

May 1, 1997

OPINION NO. 97-025

The Honorable Rebecca J. Ferguson  
Preble County Prosecuting Attorney  
Courthouse, Third Floor  
Eaton, Ohio 45320

Dear Prosecutor Ferguson:

I am in receipt of your letter concerning political subdivision tort liability. You have asked the following questions:

1. Does the tort immunity of R.C. Chapter 2744 apply to a county or township that provides fire, police, or emergency medical services in the state of Indiana pursuant to a contract?
2. Does the tort immunity of R.C. Chapter 2744 apply to a governmental entity of the state of Indiana that provides fire, police, or emergency medical services to a county or township in the state of Ohio pursuant to a contract?

By way of background, counties and townships are authorized to enter into contracts with counties, townships, and municipal corporations of another state to furnish or obtain ambulance, emergency medical, or nonemergency patient transport services. R.C. 307.05; R.C. 505.44. Townships and counties are also authorized to enter into a contract with a governmental entity of an adjoining state to obtain fire protection. R.C. 9.60(C).<sup>1</sup> In addition, townships are authorized to enter into a contract with governmental entities of adjoining states to provide fire protection, R.C. 9.60(B), and to obtain and furnish police protection services, R.C. 505.43.

I turn now to your first question, which asks whether the tort immunity of R.C. Chapter 2744 applies to a county or township that provides fire, police, or emergency medical services in the state of Indiana pursuant to a contract. As a preliminary matter, it is axiomatic that a civil action brought in a court sitting in Indiana may not proceed against an Ohio county or township unless the court has personal jurisdiction over the county or township. See *Fidelity Fin. Serv., Inc. v. West*, 640 N.E.2d 394, 396 (Ind. Ct. App. 1994). "In Indiana, jurisdiction is presumed and need not be alleged." *Id.*;

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<sup>1</sup> The term "fire protection," as used in R.C. 9.60, includes the provision of ambulance, emergency medical, and rescue service. R.C. 9.60(A)(4).

*see* Ind. Trial R. 8(A). Nevertheless, an Ohio county or township that is made a party to a civil action in Indiana may ask the court to determine whether it indeed has personal jurisdiction. *See Fidelity Fin. Serv., Inc. v. West*, 640 N.E.2d at 396. The determination whether a court sitting in Indiana has personal jurisdiction in a civil action is one that must be made by the court. *Baltimore & Ohio R.R. Co. v. Freeze*, 169 Ind. 370, 374, 82 N.E. 761, 763 (1907); *Fidelity Fin. Serv., Inc. v. West*, 640 N.E.2d at 396.

Before a court may determine that it has personal jurisdiction over an Ohio county or township, it must find that the county or township is amenable to suit under Indiana's long-arm statute, which is set forth in Ind. Trial R. 4.4, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Enviroplan, Inc. v. Western Farmers Elec. Coop.*, 900 F. Supp. 1055, 1058 (S.D. Ind. 1995); *Fidelity Fin. Serv., Inc. v. West*, 640 N.E.2d at 396. In order to make this determination, the court must apply Indiana law and federal law to the facts of the case. Because it is not prudent for the Attorney General to provide authoritative interpretations on questions of Indiana law or federal law, *see* 1988 Op. Att'y Gen. No. 88-007, I should refrain from advising you whether a court sitting in Indiana would have personal jurisdiction over an Ohio county or township.

With respect to the sovereign immunity issue, R.C. Chapter 2744 creates statutory tort immunity for political subdivisions. In this regard, R.C. 2744.02, as amended by Am. Sub. H.B. 350, 121st Gen. A. (1996) (eff. Jan. 27, 1997), provides, in pertinent part:

- (A)(1) ... Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.
- (2) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.

Pursuant to R.C. 2744.01(F), counties and townships are "political subdivisions" for purposes of R.C. Chapter 2744.

The General Assembly has thus determined that, except as provided in R.C. 2744.02(B), a county and township are not liable in damages in a civil action brought in an Ohio court of common pleas, municipal court or county court for injury, death, or loss to person or property allegedly caused by an act or omission of the county or township in connection with a governmental or proprietary function. R.C. 2744.02 does not indicate whether the tort immunity conferred upon Ohio counties and townships applies in a civil action that is brought in a court sitting in Indiana.

It is a fundamental rule of law, however, "that legislative enactments can only operate, *proprio vigore*, upon persons and things within the jurisdiction of the law-making power. And it is also true, generally, that such jurisdiction can only be coextensive with the territorial limits of the

state, or sovereignty." *Lehman v. McBride*, 15 Ohio St. 573, 608 (1863); *see also Anderson v. Poindexter*, 6 Ohio St. 622, 631 (1856). *See generally* Ohio Const. art. II, § 26 ("[a]ll laws, of a general nature, shall have a uniform operation throughout the state"). Accordingly, the tort immunity provided in R.C. 2744.02 to counties and townships does not, as a general matter, apply in civil actions brought in a court sitting in Indiana for injury, death, or loss to person or property allegedly caused by an act or omission of an Ohio county or township in connection with the provision of fire, police, or emergency medical services.<sup>2</sup>

Although an Ohio county or township may not claim the tort immunity conferred by R.C. 2744.02 as a matter of right in a civil action brought in a court sitting in Indiana, the county or township may request the court to recognize and apply the immunity of R.C. 2744.02. Under the principle of judicial comity, "the courts in one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation but out of deference and respect." *Bobala v. Bobala*, 68 Ohio App. 63, 71, 33 N.E.2d 845, 849 (Mahoning County 1940); *see Carlin v. Mambuca*, 96 Ohio App. 3d 500, 506, 645 N.E.2d 737, 740 (Cuyahoga County 1994) ("recognition and enforcement of rights created in another state on the principle of comity are a matter of courtesy and cannot be claimed as a right"), *motion to certify allowed*, 70 Ohio St. 3d 1475, 640 N.E.2d 848 (1994), *appeal dismissed*, 71 Ohio St. 3d 1441, 643 N.E.2d 1152 (1995). In accordance with this principle, an Ohio county or township may plead that R.C. 2744.02 is the applicable law with respect to the liability issue.<sup>3</sup> *Cf. Erie R.R. Co. v. Welsh*, 89 Ohio St. 81, 105 N.E. 189 (1913)

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<sup>2</sup> Language included in R.C. 9.60 and R.C. 505.43 extends the statutory immunity granted townships by R.C. 2744.02 to townships providing police and fire services outside the territorial jurisdiction of the township. However, the immunity only applies "insofar as it is applicable to the operation of" police and fire departments. Because our research indicates that the immunity granted by R.C. 2744.02 may not be extended to civil actions brought in a court sitting in Indiana against a township that provides police or fire service, R.C. 2744.02 is not applicable to the operation of a township police or fire department outside the state of Ohio. Therefore, neither R.C. 9.60 nor R.C. 505.43 extends the immunity of R.C. 2744.02 to townships providing police or fire service in the state of Indiana.

<sup>3</sup> In determining whether to apply Ohio or Indiana law in a given case, courts sitting in Indiana follow the most significant contacts rule in determining choice of law questions. *Hubbard Mfg. Co., Inc. v. Greeson*, 515 N.E.2d 1071, 1073-74 (Ind. 1987); *Tompkins v. Isbell*, 543 N.E.2d 680, 681 (Ind. Ct. App. 1989). In *Gollnick v. Gollnick by Gollnick*, 517 N.E.2d 1257, 1258 (Ind. Ct. App. 1988), *aff'd*, 539 N.E.2d 3 (Ind. 1989), an Indiana court of appeals summarized the most significant contacts rule adopted in *Hubbard Mfg. Co., Inc. v. Greeson* as follows:

The first step is to consider whether the place of the tort bears little connection to the legal action. If the contact is significant, *lex loci delicti* will be applied; if not, consideration of other factors is permitted, such as:

- (1) the place where the conduct causing the injury occurred;
- (2) the residence or place of business of the parties; and

(where the laws of a foreign state are relied upon, they must be pleaded), *aff'd*, 242 U.S. 303 (1916); Ohio R. Civ. P. 44.1(A)(3) ("[a] party who intends to rely on the ... public statutory law ... of any other state ... shall give notice in his pleading or other reasonable notice").

Your second question asks whether the tort immunity of R.C. Chapter 2744 applies to a governmental entity of the state of Indiana that provides fire, police, or emergency medical services to a county or township in the state of Ohio pursuant to a contract. As indicated above, R.C. Chapter 2744 establishes the scope of tort liability for those governmental entities defined in R.C. 2744.01(F) as political subdivisions. For purposes of R.C. Chapter 2744, the term "political subdivision" or "subdivision" means:

a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, a fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, and county solid waste

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(3) the place where the relationship is centered.

An Indiana court also may look to other factors in order to determine the substantive law to apply to an issue. *In the Matter of Estate of Bruck*, 632 N.E.2d 745, 748 (Ind. Ct. App. 1994). Application of the most significant contacts rule, therefore, involves judgment of the facts on a case-by-case basis, *Tompkins v. Isbell*, 543 N.E.2d at 681; *Bencor Corp. v. Harris*, 534 N.E.2d 271, 273 (Ind. Ct. App. 1989), and may be made separately with respect to each issue in a case. *See generally Ewing v. St. Louis-Clayton Orthopedic Group, Inc.*, 790 F.2d 682, 686 (8th Cir. 1986) (the doctrine of depechage, i.e., applying the law of different states to different issues in the same case, "is perfectly permissible and even considered desirable in many instances" (footnote omitted)); *International Adm'rs, Inc. v. Life Ins. Co. of North America*, 753 F.2d 1373, 1376 n.4 (7th Cir. 1985) ("[t]he choice of law is not made once for all issues; the trend is to decide the applicable law for each issue separately"); *Cheatham v. Thurston Motor Lines*, 654 F. Supp. 211, 214 (S.D. Ohio 1986) (under the Restatement of the Law of Conflicts, Second, approach to choice of law problems, a court must examine each issue separately).

management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code.

R.C. 2744.01(F).

In 1988 Op. Att'y Gen. No. 88-034 at 2-153, one of my predecessors examined R.C. 2744.01(F) and stated:

R.C. 2744.01(F) thus provides a list of governmental entities which are expressly included under the heading of "political subdivision." If the entity is not specifically listed in R.C. 2744.01(F), then in order to qualify as a "political subdivision" the entity must be: (1) a "body corporate and politic"; (2) "responsible for [a] governmental activit[y]"; (3) "in a geographic area smaller than that of the state."

Since governmental entities organized and located in Indiana are not named in R.C. 2744.01(F) as entities qualifying as political subdivisions for purposes of R.C. Chapter 2744, it is necessary to determine whether such entities meet the three criteria set forth in R.C. 2744.01(F)'s definition of "political subdivision."

A review of the three criteria listed in R.C. 2744.01(F) in connection with your specific question discloses that a governmental entity of the state of Indiana may not be a "political subdivision" for purposes of R.C. Chapter 2744. As stated above, in order for a governmental entity to qualify as a political subdivision under R.C. 2744.01(F), the area in which the entity performs a governmental activity must be "a geographic area smaller than that of the state." Insofar as the term "the state" means the state of Ohio, R.C. 1.59(G), it appears that the General Assembly intended for the geographical area of a political subdivision under R.C. 2744.01(F) to be an area located within the state of Ohio that does not have the same boundaries as the state of Ohio. This intention is further illustrated by the fact that all of the governmental entities listed as "political subdivisions" in R.C. 2744.01(F) are created by the General Assembly and located within the state of Ohio. Moreover, if the General Assembly had intended to include governmental entities of another state within the definition of political subdivision set forth in R.C. 2744.01(F), it could easily have communicated that intention expressly. *See, e.g.*, R.C. 9.60(B) ("[a]ny firefighting agency or private fire company may contract with any state agency or instrumentality, county, or political subdivision of this state or with a governmental entity of an adjoining state to provide fire protection"); R.C. 307.05 (a county "may enter into a contract with one or more counties, townships, municipal corporations, nonprofit corporations, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners, regardless of whether such counties, townships, municipal corporations, nonprofit corporations, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners are located within or without the state" in order to furnish or obtain ambulance, emergency medical, and nonemergency patient transport services); *see also* R.C. 4765.49(F) (extending immunity on an individual basis to EMT's licensed or certified in another state who provide services to a patient in the state of Ohio). *See generally Lake Shore Elec. Ry. Co. v. PUCO*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (had the General Assembly intended a

term to have a particular meaning, it could easily have found language to express that purpose, having used such language in other connections).

In light of the foregoing, I believe that the General Assembly did not intend to include governmental entities of another state within the definition of "political subdivision" set forth in R.C. 2744.01(F). Accordingly, since a governmental entity of the state of Indiana is not a "political subdivision" as that term is defined in R.C. 2744.01(F), the tort immunity of R.C. Chapter 2744 does not extend to such entities.

Therefore, it is my opinion, and you are advised, as follows:

1. The tort immunity provided in R.C. 2744.02 to Ohio counties and townships does not, as a general matter, apply in civil actions brought in a court sitting in Indiana for injury, death, or loss to person or property allegedly caused by an act or omission of an Ohio county or township in connection with the provision of fire, police, or emergency medical services. An Ohio county or township, however, may request a court sitting in Indiana to recognize and apply the tort immunity provided for in R.C. 2744.02.
2. Since a governmental entity of the state of Indiana is not a "political subdivision" as that term is defined in R.C. 2744.01(F), the tort immunity of R.C. Chapter 2744 does not extend to such entities.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General

May 1, 1997

The Honorable Rebecca J. Ferguson  
Preble County Prosecuting Attorney  
Courthouse, Third Floor  
Eaton, Ohio 45320

SYLLABUS:

97-025

1. The tort immunity provided in R.C. 2744.02 to Ohio counties and townships does not, as a general matter, apply in civil actions brought in a court sitting in Indiana for injury, death, or loss to person or property allegedly caused by an act or omission of an Ohio county or township in connection with the provision of fire, police, or emergency medical services. An Ohio county or township, however, may request a court sitting in Indiana to recognize and apply the tort immunity provided for in R.C. 2744.02.
2. Since a governmental entity of the state of Indiana is not a "political subdivision" as that term is defined in R.C. 2744.01(F), the tort immunity of R.C. Chapter 2744 does not extend to such entities.