

May 16, 2012

The Honorable Judy C. Wolford
Pickaway County Prosecuting Attorney
P.O. Box 910
Circleville, Ohio 43113

SYLLABUS:

2012-014

The Saltcreek Township Board of Trustees may purchase a grass truck for the Saltcreek-Tarlton Volunteer Fire Department using revenue derived from the tax levy approved by voters in November 2006 for the purpose of providing fire and emergency protection, provided the Board of Trustees determines, in the reasonable exercise of its discretion, that the purchase of the grass truck is in the public interest.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

May 16, 2012

OPINION NO. 2012-014

The Honorable Judy C. Wolford
Pickaway County Prosecuting Attorney
P.O. Box 910
Circleville, Ohio 43113

Dear Prosecutor Wolford:

I am in receipt of your request for an opinion relating to the authority of Saltcreek Township to purchase a grass truck with revenue generated by a special tax levy approved by voters in November 2006 for the purpose of providing fire and emergency protection. You indicate the original purpose of the 2006 tax levy was to purchase two ambulances. The two ambulances have been purchased, and the fund established for the 2006 tax levy has moneys remaining. The Saltcreek-Tarleton Volunteer Fire Department (the “Fire Department”) is requesting that a portion of those moneys be used to purchase a new grass truck.¹

Townships and township fire districts are subdivisions for taxation purposes, R.C. 5705.01(A), and the board of township trustees is the taxing authority for both a township and a township fire district, R.C. 5705.01(C).² Thus, a board of township trustees has the authority, with voter approval,

¹ My understanding is that a grass truck is a pickup truck used by the Fire Department for various fire and emergency response purposes—*e.g.*, fire calls (especially grass and woods fires), vehicle accidents, storm damage, transporting the Fire Department’s all-terrain vehicle, and assisting EMS personnel in removing patients from remote areas. The Fire Department wants to replace its current grass truck, a 1967 Ford pickup truck, with a 2012 Ford pickup truck fitted with a slide-in skid unit containing a water tank and pump.

² It is unclear whether the 2006 tax levy was for Saltcreek Township or for a township fire district. Neither the resolution nor the ballot language specifies the capacity in which the Saltcreek Township Board of Trustees was acting when it authorized placement of the levy on the ballot. The overall tenor of the resolution and ballot language seems to suggest that the Board of Trustees was acting as taxing authority of Saltcreek Township. In one place, however, the resolution refers to paying the “general operating expenses of said fire district.”

For the purpose of this opinion I need not determine whether the Saltcreek Township Board of Trustees acted as taxing authority of Saltcreek Township or as taxing authority of a township fire

to levy taxes in excess of the ten-mill limitation contained in Article XII, § 2 of the Ohio Constitution and R.C. 5705.02. *See* R.C. 5705.07; R.C. 5705.19. R.C. 5705.19 authorizes the taxing authority of a subdivision to propose a variety of special levies in excess of the ten-mill limitation. *See* 2010 Op. Att’y Gen. No. 2010-028, at 2-205 (while the term “special levy” is not defined by statute, it has been interpreted to mean “a levy for a specific purpose, as opposed to a general levy for current expenses” (quoting 1992 Op. Att’y Gen. No. 92-058, at 2-239 n.1)). The 2006 tax levy falls under R.C. 5705.19(I), which authorizes special levies for fire protection services and other emergency services.³ “All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.” R.C. 5705.10(C); *see also* R.C. 5705.09(D); 2006 Op. Att’y Gen. No. 2006-028,

district; that distinction is not material to the resolution of your question. It bears reminding, however, that when exercising its power as a taxing authority, a board of township trustees should be careful to make clear whether it is acting on behalf of the township or whether it is acting on behalf of another subdivision for which it serves as taxing authority, such as a township fire district. *See* 2011 Op. Att’y Gen. No. 2011-002, at 2-12; 2003 Op. Att’y Gen. No. 2003-023, at 2-179 n.4. While the boundaries of a township fire district may coincide with those of the township, this may not always be the case. *See* R.C. 505.37(C) (a board of township trustees may “create a fire district of any portions of the township that it considers necessary”). If a township fire district does not encompass the entire territory of a township, there are a number of ramifications in terms of voting by, taxation of, and furnishing fire protection services to, township residents who are not located within the boundaries of the township fire district. *See* 1990 Op. Att’y Gen. No. 90-048, at 2-204 (“[o]nly residents of ... a [township fire] district would be entitled to vote on, and benefit from, a district tax for fire protection”); 1988 Op. Att’y Gen. No. 88-074, at 2-361 (overruled in part, and on other grounds, by 2004 Op. Att’y Gen. No. 2004-032) (the expenses of a township fire “district are borne only by the portion of the township that is located within the district.... In administering the functions of a township fire district, the [township] trustees act only on behalf of the portion of the township comprising the district”). To help prevent confusion with respect to the foregoing, the authorizing resolution and other appropriate records should set forth the taxing authority status of a board of township trustees when the board places a tax levy for fire protection before the electorate.

³ The full text of R.C. 5705.19(I) provides that the taxing authority of a subdivision may propose levying a tax:

[f]or the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under [R.C. 145.48 or R.C. 742.34], or the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company[.]

at 2-253 n.7 (“[t]ax revenues that are restricted to a particular use must be placed in a fund or account that restricts their expenditure to the authorized purpose”).

Under Ohio law, special levies may be further limited to a specific purpose by resolution or ballot language. *See* 2010 Op. Att’y Gen. No. 2010-028, at 2-205; 2007 Op. Att’y Gen. No. 2007-002, at 2-19 n.8; 1994 Op. Att’y Gen. No. 94-004, at 2-13 n.1; 1992 Op. Att’y Gen. No. 92-058, at 2-239; 1990 Op. Att’y Gen. No. 90-069, at 2-292. To determine whether revenue from the 2006 tax levy may be used to purchase a grass truck, therefore, we must examine the precise language of the authorizing resolution and the ballot placing the question of the levy before the voters. *See* 2011 Op. Att’y Gen. No. 2011-037, at 2-298.

In August 2006, the Saltcreek Township Board of Trustees approved the “Resolution Declaring It Necessary To Levy A Tax In Excess Of The Ten Mill Limitation,” which provides, in relevant part:

WHEREAS, the amount of taxes which may be raised by the levy of taxes at the maximum rate authorized by [R.C. 5705.02], on the taxable property of Saltcreek Township, Pickaway County, Ohio, will be insufficient to provide an adequate amount for the necessary requirements of said Saltcreek Township, Pickaway County, Ohio, and as it is necessary for the purpose of providing fire and emergency protection for the entire township, including the Village of Tarlton, in accordance with the contract between said political subdivisions, by providing and maintaining emergency and fire apparatus and appliances, buildings and sites for apparatus and appliances, sources of water supply, materials for such water supply and to pay general operating expenses of said fire district, incidental thereto, and specifically for the purpose of purchasing two emergency squads for emergency protection, taxes to be levied on the taxable property in said Saltcreek Township, Pickaway County, Ohio for a period of five (5) years (Emphasis in original.)

Similarly, the language appearing on the ballot for the vote in November 2006 states, in relevant part:

An additional tax for the benefit of Saltcreek Township (including the Village of Tarlton) for the purposes of PROVIDING FIRE AND EMERGENCY PROTECTION at a rate not exceeding two (2) mills for each one dollar of valuation, which amounts to twenty cents (\$0.20) for each one hundred dollars of valuation, for five (5) years, commencing in 2006, first due in calendar year 2007.

The authorizing resolution and ballot language indicate the 2006 tax levy is for the general purpose of “providing fire and emergency protection.” If this were all that the authorizing resolution and ballot language provided, the purchase of a grass truck clearly would fall within the scope of the 2006 tax levy. The authorizing resolution, however, further declares that the 2006 tax levy is “specifically for the purpose of purchasing two emergency squads for emergency protection.” You question whether this language limits the use of revenue from the 2006 tax levy to the already-

purchased ambulances and prohibits a grass truck from being purchased with the revenue generated by the levy.

Under Ohio law, tax levy revenue may be used for projects that were neither contemplated nor anticipated when the tax levy was originally authorized, so long as the expenditure is reasonable and otherwise consistent with the tax levy's authorizing resolution and ballot language. *See* 2006 Op. Att'y Gen. No. 2006-028, at 2-259 n.10 ("the language of the resolution and ballot controls the purpose for which revenues may be expended, and, if there are more funds than had been anticipated, the expenditures may be expanded to include previously unanticipated projects that come within the purposes set forth in the resolution and ballot language"); 1980 Op. Att'y Gen. No. 80-071, at 2-278 (as the statement of purpose in the authorizing resolution authorized the expenditure, a board of education "may expend the bond proceeds, or the interest earned thereon, for site improvements, regardless of whether the specific improvement was within its contemplation at the time the bonds were issued"; the board also "has a duty to act in good faith and to use its best judgment with due regard to the circumstances and interests of the district"); 1979 Op. Att'y Gen. No. 79-016 (syllabus) ("[w]hen a special tax levy produces more revenue than originally anticipated by the taxing authority which presented the levy for voter approval, and the taxing authority in good faith determines that a need for further expenditure exists, the taxing authority may spend such excess revenue for the needed project, provided that the project is wholly consistent with the special levy as originally passed by the voters").

This principle applies to the 2006 tax levy at issue here. The authorizing resolution indicates the Saltcreek Township Board of Trustees had a specific purpose in mind—purchasing two ambulances—when the 2006 tax levy was placed on the ballot. The identification of a specific purpose, however, does not preclude spending revenue from the 2006 tax levy on other, unanticipated projects. Rather, an expenditure is lawful if it is consistent with the authorizing resolution and ballot language for the 2006 tax levy and if the Saltcreek Township Board of Trustees determines, in the reasonable exercise of its discretion, that the expenditure serves the public interest. *See* 2006 Op. Att'y Gen. No. 2006-028, at 2-259 n.10; 1980 Op. Att'y Gen. No. 80-070, at 2-278; 1979 Op. Att'y Gen. No. 79-016 (syllabus); *see also* 2003 Op. Att'y Gen. No. 2003-029, at 2-248 (the "determination of whether an expenditure constitutes a proper public purpose lies in the first instance with the agency ... undertaking the expenditure").

The authorizing resolution for the 2006 tax levy identifies a specific purpose of purchasing two ambulances. The authorizing resolution, however, is not limited to this specific purpose. The resolution also states that the 2006 tax levy is for "the purpose of providing fire and emergency protection for the entire township." Thus, the authorizing resolution contemplates that, once the specific purpose of acquiring two ambulances has been accomplished, revenue generated by the levy may be used for the broader purpose of providing fire and emergency protection.

This interpretation is bolstered by the ballot language for the 2006 tax levy. Unless the form of a ballot is specified by law, the ballot for a proposed local tax levy "need not contain the full text of the proposal to be voted upon." R.C. 3505.06(E); *see also* 2006 Op. Att'y Gen. No. 2006-028, at 2-254. If the full text of the proposal is not used, a condensed text that properly describes the issue must

be approved and certified by the county board of elections. *See* R.C. 3501.11(V); R.C. 3505.06(E). The ballot language is then transmitted to the Secretary of State, who must give final approval. *See* R.C. 3501.05(J); R.C. 3501.11(V). “As a general rule, the resolution and the ballot language must be consistent in expressing the purpose for which a particular tax is levied.” 2006 Op. Att’y Gen. No. 2006-028, at 2-260 n.11; *see also* 2007 Op. Att’y Gen. No. 2007-002, at 2-14 n.2 (the “language of the resolution and the language of the ballot need not be identical but must be consistent”). The ballot language for the 2006 tax levy omits any mention of purchasing two ambulances. Instead, the ballot simply states the 2006 tax levy is “for the purpose of PROVIDING FIRE AND EMERGENCY PROTECTION.” Thus, the ballot language approved by both the Pickaway County Board of Elections and the Secretary of State does not limit the use of the 2006 tax levy revenue to the purchase of two ambulances.

The Saltcreek Township Board of Trustees complied with the specific purpose of the 2006 tax levy by purchasing two ambulances. Having done so, the purchase of a grass truck is consistent with the authorizing resolution and ballot language for the 2006 tax levy.

Finally, I note that the Saltcreek Township Board of Trustees has broad discretion to determine whether the purchase of a grass truck for the Fire Department is in the public interest. *See* 2003 Op. Att’y Gen. No. 2003-029, at 2-248; 1980 Op. Att’y Gen. No. 80-070, at 2-278. Government officials, however, must exercise their discretion reasonably and in good faith. *See* 2003 Op. Att’y Gen. No. 2003-029, at 2-248; 1980 Op. Att’y Gen. No. 80-070, at 2-278; 1979 Op. Att’y Gen. No. 79-016 (syllabus). In the unlikely event there are facts suggesting the Board of Trustees is not acting in good faith or giving due regard to the interests of the Fire Department, the Board’s decision may be subject to challenge. *See* 1980 Op. Att’y Gen. No. 80-070, at 2-278.

In conclusion, it is my opinion, and you are hereby advised, that the Saltcreek Township Board of Trustees may purchase a grass truck for the Saltcreek-Tarlton Volunteer Fire Department using revenue derived from the tax levy approved by voters in November 2006 for the purpose of providing fire and emergency protection, provided the Board of Trustees determines, in the reasonable exercise of its discretion, that the purchase of the grass truck is in the public interest.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General