November 17, 1997

OPINION NO. 97-053

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
Lucas County Courthouse
Toledo, Ohio 43624-1680

Dear Prosecutor Bates:

You have requested an opinion concerning the ability of a township to institute an electronic, automatic banking deposit system for payroll checks of the township's officers and employees. As mentioned in your letter, the township would like to institute this policy in order to streamline its operations and to improve efficiency.

The disbursement of township funds is governed, in part, by R.C. 507.11(B), which states: "No money belonging to the township shall be paid out, except upon an order signed personally by at least two of the *township trustees*, and countersigned by the *township clerk*." (Emphasis added.) Accordingly, disbursements of township moneys, including those for the compensation of township officers and employees, require an order signed by at least two township trustees and countersigned by the township clerk. *See generally, e.g.*, R.C. 505.24 (compensation of township trustees); R.C. 507.09 (compensation of township clerk); 1981 Op. Att'y Gen. No. 81-061 (compensation of township employees).

The payment of public moneys generally by means of electronic transfers of funds, however, is specifically addressed in R.C. 9.37, which states in pertinent part:

> (B) *Any public official may* make by direct deposit of funds by electronic transfer, *if* the payee provides a written authorization designating a financial institution and an account number to which the payment is to be credited, any payment such public official is permitted or required by law in the performance of his duties to make by issuing a check or warrant.
> (C) Such public official may contract with a financial institution for the services necessary to make direct deposits and draw lump-sum checks or warrants payable to that institution in the amount of the payments to be transferred.

> (D) Before making any direct deposit as authorized under this section, the public official shall ascertain that the account from which the payment is to be made contains sufficient funds to cover the amount of the payment.
> (E) If the issuance of checks and warrants by a public official requires authorization by a governing board, commission, bureau, or other public body having jurisdiction over the public official, the public official may only make direct deposits and contracts under this section pursuant to a resolution of authorization duly adopted by such governing board, commission, bureau, or other public body. (Emphasis added.)

For purposes of R.C. 9.37, the term "public official" includes, among others, any elected or appointed officer or employee of any political subdivision. R.C. 9.37(A). Because township trustees and the township clerk are elected township officers, *see* R.C. 505.01 and R.C. 507.01, they are public officials for purposes of R.C. 9.37. As public officials, township trustees and the township clerk are authorized by R.C. 9.37(B) to make by direct deposit of funds by electronic transfer any payment they are permitted or required in the performance of their official duties to make by means of issuing a check or warrant, but only if the payee provides a written authorization that designates the financial institution and account number to which such payment is to be credited.[1]

Part of your concern appears to be whether the signature requirement of R.C. 507.11(B) prevents a township from implementing a direct deposit system under R.C. 9.37(B). The conclusion that R.C. 507.11(B) does not preclude a township's adoption of such a system arises from the well established rules of statutory construction set forth recently in *United Telephone Co. v. Limbach*, 71 Ohio St. 3d 369, 372, 643 N.E.2d 1129, 1131 (1994) (quoting *Johnson's Markets, Inc. v. New Carlisle Dept. of Health*, 58 Ohio St. 3d 28, 35, 567 N.E.2d 1018, 1025 (1991)), as follows:

> "First, all statutes which relate to the same general subject matter must be read *in pari materia*. See *Maxfield v. Brooks* (1924), 110 Ohio St. 566, 144 N.E. 725; *State, ex rel. Bigelow, v. Butterfield* (1936) 132 Ohio St. 5, 6 O.O. 490, 4 N.E.2d 142. And, in reading such statutes *in pari materia*, and construing them together, this court must give such a reasonable construction as to give the proper force and effect to each and all such statutes. *Maxfield v. Brooks, supra*. The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. See *Benjamin v. Columbus* (1957), 104 Ohio App. 293, 4 O.O. 2d 439, 148 N.E.2d 695, affirmed (1957), 167 Ohio St. 103, 4 O.O.2d 113, 146 N.E.2d 854; *In re Hesse* (1915), 93 Ohio St. 230, 112 N.E. 511. All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously. *State v. Glass* (1971), 27 Ohio App.2d 214, 56 O.O.2d 391, 273 N.E.2d 893; *State v. Hollenbacher* (1920), 101 Ohio St. 478, 129 N.E. 702. This

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[1] *See generally* 1984 Op. Att'y Gen. No. 84-050 (restrictions on the appropriation and expenditure of township moneys imposed by R.C. 5705.41; role of the township clerk as the fiscal officer of the township).

> court in the interpretation of related and co-existing statutes must harmonize and give full application to all such statutes unless they are irreconcilable and in hopeless conflict. *Couts v. Rose* (1950), 152 Ohio St. 458, 40 O.O. 482, 90 N.E.2d 139."

Thus, where two statutes, such as R.C. 507.11(B) and R.C. 9.37(B), relate to the same subject, payments of public funds, they should be harmonized to the extent possible in order to give effect to both statutes. Accordingly, because R.C. 507.11(B) requires any order for the payment of township funds to be personally signed by at least two of the township's trustees and countersigned by the township clerk, any order for the direct deposit of township funds by electronic transfer, as authorized by R.C. 9.37(B), must also be so signed. *See generally* R.C. 9.10-.14 (use of facsimile signature by public official).

In summary, pursuant to R.C. 507.11(B), township expenses, including the compensation of township officers and employees, may be paid by the township upon an order signed personally by at least two of the township trustees and countersigned by the township clerk. Thus, in accordance with R.C. 9.37(B), a township may pay the compensation of a township officer or employee by direct deposit of funds by electronic transfer upon an order for such payment signed by at least two township trustees and countersigned by the township clerk, so long as the officer or employee provides the township a written authorization designating the financial institution and account number to which the payment is to be credited.[2] *See* 1996 Op. Att'y Gen. No. 96-055 (syllabus, paragraph one) ("[p]ursuant to R.C. 9.37(B), a county auditor may pay the compensation of a county employee by direct deposit of funds by electronic transfer, provided the employee furnishes a written authorization designating a financial institution and an account number to which the payment is to be credited").

In answer to your question, it is my opinion, and you are hereby advised that, pursuant to R.C. 9.37(B) and R.C. 507.11(B), a township may pay the compensation of a township officer or employee by direct deposit of funds by electronic transfer upon an order for such payment signed by at least two township officers and countersigned by the township clerk, provided the township officer or employee furnishes a written authorization designating a financial institution and an account number to which the payment is to be credited.

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[2] As concluded in 1996 Op. Att'y Gen. No. 96-055 (syllabus, paragraph two), however, because R.C. 9.37(B) requires written authorization of the payee for payment by direct deposit of funds by electronic transfer, a public official has no authority to require an employee to be paid compensation by direct deposit of funds by electronic transfer. *See generally* R.C. 9.41 (concerning payrolls for persons in the classified service of, among others, civil service townships, and stating in part: "Where estimates, payrolls, or accounts are prepared by electronic data processing equipment, the director of administrative services or the municipal or civil service township civil service commission may develop methods for controlling the input or verifying the output of such equipment to ensure compliance with [R.C. Chapter 124] and the rules adopted thereunder. Any estimates, payrolls, or accounts prepared by these methods shall be subject to special audit at any time").

Respectfully,

BETTY D. MONTGOMERY
Attorney General

November 17, 1997

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
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SYLLABUS: 97-053

Pursuant to R.C. 9.37(B) and R.C. 507.11(B), a township may pay the compensation of a township officer or employee by direct deposit of funds by electronic transfer upon an order for such payment signed by at least two township officers and countersigned by the township clerk, provided the township officer or employee furnishes a written authorization designating a financial institution and an account number to which the payment is to be credited.