, a township resolution prohibiting thru trucks on township roads has “obvious constitutional implications.” In light of our conclusion that a board of township trustees has no statutory authority to enact regulations prohibiting through or local trucks on township roads, we need not address these implications. If, however, the General Assembly proceeds to enact legislation regarding this matter, it may wish to consider judicial decisions that have delineated the constitutional parameters for ordinances, enacted by municipalities under their home rule powers, that regulate the use of municipal highways by certain vehicles.<sup>13</sup> *Cf. City of Niles v. Dean*, 25 Ohio St. 2d 284, 286-87, 268 N.E.2d 275 (1971) (upholding the constitutionality of a municipal ordinance that “confines through traffic, not intending to discharge cargo within the city, to designated state routes” and designated city streets, permits resident and non-resident truckers “to service industrial and commercial firms in the city,” and “provides that trucks may use certain streets only for the servicing of designated businesses thereon”) and *Cincinnati Motor Transportation Association v. City of Lincoln Heights*, 25 Ohio St. 2d 203, 267 N.E.2d 797 (1971) (syllabus) (“[a]n ordinance of a municipality which is primarily residential, prohibiting truck traffic on an exclusively residential street, which street affords the most direct route for truckers to use in gaining access to an interstate highway, is neither unreasonable nor unconstitutional where other routes, though less convenient, are available for their use”) with *Richter Concrete Corp. v. City of Reading*, 166 Ohio St. 279, 142 N.E.2d 525 (1957) (syllabus) (“[w]here an ordinance prohibits the operation of trucks over a certain weight on all the streets of a municipality, excepting the only state highway therein, and further excepting operations for loading or unloading at a residence, place of business or industry in the municipality or traveling to or from a residence, place of business or industry where such trucks are registered or hired, such ordinance is discriminatory against nonresidents of such municipality, is an unreasonable classification, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and Section 2 of Article I of the Ohio Constitution and is invalid”).

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<sup>13</sup> *See City of Niles v. Dean*, 25 Ohio St. 2d 284, 286, 289, 268 N.E.2d 275 (1971) (“a municipal corporation has the power, as part of its right to regulate and control its streets, to designate the routes which may be followed by trucks and to exclude them from all but designated streets, so long as such regulation is reasonable and does not constitute a denial of equal protection.... The regulation of truck traffic on municipal streets is necessary under today’s traffic conditions, and a municipal ordinance regulating such use is a valid exercise of the police power so long as the ordinance is reasonable, is not discriminatory and is of uniform operation”).

In conclusion, it is my opinion, and you are advised, that a board of trustees of a non-home rule township has no authority under R.C. 4511.07, R.C. 4511.11, R.C. 5571.02 or other statute to prohibit "thru trucks" from operating on all roads that the township is responsible for maintaining in order to prevent excessive traffic and damage to the road surface. (1981 Op. Att'y Gen. No. 81-008, overruled.)

Respectfully,



RICHARD CORDRAY  
Ohio Attorney General