

April 19, 2016

The Honorable Gary L. Lammers
Putnam County Prosecuting Attorney
336 E. Main St., Suite B
Ottawa, Ohio 45875

SYLLABUS:

2016-014

A township fire department established by a board of township trustees under R.C. 505.37 for the purpose of providing fire protection services within a township or a township fire district has no authority to purchase a portion of a building to house fire-fighting equipment.



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OPINION NO. 2016-014

The Honorable Gary L. Lammers
Putnam County Prosecuting Attorney
336 E. Main St., Suite B
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Dear Prosecutor Lammers:

We have received your request for an opinion regarding the purchase of a building to house fire-fighting equipment. In 1974, a board of township trustees submitted a bond issue and tax levy to the electors of the incorporated and unincorporated portions of a township for constructing, furnishing, and equipping a fire station. The board of township trustees also submitted a tax levy to the electors of the unincorporated portions of the township for constructing and equipping a building for road machinery and equipment. The revenue derived from these tax levies are placed into a fire fund and a road and bridge fund, respectively. Both levies “ha[ve] been successfully renewed through the years.”

The township used the funds derived from these levies to construct a building. One half of the building houses fire-fighting equipment and the other half of the building houses road machinery and equipment. The costs of utilities and insurance for the building are allocated evenly between the fire fund and the road and bridge fund.

The building is not large enough to house the road machinery and equipment and the fire-fighting equipment that the township has acquired over the years. As a result, the township wishes to sell the portion of the building currently used to house road machinery and equipment to a township fire department “controlled by the board of township trustees.” The township fire department desires to purchase this portion of the building with funds derived from “their fire levy.” You ask whether it is permissible for the township fire department to use these funds for this purpose. Resolution of your inquiry is found in the provisions of statute that authorize a board of township trustees to furnish fire protection services for the township and its residents.

A Board of Township Trustees May Provide Fire Protection Services to a Township or Portions of a Township

A board of township trustees may provide fire protection services to township residents in a variety of ways.¹ Pursuant to R.C. 505.37(A), a board of township trustees may provide fire protection services to a township by “establish[ing] all necessary rules to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents.” R.C. 505.37(A) authorizes a board of township trustees to “purchase ... or otherwise provide” necessary fire-fighting equipment “for fire-fighting purposes” and to purchase or construct any buildings necessary for the care and maintenance of the fire-fighting equipment. A board of township trustees may issue bonds and levy taxes on behalf of the township to fund fire-related expenditures. *See* R.C. 505.37(D) (“[t]he board of township trustees of any township ... may purchase ... the necessary fire-fighting equipment, buildings, and sites for the township ... and issue securities for that purpose.... The board of township trustees ... may also construct any buildings necessary to house fire-fighting equipment and issue securities for that purpose ...”);² R.C. 505.39 (“[t]he board of township trustees may ... levy a sufficient tax upon all taxable property in the township or in a fire district ... to provide and maintain ... buildings and sites for [fire] apparatus and appliances”); R.C. 5705.19(I) (“[t]he taxing authority of any subdivision ... may declare by resolution ... that it is necessary to levy a tax in excess of [the ten-mill limitation] ... [f]or the purpose of providing ... fire apparatus, appliances, buildings, or sites therefor”); R.C. 5705.01(A) (the term subdivision includes a township).

A board of township trustees may establish and operate a fire department on behalf of a township or may enter into contracts with private volunteer companies or other fire-fighting agencies for the provision of fire protection services within the township. *See* R.C. 505.37(A) (“[t]he board [of township trustees] may employ one or more persons to maintain and operate fire-fighting equipment, or it may enter into an agreement with a volunteer fire company for the use and operation of fire-fighting equipment”); R.C. 9.60 (authorizing a township to contract with “any governmental entity in this state or another jurisdiction to provide fire protection”); *Lish v. Coolville Volunteer Fire Dep’t*, 70 Ohio Misc. 2d 74, 77, 652 N.E.2d 7 (C.P. Athens County 1995) (“[p]ursuant to R.C. 505.37, a township may provide fire protection for its citizens

¹ “A township is not required to provide fire or rescue services, ... but may, if it chooses.” 1988 Op. Att’y Gen. No. 88-042, at 2-201. *See generally* R.C. 505.37-.45 (delineating the ways in which a township may provide fire services to its residents); R.C. 9.60 (authorizing a township to contract with “any governmental entity in this state or another jurisdiction to provide fire protection”).

² R.C. 505.262(A) provides that “[n]otwithstanding [R.C. 505.37(D)] ... the board of township trustees of any township ... may adopt a resolution allowing the township to contract for the purchase of equipment, buildings, and sites, or for the construction of buildings, for any lawful township purpose.” The statute authorizes a board of township trustees to issue securities to finance such purchases or construction. *See* R.C. 505.262(A).

by either employing firefighters or entering into a contract with a volunteer fire company”). When a board of township trustees establishes a township fire department pursuant to R.C. 505.37(A), the board appoints a fire chief, provides for the employment of fire-fighters as required by R.C. 505.38(A), “purchases equipment, and owns or leases a building to house the firefighting equipment.” *Lish*, 70 Ohio Misc. 2d at 77-78; *see also* R.C. 505.38(A) (“[i]n each township or fire district that has a fire department, the head of the department shall be a fire chief, appointed by the board of township trustees.... The board shall provide for the employment of firefighters as it considers best and shall fix their compensation”); 1980 Op. Att’y Gen. No. 80-075, at 2-298 (R.C. 505.38(A) “contains requirements for persons who are (1) publicly appointed (2) as volunteer fire fighters (3) to the fire department of the designated political subdivision.... volunteer fire fighters of a private fire company under contract with a township, fire district, village or city are not appointed by the political subdivision”) (emphasis in original). When a board of township trustees chooses to contract with a private volunteer fire company for the provision of fire protection services, “[t]he township has no authority over the appointment of a fire chief, designation of firefighters, purchase of equipment, or buildings to house firefighting equipment.” *Lish*, 70 Ohio Misc. 2d at 78.

A board of township trustees may also create fire districts to provide fire protection services to specific portions of the township. Under R.C. 505.37(C), a board of township trustees, “whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence,” may create one or more township fire districts “of any portions of the township that it considers necessary.” *See generally* 1969 Op. Att’y Gen. No. 69-014 (syllabus, paragraph 1) (a township fire district may encompass the entire township); 1957 Op. Att’y Gen. No. 515, p. 137 (syllabus, paragraph 1) (a board of township trustees may create two separate fire districts in a single township). A municipal corporation “that is within or adjoining the township” may be included in a township fire district if the board of township trustees adopts a resolution authorizing the addition and the legislative authority of the municipal corporation adopts “a resolution or ordinance requesting the addition of the municipal corporation to the fire district.” R.C. 505.37(C). Procedures exist for adding territory to a township fire district when the fire district imposes a tax. *See id.*

A township fire district “is a political subdivision separate from the township as a whole, but is governed by the board of township trustees.” Ohio Legislative Service Comm’n, Final Bill Analysis, H.B. 513 (2002); *see also* R.C. 505.37(C) (authorizing the board of township trustees to “purchase ... or otherwise provide any fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes, or ... contract for the fire protection for the fire district”); R.C. 505.38 (requiring a board of township trustees to appoint a fire chief and provide for the employment of fire-fighters “[i]n each ... fire district that has a fire department”); R.C. 505.39 (authorizing a board of township trustees to “levy a sufficient tax upon all taxable property ... in a fire district”); R.C. 5705.01(A) (a township fire district is a subdivision for purposes of the tax levy law); R.C. 5705.01(C) (identifying the board of township trustees of the township in which a township fire district is located as the taxing authority or bond issuing authority of the district); 1988 Op. Att’y Gen. No. 88-074, at 2-361 (“[a] township fire district created pursuant to R.C.

505.37(C) is governed by the board of township trustees that has created the fire district.... In administering the functions of a township fire district, the trustees act only on behalf of the portion of the township comprising the district”); 1952 Op. Att’y Gen. No. 1101, p. 50 (syllabus, paragraph 4) (“a fire district ... is a subdivision within the scope of the Uniform Tax Levy Law”). As the governing authority of a township fire district, a board of township trustees may purchase or otherwise provide necessary fire-fighting equipment on behalf of the district and may issue bonds and levy taxes to acquire necessary equipment and buildings. *See, e.g.*, R.C. 505.39 (“[t]he board of township trustees may ... levy a sufficient tax upon all taxable property ... in a fire district ... to provide and maintain fire apparatus and appliances, [and] buildings and sites for apparatus and appliances”); R.C. 505.401 (authorizing “a board of trustees of a fire district ... [to] issue bonds for the purpose of acquiring fire-fighting equipment, buildings, and sites for the district or for the purpose of constructing or improving buildings to house fire-fighting equipment”); R.C. 5705.19(I) (authorizing the taxing authority of any subdivision to submit a tax to the electors in excess of the ten-mill limitation for the purpose of “providing and maintaining fire ... buildings”); *see also* 2006 Op. Att’y Gen. No. 2006-029 (“[t]o finance the operations of a fire district, a board of township trustees may ‘levy a sufficient tax upon all taxable property’ in the district”). Residents of a township fire district are the only township residents entitled to vote on, and benefit from, a tax levied within the district. *See* 1990 Op. Att’y Gen. No. 90-048 (syllabus, paragraph 4); *see also* 1988 Op. Att’y Gen. No. 88-074, at 2-361 (“[e]xpenses of the district are borne only by the portion of the township that is located within the district”); 1943 Op. Att’y Gen. No. 5798, p. 44, at 49 to 50 (moneys in the general fund of a township may not be allocated to a fire district established within the township because the fire district is funded by taxes levied within the district, not the township).

A board of township trustees may establish and operate a township fire department for the purpose of providing fire protection services within the township fire district or may enter into contracts with private volunteer companies or other fire-fighting agencies for the provision of fire protection services within the fire district. *See* R.C. 505.37(A) (“[t]he board [of township trustees] may employ one or more persons to maintain and operate fire-fighting equipment”); R.C. 505.37(C) (“[t]he board [of township trustees] may purchase ... or otherwise provide any fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes, or may contract for the fire protection for the fire district as provided in [R.C. 9.60]”); R.C. 9.60 (authorizing a board of township trustees to contract with “any governmental entity in this state or another jurisdiction to provide fire protection” to a township fire district); *see also* R.C. 505.38(A) (acknowledging that a township fire district may have a fire department by stating, “[i]n each township *or fire district that has a fire department*, the head of the department shall be a fire chief, appointed by the board of township trustees”) (emphasis added).

You state that in this instance, the township fire department is “controlled by the board of township trustees.” We take this to mean that the board of township trustees has established the township fire department pursuant to R.C. 505.37(A) and that the township fire department provides fire protection services to the township pursuant to R.C. 505.37(A) or a township fire district pursuant to R.C. 505.37(C). *See generally* 1956 Op. Att’y Gen. No. 7112, p. 675, at 676

(“fire *departments* are not the same as private fire *companies*”) (emphasis in original). The township fire department in this instance is not a private volunteer company.

A Township Fire Department Established by a Board of Township Trustees May Not Purchase a Building to House Fire-Fighting Equipment

You ask whether the township fire department may purchase a portion of a building from the township using funds from “their fire levy.” The township fire department desires to purchase this portion of the building to house fire-fighting equipment. The answer to your question requires the consideration of two issues: (1) whether the township fire department has the authority to purchase a building to house fire-fighting equipment, and, if so, (2) whether the township fire department may use funds derived from “their fire levy” for this purchase.

The General Assembly has conferred upon a board of township trustees the authority to acquire, construct, and purchase buildings for the purpose of housing fire-fighting equipment. R.C. 505.37(A) states, in pertinent part, that “[t]he board [of township trustees] shall provide for the care and maintenance of fire equipment, and, for these purposes, may purchase ... or construct and maintain necessary buildings.” R.C. 505.37(D) states that “[t]he board of township trustees of any township ... may purchase ... the necessary fire-fighting equipment, buildings, and sites for the township” and “may also construct any buildings necessary to house fire-fighting equipment.”

As the taxing authority or bond issuing authority of a township and a township fire district, the board of township trustees has authority to levy taxes and issue securities to fund the acquisition, construction, or purchase of such buildings. *See* R.C. 5705.01(A) (a township and a township fire district are subdivisions for purposes of the tax levy law); R.C. 5705.01(C) (identifying the board of township trustees as the taxing authority of a township and the board of township trustees of the township in which a township fire district is located as the taxing authority or bond issuing authority of the district). R.C. 505.37(D) states that “[t]he board of township trustees of any township ... may purchase ... the necessary fire-fighting equipment, buildings, and sites for the township ... and issue securities for that purpose.” R.C. 505.39 provides that “[t]he board of township trustees may ... levy a sufficient tax upon all taxable property in the township or in a fire district ... to provide and maintain ... buildings and sites for [fire] apparatus and appliances.” *See also* R.C. 5705.19(I) (authorizing the taxing authority of any subdivision to submit a tax to the electors in excess of the ten-mill limitation for the purpose of “providing and maintaining fire ... buildings”). R.C. 505.401 applies specifically to a fire district, authorizing “a board of trustees of a fire district ... [to] issue bonds for the purpose of acquiring fire-fighting equipment, buildings, and sites for the district or for the purpose of constructing or improving buildings to house fire-fighting equipment.” No statute in the Revised Code grants authority to purchase a building to house fire-fighting equipment for a township or a township fire district to an entity or official other than a board of township trustees.³ In

³ R.C. 9.60 provides, in part:

particular, no language in any statute authorizes a township fire department or any person in the employ of a township fire department to purchase a building or a portion of a building to house fire-fighting equipment.

A public body or public officer may delegate its authority absent “specific statutory authority therefor” if the powers to be delegated relate “to purely ministerial duties.” 2000 Op. Att’y Gen. No. 2000-024, at 2-164 to 2-165 (“[i]t is a well-settled rule that the authority of a public body or officer to delegate official duties ... is limited, and, in the absence of specific statutory authority therefor, may only be exercised with respect to purely ministerial duties”). The authority of a public body or public officer is “not delegable ... if it requires judgment and discretion in its performance.” 1979 Op. Att’y Gen. No. 79-067, at 2-223. “This rule is based on the presumption that the General Assembly has delegated duties to a public body or officer named in a statute because that body or officer is deemed competent to exercise the judgment and discretion necessary for performance of the duties.” 2000 Op. Att’y Gen. No. 2000-024, at 2-165; *see also Burkholder v. Lauber*, 6 Ohio Misc. 152, 154, 216 N.E.2d 909 (C.P. Fulton County 1965) (“[w]here the powers of judgment and discretion are by law reposed in a public officer, the presumption is that such officer was selected because of his fitness and competency to exercise that judgment and discretion, and unless the authority to do so is expressly conferred upon him, he may not delegate his powers and duties to another”).

(B) Any firefighting agency, private fire company, or emergency medical service organization may contract with any governmental entity in this state or another jurisdiction to provide fire protection or emergency medical services, as appropriate, whether on a regular basis or only in times of emergency, upon the approval of the governing boards or administrative heads of the entities that are parties to the contract.

(C) Any governmental entity in this state may contract with any firefighting agency, private fire company, or emergency medical service organization of this state or another jurisdiction to obtain fire protection or emergency medical services, as appropriate, whether on a regular basis or only in times of emergency, upon the approval of the governing boards or administrative heads of the entities that are parties to the contract.

For the purpose of this opinion, we need not determine whether a township fire department constitutes a “governmental entity” under R.C. 9.60. *Cf.* 2009 Op. Att’y Gen. No. 2009-013 (syllabus, paragraph 2) (the power conferred upon a board of township trustees to enter into contracts on behalf of a township under R.C. 9.60 cannot be exercised or delegated to a township fire chief). However, it is important to note that, even if a township fire department were a “governmental entity” under R.C. 9.60, nothing in the statute authorizes such an entity to purchase a building to house fire-fighting equipment. R.C. 9.60 authorizes a governmental entity in the state to enter into contracts “to obtain fire protection or emergency medical services.” R.C. 9.60(C); *see also* R.C. 9.60(A)(2) (“‘[f]ire protection’ means the use of firefighting equipment by the fire department of a firefighting agency or a private fire company”).

The power conferred upon a board of township trustees to purchase buildings to house fire-fighting equipment does not relate to “purely ministerial duties.” The decision to purchase a building for a township or a township fire district requires the exercise of discretion in which a board of township trustees determines whether the building is necessary and in the best interests of the township or township fire district. *See, e.g.*, R.C. 505.37(A) (“[t]he board [of township trustees] shall provide for the care and maintenance of fire equipment, and, for these purposes, may purchase ... or construct and maintain *necessary* buildings”) (emphasis added); R.C. 505.37(D) (“[t]he board of township trustees of any township ... may purchase ... the *necessary* fire-fighting equipment, buildings, and sites for the township ... and issue securities for that purpose.... The board of township trustees ... may also construct any buildings *necessary* to house fire-fighting equipment and issue securities for that purpose ...”) (emphasis added). Given the discretionary nature of the authority granted to a board of township trustees to purchase a building to house fire-fighting equipment, the board may not delegate this authority to a township fire department formed to provide fire protection services within the township or a township fire district. *Cf. Burkholder*, 6 Ohio Misc. at 152 (syllabus) (county engineer was not authorized to enter into an agreement on behalf of the county, as the power to do so was vested in the board of county commissioners); 2009 Op. Att’y Gen. No. 2009-013, at 2-107 (the authority of a board of township trustees to take joint action with the legislative authority of a municipal corporation under R.C. 505.37(B) is not delegable to a township fire chief); 1997 Op. Att’y Gen. No. 97-054 (syllabus, paragraph 2) (concluding that a board of county commissioners was not authorized to delegate to the sanitary engineer the duties imposed upon the board by R.C. 6117.01 in regard to the sanitary engineering department); 1993 Op. Att’y Gen. No. 93-026, at 2-135 (board of township trustees may not delegate its authority to select a site for a township hall under R.C. 505.104).

The Attorney General reached a similar conclusion in 2009 Op. Att’y Gen. No. 2009-013. In that opinion, the Attorney General addressed, among other things, whether a township fire chief has authority under R.C. 505.37(B) to act in concert with the legislative authority of a municipal corporation to provide the township with a mobile communication center for fire-fighting purposes. 2009 Op. Att’y Gen. No. 2009-013, at 2-107.

R.C. 505.37(B) states that “[t]he boards of township trustees of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination of these, may, through joint action, unite in the joint purchase ... use, and operation of fire-fighting equipment.” Similar to the statutes that address the authority to purchase buildings to house fire-fighting equipment, R.C. 505.37(B) authorizes a board of township trustees to take joint action with the legislative authority of a municipal corporation. The Attorney General found that the power conferred upon a board of township trustees by R.C. 505.37(B) cannot be delegated to the township fire chief because “the power conferred upon the board ... requires the board to exercise its discretion, and no provision of law authorizes the board to delegate its power under [the statute].” 2009 Op. Att’y Gen. No. 2009-013, at 2-107. Relying on the plain language of R.C. 505.37(B) and the discretionary nature of the authority conferred thereunder, the Attorney General concluded that “R.C. 505.37(B) does not ... authorize a township fire chief and the legislative authority of a municipal corporation to” take

joint action to establish a mobile communication center for fire-fighting purposes. 2009 Op. Att’y Gen. No. 2009-013 (syllabus, paragraph 1).

The authority to purchase a building for a township or a township fire district for the purpose of housing fire-fighting equipment is conferred upon a board of township trustees. The General Assembly has not conferred similar authority upon a township fire department established for the purpose of providing fire protection services within the township or a township fire district. Further, the General Assembly has not provided language in the pertinent statutes to permit a board of township trustees to delegate the authority to purchase buildings to house fire-fighting equipment to township departments or employees, including a township fire department. Accordingly, we conclude that the township fire department has no authority to purchase from the township a portion of a building that currently houses road machinery and equipment. This conclusion makes it unnecessary to address whether the township fire department may use funds from “their fire levy” to purchase the building.

Conclusion

In sum, it is our opinion, and you are hereby advised that a township fire department established by a board of township trustees under R.C. 505.37 for the purpose of providing fire protection services within a township or a township fire district has no authority to purchase a portion of a building to house fire-fighting equipment.

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