

December 16, 2008

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

SYLLABUS:

2008-038

1. Pursuant to R.C. 5535.08, a board of township trustees has the authority to enter into a mutual aid agreement with a political subdivision of this state having the authority to repair and maintain roads or streets for reciprocal road repair and maintenance services.
2. Pursuant to R.C. 507.02, a board of township trustees may appoint a deputy fiscal officer to discharge the duties of the office of township fiscal officer when the township fiscal officer is unable to discharge the duties of his office because of a medical emergency.
3. The duties of a township trustee may not be assigned to another person during a medical emergency that renders the trustee unable to discharge the duties of his office.
4. When one or more of the elected offices of a township are vacant because of an officeholder's death or from any other cause, the procedures for the appointment of successors set forth in R.C. 503.24 must be followed.
5. The provisions of law pertaining to (1) the authority of a township to enter into mutual aid agreements for reciprocal road maintenance and repair services, (2) the propriety of assigning the duties of elected township officers, and (3) filling vacancies in elected township offices are not repealed or otherwise affected by federal and state law empowering federal, state, and local officials to declare a state of emergency in a township or the type of emergency the township is confronting.



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December 16, 2008

OPINION NO. 2008-038

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

Dear Prosecutor Baxter:

You have requested an opinion concerning the authority of elected township officers to prepare in advance for pandemics.¹ By way of background, you have informed us that

[t]he Erie County Health Department is working in conjunction with the Erie County Townships to create a master plan for continuation of services in cases of pandemics or other emergencies where serious infections or illnesses could impede the ability of each township to provide needed services. Since all townships are creatures of statute, we are unsure of what capacity we have to make alternative arrangements for such township functions as medical aid [paramedics/fire departments], road crews, meeting payroll, etc. Further, such emergencies are likely to arise with little or [no] warning. Advance preparation is critical and some of the suggested solutions, if permissible, take time to set in place particularly in smaller townships without technical expertise.

In order to help the elected township officers of Erie County prepare in advance for pandemics, you have asked us to address the following questions:²

¹ In common parlance, the term “pandemic,” as a noun, means an outbreak of a disease that occurs over a wide geographic area and affects an exceptionally high proportion of the population. *Merriam-Webster’s Collegiate Dictionary* 894 (11th ed. 2005).

² Your letter requesting a formal opinion of the Attorney General sets forth nine questions related to the authority of elected township officers to prepare in advance for pandemics. In this

1. Does a township have the authority to enter into mutual aid agreements with other political subdivisions in this state for the provision of reciprocal road repair and maintenance services?
2. May the duties of elected township officers be assigned during a medical emergency?
3. What may a township do when all the elected township officers are unable to perform their duties because of death, disability, or the closing of roads in the township to traffic?
4. Would the answers to the first three questions change if a declaration of emergency is issued by federal, state, or local officials?
5. Would the answers to the first three questions change if the emergency is caused by a pandemic, armed forces conflict, or threat of terrorism or bioterrorism?

In response to your questions, we conclude as follows:

1. Pursuant to R.C. 5535.08, a board of township trustees has the authority to enter into a mutual aid agreement with a political subdivision of this state having the authority to repair and maintain roads or streets for reciprocal road repair and maintenance services.
2. Pursuant to R.C. 507.02, a board of township trustees may appoint a deputy fiscal officer to discharge the duties of the office of township fiscal officer when the township fiscal officer is unable to discharge the duties of his office because of a medical emergency.
3. The duties of a township trustee may not be assigned to another person during a medical emergency that renders the trustee unable to discharge the duties of his office.

opinion we consider your questions concerning the authority of a township to enter into mutual aid agreements for road repair and maintenance services, the propriety of assigning the duties of elected township officers, and the filling of vacancies in elected township offices. Your remaining questions pertaining to the authority of elected township officers to hold meetings by teleconference during a pandemic, limiting attendance at township meetings during a pandemic, and establishing an emergency plan for paying township salaries and bills will be addressed in a second opinion to be issued at a later date.

4. When one or more of the elected offices of a township are vacant because of an officeholder's death or from any other cause, the procedures for the appointment of successors set forth in R.C. 503.24 must be followed.
5. The provisions of law pertaining to (1) the authority of a township to enter into mutual aid agreements for reciprocal road maintenance and repair services, (2) the propriety of assigning the duties of elected township officers, and (3) filling vacancies in elected township offices are not repealed or otherwise affected by federal and state law empowering federal, state, and local officials to declare a state of emergency in a township or the type of emergency the township is confronting.

Before turning to your specific questions, let us review the extent to which elected township officers may exercise the powers of a township.³ In Ohio elected township officers and their activities are governed by relevant provisions of statute. *See generally Geauga County Bd. of Comm'rs v. Munn Rd. Sand & Gravel Co.*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993) (local governmental authorities, absent home rule authority, may exercise only those powers affirmatively granted by the General Assembly). As creatures of statute, these officers may exercise only the powers expressly conferred by statute and the powers necessarily implied by those express powers.⁴ *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); *Hopple v. Trustees of Brown Township*, 13 Ohio St. 311, 324-25 (1862). *See generally State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84, 89, 197 N.E. 112 (1935) (“[t]he County Auditor and County Treasurer of a county are creatures of statute. They can exercise only such powers as are expressly delegated by statute, together with such implied powers as are necessary to carry into effect the powers expressly delegated”). Consequently, elected township officers may not exercise a power or undertake an activity absent express or implied statutory authority to do so.

Mutual Aid Agreements for the Repair and Maintenance of Township Roads

Your first question asks whether a township has the authority to enter into mutual aid agreements with political subdivisions of this state for the provision of reciprocal road repair and maintenance services. A board of township trustees is empowered to undertake the construction,

³ The elected officers of a township are the trustees, *see* R.C. 505.01, and the fiscal officer, *see* R.C. 507.01.

⁴ R.C. Chapter 504 authorizes townships to adopt a limited home rule government. Because there are no townships in Erie County that have adopted the limited home rule government, this opinion does not consider the powers of the elected officers of townships that have adopted a limited home rule government. *See, e.g.*, R.C. 504.04; 2007 Op. Att’y Gen. No. 2007-036 at 2-373 nn.9-10.

reconstruction, resurfacing, improvement, repair, and maintenance of township roads.⁵ See R.C. 5535.01; R.C. 5535.08; R.C. 5535.15; R.C. 5549.21; R.C. 5571.01-.02; R.C. 5571.12. A board of township trustee thus has express authority to provide for the repair and maintenance of township roads under its jurisdiction.⁶

As part of this authority, the General Assembly has authorized a board of township trustees to obtain road repair and maintenance services from other political subdivisions by way of mutual aid agreements.⁷ R.C. 5535.08(C)(1) states:

In nonemergency situations, any political subdivision having authority to construct, reconstruct, resurface, improve, repair, and maintain roads or streets *may enter into an agreement, under terms agreeable to all parties, with any other political subdivision having that authority to obtain or provide road or street construction, reconstruction, resurfacing, improvement, repair, or maintenance services.* The cost, if any, of services obtained under the agreement may be paid from general fund moneys of the political subdivision receiving the services, or from any other funds available for the repair and maintenance of roads or streets within that political subdivision. (Emphasis added.)

R.C. 5535.08(C)(1) thus authorizes a board of township trustees to enter into an agreement with a political subdivision of this state having the authority to construct, reconstruct, resurface, improve, repair, and maintain roads or streets whereby the township and political subdivision

⁵ The public highways of Ohio are divided into three classes: state roads, county roads, and township roads. R.C. 5535.01. Under this statutory scheme, township roads are all public highways other than state roads, which are the roads and highways on the state highway system, and county roads, which are all roads that are or may be established as a part of the county highway system. *Id.*

⁶ Unless the context of a statute indicates otherwise, as used in the statutes regulating the construction, reconstruction, resurfacing, improvement, repair, and maintenance of state, county, and township roads, “maintenance” means keeping roads in proper condition, while “repair” means restoring roads to their original condition after they have become damaged. See 2006 Op. Att’y Gen. No. 2006-028 at 2-261; 1994 Op. Att’y Gen. No. 94-025 at 2-110 and 2-111; 1987 Op. Att’y Gen. No. 87-059 at 2-359 and 2-360; 1939 Op. Att’y Gen. No. 1494, vol. III, p. 2208, at 2210.

⁷ Various statutes authorize a board of township trustees to obtain road repair and maintenance services from other Ohio political subdivisions. See, e.g., R.C. 307.15(A)(1); R.C. 5535.01(C); R.C. 5535.08; R.C. 5573.22. Because your question concerns the authority of a township to obtain road repair and maintenance services from political subdivisions by way of mutual aid agreements, this opinion does not consider those statutes under which a township may obtain road repair and maintenance services without agreeing to provide such services in return.

mutually agree to provide each other with road or street repair and maintenance services in nonemergency situations.

Moreover, during emergencies a township may receive road repair and maintenance assistance from another political subdivision as follows:

In the case of an emergency,⁸ any political subdivision having authority to repair and maintain roads or streets may provide emergency road or street repair and maintenance assistance to any other political subdivision if the political subdivision seeking to provide the assistance has adopted a resolution or ordinance stating that it will participate in the provision of emergency road or street repair and maintenance assistance within this state, on a case by case basis, whenever it is possible for that political subdivision to do so. The resolution or ordinance shall identify any employees authorized to provide that assistance outside the boundaries of the political subdivision. (Footnote added.)

R.C. 5535.08(B)(1). *See generally* R.C. 5502.41(E) (under the intrastate mutual aid program, “[p]articipating political subdivisions may request assistance of other participating political subdivisions in response to and recovery from a disaster during formally declared emergencies”).

Reading the various provisions of R.C. 5535.08 together, a board of township trustees has the authority to enter into a mutual aid agreement for reciprocal road repair and maintenance services during emergency and nonemergency situations. *See generally State v. Moaning*, 76 Ohio St. 3d 126, 128, 666 N.E.2d 1115 (1996) (“[i]t 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”). Therefore, pursuant to R.C. 5535.08, a board of township trustees has the authority to enter into a mutual aid agreement with a political subdivision of this state having the authority to repair and maintain roads or streets for reciprocal road repair and maintenance services. *See generally* R.C. 5502.29 (“[p]olitical subdivisions,⁹ in collaboration with other public and private agencies within this state, may develop mutual aid arrangements for reciprocal emergency management aid and assistance in case of any hazard¹⁰ too great to be dealt with

⁸ For purposes of R.C. 5535.08, an “emergency” is “a natural disaster, or a state of emergency as declared by the governor or a county sheriff, that has occurred or been declared in the county, township, or municipal corporation receiving emergency road or street repair and maintenance assistance authorized by [R.C. 5535.08].” R.C. 5535.08(D).

⁹ A township of this state is a “political subdivision” for purposes of R.C. 5502.29. R.C. 5502.21(M).

¹⁰ For purposes of R.C. 5502.29, a “hazard” is “any actual or imminent threat to the survival or overall health, safety, or welfare of the civilian population that is caused by any natural,

unassisted.... In time of any hazard, each political subdivision may render assistance in accordance with such mutual aid arrangements” (footnotes added)); R.C. 5502.291 (“[t]he governor ... shall coordinate mutual aid plans between political subdivisions”).

Authority of Elected Township Officers to Assign Their Duties During a Medical Emergency

Your second question asks whether the duties of elected township officers may be assigned during a medical emergency.¹¹ Because the elected officers of a township are the trustees and fiscal officer, *see* note three, *supra*, this opinion will consider the propriety of assigning the duties of a township trustee and township fiscal officer to another person during a medical emergency that renders the trustee or fiscal officer unable to discharge the duties of his office.

With respect to the office of township fiscal officer, R.C. 507.02 provides as follows:

When a township fiscal officer is unable to carry out the duties of office because of illness, because of entering the military service of the United States, or because the fiscal officer is otherwise incapacitated or disqualified, the board of township trustees shall appoint a deputy fiscal officer, who shall have full power to discharge the duties of the office. The deputy fiscal officer shall serve during the period of time the fiscal officer is absent or incapacitated, or until a successor fiscal officer is elected and qualified. Before entering on the discharge of official duties, the deputy fiscal officer shall give bond, for the faithful discharge of official duties, as required under [R.C. 507.03]. The board shall, by resolution, adjust and determine the compensation of the fiscal officer and deputy fiscal officer. The total compensation of both the fiscal officer and any deputy fiscal officer shall not exceed the sums fixed by [R.C. 507.09] in any one year. (Emphasis added.)

The plain language of R.C. 507.02 thus authorizes a board of township trustees to appoint a deputy fiscal officer to discharge the duties of the office of township fiscal officer when the township fiscal officer is unable to discharge the duties of his office because of a medical emergency. Accordingly, pursuant to R.C. 507.02, a board of township trustees may appoint a deputy fiscal officer to discharge the duties of the office of township fiscal officer when the township fiscal officer is unable to discharge the duties of his office because of a medical

human-made, or technological event. ‘Hazard’ includes, without limitation, an attack, disaster, and emergency.” R.C. 5502.21(I).

¹¹ For the purpose of this question, it is assumed that the medical emergency has not rendered the office of township trustee or township fiscal officer vacant. *See* R.C. 3.17; R.C. 503.24; R.C. 503.241.

emergency.¹² *See generally* *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) (“[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted”).

Unlike R.C. 507.02, no statute authorizes the assignment of the duties of a township trustee to another person during a medical emergency that renders the trustee unable to discharge the duties of his office. In such a situation, the common-law rule governing the delegation of duties applies. This rule provides:

Where the proper execution of a public office requires that the officer exercise his own judgment or discretion, the presumption is that the particular officer was chosen because he was deemed fit and competent to exercise that judgment or discretion. In such cases, the officer cannot delegate his duties to another, unless the power to so substitute another in his place has been expressly or impliedly granted to the officer.

1977 Op. Att’y Gen. No. 77-064 at 2-232; *accord* *CB Transp., Inc. v. Butler County Bd. of Mental Retardation*, 60 Ohio Misc. 71, 82, 397 N.E.2d 781 (C.P. Butler County 1979); *Burkholder v. Lauber*, 6 Ohio Misc. 152, 154, 216 N.E.2d 909 (C.P. Fulton County 1965); 2000 Op. Att’y Gen. No. 2000-024 at 2-164 and 2-165; 1984 Op. Att’y Gen. No. 84-074 at 2-240. *See generally* 1979 Op. Att’y Gen. No. 79-067 at 2-223 (“[i]f a duty imposed by statute is purely ministerial, i.e., a ‘mere physical act,’ it may be delegated; the duty is not delegable, however, if it requires judgment and discretion in its performance”).

The exercise of many of the statutory powers and duties of township trustees requires the use of judgment and discretion. *See, e.g.*, R.C. 503.01; R.C. 505.08; R.C. 505.10; R.C. 505.17; R.C. 505.172; R.C. 505.39; R.C. 505.84; R.C. 5502.24(B); R.C. 5705.28. *See generally* *McNelly v. Clay Township*, 23 Ohio Dec. 506, 509, 11 Ohio N.P. (n.s.) 33 (C.P. Montgomery County 1910) (determining that the relocation of a ditch and the acceptability of its construction were

¹² A township fiscal officer “may delegate to an assistant any of the duties the fiscal officer is otherwise required to perform.” R.C. 507.021(A). An assistant to the township fiscal officer is not, however, delegated the full power to discharge the duties of the office of township fiscal officer when the township fiscal officer is unable to perform his duties because of a medical emergency. *Id.* Instead, the appointment of an assistant serves “to provide assistance to the fiscal officer in performing [his] duties,” but does “not relieve the township fiscal officer of responsibility to discharge the duties of the office.” *Id.* Accordingly, pursuant to R.C. 507.02, the deputy fiscal officer, rather than an assistant to a township fiscal officer, is responsible for discharging all the duties of the office of township fiscal officer when the township fiscal officer is unable to perform his duties because of a medical emergency. *See generally* R.C. 507.021(A) (assistants to a township fiscal officer “serve at the pleasure of the township fiscal officer or, in the absence of the township fiscal officer, the deputy fiscal officer”).

within the discretion of the board of township trustees); 1993 Op. Att’y Gen. No. 93-026 at 2-135 (“[t]he selection of an appropriate site for the township hall requires the trustees to use their judgment and discretion on behalf of the township as to the type of land selected and its location”). Also, no statute authorizes a township trustee to assign his duties to another person. Thus, in the absence of a statute authorizing a township trustee to delegate the duties of his office to another person, the trustee may not assign the duties of his office to another person. *See generally* 1979 Op. Att’y Gen. No. 79-067 at 2-223 (“[i]t would contravene the legislative intent ... to allow a judgmental and discretionary act to be delegated to an entity other than the entity originally entrusted with the duty by statute”). We conclude, therefore, that the duties of a township trustee may not be assigned to another person during a medical emergency that renders the trustee unable to discharge the duties of his office.

Filling of Vacancies in Elected Township Offices

Your third question concerns the manner by which a township may resume conducting township business when all its elected officers are unable to perform their duties because of death, disability, or the closing of roads in the township to traffic. R.C. 503.24 provides procedures that are to be followed when an elected township officer is unable to discharge his duties because of his demise. R.C. 503.24, which concerns the filling of vacancies in elected township offices, states:

If there is a vacancy by reason of the nonacceptance, death, or removal of a person chosen to an office in any township at the regular election, or if there is a vacancy from any other cause, the board of township trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term or until a successor is elected.

If a township is without a board or if no appointment is made within thirty days after the occurrence of a vacancy, a majority of the persons designated as the committee of five on the last-filed nominating petition of the township officer whose vacancy is to be filled who are residents of the township shall appoint a person having the qualifications of an elector to fill the vacancy for the unexpired term or until a successor is elected. If at least three of the committee members who are residents of the township cannot be found, or if that number of such members fails to make an appointment within ten days after the thirty-day period in which the board of trustees is authorized to make an appointment, then the presiding probate judge of the county shall appoint a suitable person having the qualifications of an elector in the township to fill the vacancy for the unexpired term or until a successor is elected.

If a vacancy occurs in a township elective office more than forty days before the next general election for municipal and township officers a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election. If the term expires within one year from the day of the next general election for municipal and township

officers, a successor appointed pursuant to this section shall serve out the unexpired term. (Emphasis added.)

R.C. 503.24 thus establishes specific procedures that are to be followed when an elected office of a township is vacant because of the death of the officeholder. Accordingly, when one or more of the elected offices of a township are vacant because of an officeholder's death, the procedures for the appointment of successors set forth in R.C. 503.24 must be followed. *See generally Akron Transp. Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493 (1951) (“[i]t is one of the well recognized canons of statutory construction that when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner” (quoting *Utah Rapid Transit Co. v. Ogden City*, 89 Utah 546, 551, 58 P.2d 1 (1936), *overruled in part by Rich v. Salt Lake City Corp.*, 20 Utah 2d 339, 437 P.2d 690 (1968))).

In addition, R.C. 503.24 applies whenever a vacancy “from any other cause” occurs in an elected township office.¹³ Whether a vacancy results in an elected township office because the officeholder is disabled or unable to attend to township business for any reason is a question of fact that must be answered on a case-by-case basis.¹⁴ *See generally* R.C. 3.17 (“[a]ny member of

¹³ As explained earlier, R.C. 507.02 authorizes a *board of township trustees* to appoint a deputy fiscal officer to discharge the duties of the office of township fiscal officer when the township fiscal officer is ill or otherwise incapacitated. R.C. 507.02 does not apply, however, if there is no board of township trustees because of vacancies in two or more offices on the board. *See generally* 1993 Op. Att’y Gen. No. 93-020 at 2-111 (“[w]hen vacancies on the township board of trustees leave only one trustee, however, there is no board of trustees. In such a situation, the alternative appointment provisions of R.C. 503.24 come into play” (citation omitted)).

If only one trustee position is vacant, the two remaining trustees may appoint a deputy fiscal officer to serve during the period of time the township fiscal officer is ill or otherwise incapacitated, provided the office of township fiscal officer is not deemed vacant. *See* R.C. 507.02; *see also* 1999 Op. Att’y Gen. No. 99-004 (any action by a board of township trustees requires the participation and concurrence of at least two trustees).

¹⁴ It is unlikely that the closing of roads in a township to traffic will create a vacancy in an elected township office for the following reasons. First, any closure of the roads in the township to traffic will likely be insufficient in duration to create a vacancy. *See* R.C. 3.17; R.C. 503.24; R.C. 503.241. In addition, when roads in a township are closed to traffic for an extended period of time, it is to be expected that some authorized traffic on the roads will be maintained. For example, local law enforcement officers and military personnel must patrol the roads to protect the property, health, safety, and welfare of the civilian population within the township. As a result, an elected township officer may request local law enforcement officers or military

a board ... who fails to attend at least three-fifths of the regular and special meetings held by that board ... during any two-year period forfeits the member's position on that board"); R.C. 503.241 ("[w]henver any township officer is absent from the township because of sickness or injury, he shall cause to be filed with the board of township trustees a physician's certificate of his sickness or injury. If such certificate is not filed with the board within ten days after the expiration of the ninety consecutive days of absence from the township, his office shall be deemed vacant and the board of township trustees shall declare a vacancy to exist in such office"); 1931 Op. Att'y Gen. No. 3601, vol. II, p. 1199 (the office of a township clerk (now township fiscal officer) who has a temporary physical or mental capacity that prevents him from performing the duties of his office is not vacant. However, absence from the office for more than a reasonable time because of a physical or mental incapacity creates a vacancy in the office. It is a question of fact as to what constitutes a reasonable time in a given case). *But see generally* 1985 Op. Att'y Gen. No. 85-062 at 2-231 ("a general inability of an incumbent to fulfill the duties of his office does not constitute a vacancy of the office").

Therefore, in response to your third question, when one or more of the elected offices of a township are vacant because of an officeholder's death or from any other cause, the procedures for the appointment of successors set forth in R.C. 503.24 must be followed.

Township Authority Is Not Affected When a Declaration of Emergency Is Issued by Federal, State, or Local Officials

Your fourth question asks whether the answers to the first three questions change when a declaration of emergency is issued by federal, state, or local officials. Various federal and state laws authorize federal, state, and local officials to declare a state of emergency in a township. *See, e.g.*, 50 U.S.C. § 1621; 50 U.S.C. § 1631; 44 C.F.R. § 206.38; R.C. 3701.13; R.C. 3707.04; R.C. 3707.05; R.C. 5502.41(F)(1); R.C. 5535.08(D). *See generally* R.C. 5502.21(F) (as used in R.C. 5502.21-.51, which establishes emergency management procedures, an "emergency" means "any period during which the congress of the United States or a chief executive¹⁵ has declared or proclaimed that an emergency exists" (footnote added)). None of the laws cited, however, materially affects (1) the authority of a township to enter into mutual aid agreements for reciprocal road maintenance and repair services, (2) the propriety of assigning the duties of elected township officers, or (3) the filling of vacancies in elected township offices.

personnel to transport him to a location where township business is to be conducted when the roads in the township are closed to traffic.

¹⁵ As used in R.C. 5502.21-.51, "chief executive" means "the president of the United States, the governor of this state, the board of county commissioners of any county, the board of township trustees of any township, or the mayor or city manager of any municipal corporation within this state." R.C. 5502.21(C).

Moreover, operation of the laws and legal principles used to analyze your first three questions is not contingent upon who declares a state of emergency in a township. These laws and legal principles apply whenever an emergency is declared by officials at the federal, state, or local level. Hence, we conclude that the provisions of law pertaining to (1) the authority of a township to enter into mutual aid agreements for reciprocal road maintenance and repair services, (2) the propriety of assigning the duties of elected township officers, and (3) filling vacancies in elected township offices are not repealed or otherwise affected by federal and state law empowering federal, state, and local officials to declare a state of emergency in a township.

Township Authority Is Not Affected by the Type of Emergency

Your final question asks whether the answers to the first three questions change when the emergency is caused by a pandemic, an armed forces conflict, or a threat of terrorism or bioterrorism. We are not aware of a federal or state law that materially affects (1) the authority of a township to enter into mutual aid agreements for reciprocal road maintenance and repair services, (2) the propriety of assigning the duties of elected township officers, or (3) the filling of vacancies in elected township offices on the basis of the type of emergency the township is confronting. Accordingly, with regard to your last question, we conclude that the provisions of law pertaining to (1) the authority of a township to enter into mutual aid agreements for reciprocal road maintenance and repair services, (2) the propriety of assigning the duties of elected township officers, and (3) filling vacancies in elected township offices are not repealed or otherwise affected by the type of emergency the township is confronting.

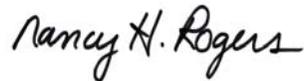
Conclusions

In sum, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 5535.08, a board of township trustees has the authority to enter into a mutual aid agreement with a political subdivision of this state having the authority to repair and maintain roads or streets for reciprocal road repair and maintenance services.
2. Pursuant to R.C. 507.02, a board of township trustees may appoint a deputy fiscal officer to discharge the duties of the office of township fiscal officer when the township fiscal officer is unable to discharge the duties of his office because of a medical emergency.
3. The duties of a township trustee may not be assigned to another person during a medical emergency that renders the trustee unable to discharge the duties of his office.
4. When one or more of the elected offices of a township are vacant because of an officeholder's death or from any other cause, the procedures for the appointment of successors set forth in R.C. 503.24 must be followed.

5. The provisions of law pertaining to (1) the authority of a township to enter into mutual aid agreements for reciprocal road maintenance and repair services, (2) the propriety of assigning the duties of elected township officers, and (3) filling vacancies in elected township offices are not repealed or otherwise affected by federal and state law empowering federal, state, and local officials to declare a state of emergency in a township or the type of emergency the township is confronting.

Respectfully,

A handwritten signature in black ink that reads "Nancy H. Rogers". The signature is written in a cursive, flowing style.

NANCY H. ROGERS
Attorney General