

**OPINION NO. 2007-043****Syllabus:**

1. A board of township trustees may donate money to a local school district only if the board has statutory authority to make a donation and the township has funds that are available for that purpose. Existing statutes do not provide general authority for a board of township trustees to donate money to a local school district. However, a board of township trustees may expend money under R.C. 505.57 (paying lodging excise tax proceeds to a local school district that contains a tax exempt state-owned lodge if the existence of the lodge creates a serious financial burden on the district) and R.C. 505.70(A) (cooperating in establishing and operating a federal program) or under other statutes authorizing expenditures that may benefit a local school district.
2. R.C. 505.707 does not authorize a board of township trustees to make donations to local school districts or other governmental bodies.

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**To: Paul J. Gains, Mahoning County Prosecuting Attorney, Youngstown, Ohio**

**By: Marc Dann, Attorney General, December 13, 2007**

We have received your request for an opinion concerning the fiscal powers of a board of township trustees. You have asked whether a board of township trustees has the ability to donate money to a local school district.

For the reasons set forth below, we conclude that a board of township trust-

ees may donate money to a local school district only if the board has statutory authority to make a donation and the township has funds that are available for that purpose. Existing statutes do not provide general authority for a board of township trustees to donate money to a local school district. However, a board of township trustees may expend money under R.C. 505.57 (paying lodging excise tax proceeds to a local school district that contains a tax exempt state-owned lodge if the existence of the lodge creates a serious financial burden on the district) and R.C. 505.70(A) (cooperating in establishing and operating a federal program) or under other statutes authorizing expenditures that may benefit a local school district. R.C. 505.707 does not authorize a board of township trustees to make donations to local school districts or other governmental bodies.

#### **Authority of a Township to Make Donations of Public Funds**

As stated in your request letter, townships and their activities are governed by the provisions of Title 5 of the Ohio Revised Code. Boards of township trustees may exercise only the powers expressly conferred by statute and the powers that must necessarily be implied from those express powers to enable the trustees to perform the duties imposed upon them. *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); *Hopple v. Trustees of Brown Township*, 13 Ohio St. 311, 324 (1862).<sup>1</sup>

Further, moneys held by a township are public funds and are governed by the principle that public funds are held in trust for the benefit of the public. Public funds may be expended only by clear authority of law and in accordance with applicable statutes. *See State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) (“[a]ll public property and public moneys ... constitute a public trust fund .... Said trust fund can be disbursed only by clear authority of law”); 2002 Op. Att’y Gen. No. 2002-031, at 2-206 to 2-207. Any doubt as to the authority to expend public funds must be resolved in favor of the public and against the grant of authority to make the expenditure. *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916); 2007 Op. Att’y Gen. No. 2007-036; 2002 Op. Att’y Gen. No. 2002-031, at 2-207.

In addition, the donation of public money is limited by the fact that the use of certain funds is restricted by statute or constitution. Donations may be made only from funds that are available to be expended as donations in particular circumstances. *See, e.g.*, Ohio Const. art. XII, § 5; R.C. 5705.09; R.C. 5705.10; 2006 Op. Att’y Gen. No. 2006-009, at 2-78 to 2-80; 2004 Op. Att’y Gen. No. 2004-047; 2002 Op. Att’y Gen. No. 2002-031, at 2-207 n.2.

Therefore, a board of township trustees may make a donation of public

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<sup>1</sup> Townships are granted statutory authority to adopt a limited home rule government under R.C. Chapter 504. This opinion does not consider the powers of a township that has adopted a limited home rule government. *See, e.g.*, R.C. 504.04; 2007 Op. Att’y Gen. No. 2007-036, slip op. at 9 n.10; 2005 Op. Att’y Gen. No. 2005-042.

funds only pursuant to clear statutory authority and with funds that are available for that purpose. *See generally* 2007 Op. Att’y Gen. No. 2007-036 (syllabus, paragraph 3) (“[a] township may donate public money to the board of health of a general health district only if the township has statutory authority, either express or necessarily implied, to make such a donation”); 2002 Op. Att’y Gen. No. 2002-031 (syllabus, paragraph 1) (“[a] county or township may donate public money to a charity, community group, nonprofit corporation, community social event, or community cultural event only if the county or township has statutory authority, either express or necessarily implied, to make such a donation. Any such donation must be made in compliance with applicable law”); 1988 Op. Att’y Gen. No. 88-018 (syllabus) (a county has no authority to deposit sales and use tax proceeds into a revenue sharing fund from which moneys are distributed, according to a stated formula of entitlement, to townships and municipalities within the county).

#### **Authority of a Township to Make Donations to a Local School District**

Our research has disclosed no statute that provides general authority for a board of township trustees to donate money to a local school district. However, R.C. 505.57 does authorize a board of township trustees to pay lodging excise tax proceeds to a school district that contains a tax exempt state-owned lodge if the existence of the lodge creates a serious financial burden on the district.

In addition, R.C. 505.70(A) authorizes the trustees of any township to “participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted by the congress of the United States,” and for this purpose to adopt any procedures and take any action not prohibited by the Ohio Constitution and not in conflict with Ohio laws. Under this provision, a township may give financial assistance to a local school district, but only in establishing and operating a federal program. *See also* 1987 Op. Att’y Gen. No. 87-051.

Other statutes authorize townships to take action that may benefit other public bodies, including local school districts, in various manners.<sup>2</sup> For example, R.C. 505.10(A)(2)(a) permits a township with property that is unneeded, obsolete, or unfit for use and is of a value not in excess of \$2,5000 to sell the property by private sale without advertisement or public notification, and R.C. 505.101 permits a township to enter into a contract for the sale of materials, equipment, or supplies to a political subdivision without advertising or bidding. *See also* R.C. 505.108 (sale or

<sup>2</sup> Certain provisions authorizing a township to take action that may benefit another public body relate to real property rather than public money. For example, R.C. 505.10(A)(5) states that “[w]hen a township has title to real property, the board of township trustees, by resolution, may authorize the transfer and conveyance of that property to any other political subdivision of the state upon such terms as are agreed to between the board and the legislative authority of that political subdivision.”

donation to public agency, nonprofit organization, or tax exempt entity of property recovered by township police that remains unclaimed).<sup>3</sup>

You have asked particularly about R.C. 505.707, which provides express authority for a township to donate money in certain circumstances, as follows:

A board of township trustees may appropriate from the township general revenue fund moneys not appropriated for any other purpose to an organization that the board determines serves a community purpose and that is exempt from federal taxation under subsection 501(a) and described in subsection 501(c)(3) of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C. 1, as amended.

This provision authorizes a board of township trustees to donate general revenue fund moneys to organizations determined to serve a community purpose. However, by the plain language of the statute, the recipients are limited to organizations that are included as § 501(c)(3) organizations for purposes of federal income tax. Governmental bodies are not included in that classification. *See* 26 U.S.C.A. § 501(a), (c)(3) (West Supp. 2007); 2007 Op. Att’y Gen. No. 2007-036, slip op. at 10 (“R.C. 505.77 does not ... authorize a township to make donations to other governmental bodies”); 2002 Op. Att’y Gen. No. 2002-031. Therefore, R.C.

<sup>3</sup> There are other statutes granting townships statutory authority to make donations or provide favorable treatment in circumstances or for purposes that do not appear to include local school districts among the authorized recipients. *See* R.C. 505.10(A)(2)(b) (a township with unneeded, obsolete, or unfit-for-use property of a value not in excess of \$2,5000 may donate it to an eligible nonprofit organization); R.C. 505.102 (a board of township trustees may sell, lease, or transfer real property to a nonprofit senior citizens’ organization); R.C. 505.58 (“[a] board of township trustees may expend money from the general fund to make contributions to convention and visitors’ bureaus operating within the county in which the township is located”); R.C. 505.70(B) (a board of township trustees may give financial assistance to public and nonprofit private agencies in establishing and operating programs to provide necessary social services to meet the needs of older persons); R.C. 505.701 (a board of township trustees may give financial or other assistance to a community improvement corporation to defray its administrative expenses and may purchase real property for the community improvement corporation); R.C. 505.702 (a board of township trustees may appropriate money for neighborhood crime watch programs); R.C. 505.703 (a board of township trustees may appropriate money to a county office of economic development); R.C. 505.704 (a board of township trustees may participate in and make contributions to a nonprofit corporation that consists of units of government and is established for the purpose of regional cooperation and improvement); R.C. 505.705 (a board of township trustees may appropriate money to another political subdivision with authority to provide the township with water or sewer services); R.C. 505.80 (a board of township trustees may appropriate money to be expended by joint agreement with one or more other political subdivisions for the public purpose of encouraging economic development of the township or area through promotion of tourism).

505.707 does not authorize a board of township trustees to make donations to local school districts or other governmental bodies.

**Conclusions**

For the reasons discussed above, it is my opinion and you are advised as follows:

1. A board of township trustees may donate money to a local school district only if the board has statutory authority to make a donation and the township has funds that are available for that purpose. Existing statutes do not provide general authority for a board of township trustees to donate money to a local school district. However, a board of township trustees may expend money under R.C. 505.57 (paying lodging excise tax proceeds to a local school district that contains a tax exempt state-owned lodge if the existence of the lodge creates a serious financial burden on the district) and R.C. 505.70(A) (cooperating in establishing and operating a federal program) or under other statutes authorizing expenditures that may benefit a local school district.
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