

December 1, 2015

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
160 High Street N.W., 4th Floor
Warren, Ohio 44481-1092

SYLLABUS:

2015-034

Employees of a township or village may perform repair services upon county roads for a county engineer pursuant to the terms of an agreement authorized by R.C. 5535.08(C)(1). The county engineer may reimburse the township or village for the compensation paid to its employees for performing such repair services, provided such an arrangement is agreed upon pursuant to R.C. 5535.08(C)(1).



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OPINION NO. 2015-034

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
160 High Street N.W., 4th Floor
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

You have requested an opinion whether R.C. 5535.08 authorizes township and village employees to work for the county engineer for no more than 30 days to repair potholes in county roads that are maintained by the county engineer, and if so, whether the county engineer may reimburse the township and village for the compensation they pay their employees while the employees are working for the county engineer repairing potholes.

It is firmly established that a board of county commissioners, as a creature of statute, has only those powers that are expressly granted by statute or that are necessarily implied therein. 2009 Op. Att’y Gen. No. 2009-040, at 2-296 (“[i]t is well established that a board of county commissioners is a creature of statute that may exercise only those powers conferred upon it expressly by statute or as may be implied by necessity in order to facilitate the exercise of another express power” (citing *State ex rel. Shriver v. Bd. of Comm’rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947))); see *Elder v. Smith*, 103 Ohio St. 369, 370, 133 N.E. 791 (1921) (a “board of county commissioners has such powers and jurisdiction, and only such, as are conferred by statute”). Therefore, if a board of county commissioners is not granted a particular power expressly by statute or necessarily by implication, it is precluded from exercising that power.

The county engineer is granted by statute general charge of the “[c]onstruction, reconstruction, improvement, maintenance, and repair of all bridges and highways within the engineer’s county, under the jurisdiction of the board of county commissioners[.]” R.C. 5543.01(A)(1); see generally R.C. 5535.01 (“[t]he public highways of the state shall be divided into three classes: state roads, county roads, and township roads.... County roads include all roads which are or may be established as a part of the county system of roads as provided in [R.C. 5541.01-.03], which shall be known as the county highway system. Such roads shall be

maintained by the board of county commissioners”). It is pursuant to R.C. 5543.01 that the county engineer is responsible for the circumstances you have asked about concerning the repair of potholes in county roads.

The plain language of R.C. 5535.08 informs the answer to your question, and so we turn to a close examination of its terms. R.C. 5535.08 begins by providing that “[t]he state, county, and township shall each maintain its roads, as designated in [R.C. 5535.01]; however, *the county or township, by agreement between the board of county commissioners and the board of township trustees, may contribute to the repair and maintenance of the roads under the control of the other.*” R.C. 5535.08(A) (emphasis added); *see* 1981 Op. Att’y Gen. No. 81-039 (syllabus, paragraph 1) (“[e]ach county and township bears the responsibility for the maintenance and repair of its respective road or highway system, although the various political subdivisions may cooperate in the maintenance and repair of the others’ roads”). This language sets forth the general requirement that the state and each county and township maintain their respective roads as they are defined by R.C. 5535.01. R.C. 5535.08(A) further authorizes counties and townships to “contribute to the repair and maintenance of the roads under the control of the other.”¹

R.C. 5535.08 is further divided into division (B), which authorizes certain actions in the case of an emergency, and division (C), which applies to nonemergency situations. You advise that the repairs you have asked about will not occur in the context of an emergency for purposes of R.C. 5535.08. We therefore turn to R.C. 5535.08(C):

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.

¹ The term “contribute” is not defined for purposes of R.C. 5535.08. In the absence of a statutory definition, we look to a term’s common meaning. *See* R.C. 1.42 (“[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage”); *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449 (1983) (“any term left undefined by statute is to be accorded its common, everyday meaning”); 2014 Op. Att’y Gen. No. 2014-013, at 2-109 (recognizing that when a term is not statutorily defined, it is appropriate to use the term’s ordinary dictionary definition). Contribute means “to give (money, time, knowledge, assistance, etc.) to a common supply, fund, etc.” *Random House Webster’s Unabridged Dictionary* 442 (2001).

R.C. 5535.08(C)(1). As it applies to the facts you have provided, R.C. 5535.08(C)(1) authorizes *any* political subdivision that has “authority to ... repair ... roads or streets [to] enter into an agreement ... with any other political subdivision having that authority [in order] to obtain or provide road or street ... repair ... services.” Thus, a township or village that has the authority to repair roads or streets may enter into an agreement with the county whereby the township or village provides road or street repair services to the county. Townships have such authority by the terms of both R.C. 5535.08(A) and R.C. 5535.01. The General Assembly also has authorized villages to repair streets. *See* R.C. 715.19 (“[a]ny municipal corporation may lay off, establish, plat, grade, open, widen, narrow, straighten, extend, improve, keep in order and repair, light, clean, and sprinkle, streets, alleys, public grounds, places and buildings, wharves, landings, docks, bridges, viaducts, and market places, within such municipal corporation”); R.C. 717.01 (“[e]ach municipal corporation may do any of the following: ... (P) Open, construct, widen, extend, improve, resurface, or change the line of any street or public highway”); R.C. 717.04 (“[m]unicipal corporations may lay out, establish, acquire, open, construct, improve, maintain, regulate, vacate, or abandon ‘limited access highways’ or ‘freeways’ in the same manner in which such municipal corporations may lay out, establish, acquire, open, construct, improve, maintain, regulate, vacate or abandon a street or public highway”).

R.C. 5535.08(C)(1) further provides that the cost of any services provided by a township or village to a county may be paid from general fund moneys of the county or any other funds available for the repair of county roads. Funds the county engineer is authorized to use to fulfill his duties under R.C. 5543.01(A)(1) are “funds available for the repair of county roads” pursuant to R.C. 5535.08(C)(1). *See, e.g.*, 1994 Op. Att’y Gen. No. 94-025 (syllabus, paragraph 6) (“[m]otor vehicle license tax revenues and motor vehicle fuel excise tax revenues that form a portion of the operating budget of the county engineer pursuant to R.C. 315.12(A) may be used for any cost incurred in the operation of the office of county engineer, including the maintenance of bridges on township roads”).

You specifically ask whether the county engineer may reimburse the township and village for the compensation they pay their employees while the employees are working for the county engineer repairing potholes. R.C. 5535.08(C)(1) does not dictate how one subdivision reimburses or pays another for services provided under the statute’s terms. Rather, it requires mutually agreeable terms in any agreement entered into. Thus, the way in which the county reimburses a township or village is subject to the terms of the agreement authorized by R.C. 5535.08(C)(1). It seems reasonable that the county would reimburse employee costs as reflected on employee paystubs, as you suggest in your letter. Such terms must be mutually agreed upon pursuant to R.C. 5535.08(C)(1) and executed in accordance with R.C. 5535.08(C)(2) and (3), which provide that employees remain entitled to their employment rights and benefits even when working outside the boundaries of their employing subdivision.²

² R.C. 5535.08(C) provides, in relevant part:

You also ask about a period of services provided that lasts no longer than 30 days. There is no time limit imposed upon the provision of services that is authorized by R.C. 5535.08(C)(1). Again, R.C. 5535.08(C)(1) simply requires that the terms of an agreement be agreeable to the parties. Thus, the number of days of service provided is subject to the terms of the agreement authorized by R.C. 5535.08(C)(1).

Conclusion

In your letter, you describe several possible interpretations of R.C. 5535.08. We hope that the above description of the plain meaning of the statute is helpful in addressing your concerns. Based on the foregoing, it is my opinion, and you are hereby advised that, employees of a township or village may perform repair services upon county roads for a county engineer pursuant to the terms of an agreement authorized by R.C. 5535.08(C)(1). The county engineer may reimburse the township or village for the compensation paid to its employees for performing such repair services, provided such an arrangement is agreed upon pursuant to R.C. 5535.08(C)(1).

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

(2) [R.C. Chapter 2744], insofar as it applies to the performance of road or street construction, reconstruction, resurfacing, improvement, repair, or maintenance services, applies to a political subdivision having authority to perform those services that has entered into an agreement authorized by [R.C. 5535.08(C)(1)], and to the employees of such a political subdivision, when the employees are performing those services outside the boundaries of the political subdivision under that agreement.

(3) Employees of a political subdivision who perform road or street construction, reconstruction, resurfacing, improvement, repair, or maintenance services outside the boundaries of that political subdivision pursuant to an agreement authorized by [R.C. 5535.08(C)(1)] may participate in any pension or indemnity fund that their employer establishes and are entitled to all rights and benefits of [R.C. Chapter 4123], to the same extent as when performing those services within the political subdivision that employs them.