OPINION NO. 91-070

Syllabus:

1. There is no statutory requirement for township approval of water supply improvements prior to their installation by the county pursuant to R.C. Chapter 6103.

2. Pursuant to Ohio case law, when a county installs water system improvements in an unincorporated area of the county under R.C. Chapter 6103, the county must make a reasonable effort to comply with provisions of a township fire code that affect water system improvements.

3. If, after making a reasonable effort, the county determines that it is unable to comply with provisions of a township fire code as it installs water system improvements under R.C. Chapter 6103, then there must be a weighing and balancing of the interests of the township and the county to determine the extent to which the county is required to comply with the township fire code.

4. It is impossible to use an opinion of the Attorney General to perform the function of weighing and balancing the interests of various governmental entities in carrying out their regulatory schemes because that function requires findings of fact.

To: William F. Schenck, Greene County Prosecuting Attorney, Xenia, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

You have requested an opinion concerning the effect of a township fire code on the county's installation of water improvements. In the situation with which you are concerned, the board of county commissioners is installing water improvements throughout the county in accordance with R.C. Chapter 6103.

I. The County's Authority over Public Water Supplies

R.C. 6103.02(A) grants a county general authority to provide public water supplies for any sewer district "[f]or the purpose of preserving and promoting the public health and welfare, and providing fire protection." The board of county commissioners is authorized to adopt and enforce rules for the construction, maintenance, protection, and use of public water supplies in the county outside of municipal corporations, and within municipal corporations if the supplies are constructed or operated by the county or supplied with water from county water supplies. The county's rules "shall not be inconsistent with the laws of the state or the rules of the environmental protection agency." R.C. 6103.02(A). The county is required to approve plans and specifications for any public water supplies or water pipes or mains before construction begins in any unincorporated area, unless the construction is for the purpose of supplying water to a municipal corporation. *Id.*

R.C. 6103.03 gives the county authority to provide water supply improvements within sewer districts that include municipal corporations. The statute provides, however, that no contract may be let for an improvement within the corporate limits of a municipal corporation until the legislative authority of the municipal corporation has approved the plans, specifications, and estimated cost of the improvement. R.C. 6103.03. Thus, it is clear that municipal approval is required before a county may install water supply improvements in a municipal corporation in accordance with R.C. Chapter 6103. *Id.*

II. The Ohio Environmental Protection Agency's Authority over Public Water Systems

R.C. Chapter 6109 provides generally for the Ohio Environmental Protection Agency ("Ohio EPA") to oversee the provision of safe drinking water throughout the State of Ohio. *See* R.C. 6109.03-.04. The Director of Environmental Protection has authority to adopt rules governing public water systems[1] in order to protect the public health and welfare and to provide a program for the general supervision of operation and maintenance of public water systems. *See* R.C. 6109.04(B), (C)(2). The statutory scheme provides that no public water system may be constructed or installed without prior plan approval by the Director of Environmental Protection. R.C. 6109.07 states, in part:

> (A) *No person shall begin construction or installation of a public water system, or make a substantial change in a public water system, until plans therefor have been approved by the director of environmental protection.* Upon receipt of a proper application, the director shall consider the need for compliance with requirements of the Safe Drinking Water Act, and generally accepted standards for the construction and equipping of water systems, and shall issue an order approving or disapproving such plans....
>
> (B) *No person shall construct or install a public water system, or make any substantial change in a public water system, that is not in accordance with plans approved by the director.* (Emphasis added.)

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1 R.C. 6109.01 contains the following definition:

> As used in Chapter 6109. of the Revised Code:
>
> (A) *"Public water system" means a system for the provision to the public of piped water for human consumption,* if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system, and any water supply system serving an agricultural labor camp, as defined in section 3733.41 of the Revised Code. (Emphasis added.)

See also R.C. 6109.31 (prohibiting violations of R.C. Chapter 6109 and of orders, rules, or terms of variances or exemptions granted by the Director under that chapter); R.C. 6109.33 (civil penalties). It is, thus, clear that a county may not install a public water system or make substantial improvements to a public water system without obtaining prior approval of the Director of Environmental Protection.

III. A Township's Authority to Adopt a Unified Fire Code

Your letter of request raises several issues. The first is whether the county must obtain the approval of a township prior to constructing water supply improvements within the township. The position that such approval is required has been taken by a township that has adopted a unified fire code pursuant to R.C. 505.373.

R.C. 505.373 authorizes the adoption of a fire code by a township, as follows:

> The township board of trustees may, by resolution, adopt by incorporation by reference a standard code pertaining to fire, fire hazards and fire prevention, prepared and promulgated by the state, or any department, board, or other agency thereof, or any such code prepared and promulgated by a public or private organization that publishes a model or standard code.

See also R.C. 505.374 ("[n]o person shall violate a provision of a standard code or regulation adopted under [R.C. 505.373]"); R.C. 505.99 (criminal penalties).

The fire code adopted by the township in question[2] contains standards for fire hydrant and water main systems for fire protection. It appears that standards of this sort may be reasonably related to fire, fire hazards, and fire prevention and, thus, may properly come within the authority granted by R.C. 505.373. *See, e.g.*, R.C. 505.37; R.C. 505.40; 1956 Op. Att'y Gen. No. 6541, p. 344.

IV. Comparison of Townships and Municipal Corporations

In order to answer your question, it is necessary to examine certain basic differences between townships and municipal corporations. Municipal corporations are granted constitutional powers with respect to the establishment and operation of public utilities, including public water systems. *See* Ohio Const. art. XVIII, §4 ("[a]ny municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants..."); Ohio Const. art. XVIII, §5; Ohio Const. art. XVIII, §6 (expressly including the sale of water as a public utility). *See also* Ohio Const. art. XVIII, §§3 and 7 (municipal powers of local self-government).

In contrast, townships have only such powers as they have been given by statute.[3] *See, e.g., Hopple v. Trustees of Brown Township*, 13 Ohio St. 311,

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[2] I assume, for purposes of this opinion, that the township fire code was properly adopted in accordance with R.C. 505.373.

[3] Townships have statutory power to adopt a limited self-government form of township government pursuant to R.C. Chapter 504. *See* Sub. H.B. 77, 119th Gen. A. (1991) (eff. Sept. 17, 1991). Since your question predates the effective date of this statute, it is clear that the fire code in question was adopted pursuant to R.C. 505.373, rather than pursuant to any provision of R.C. Chapter 504, and this opinion addresses only the facts that you have presented. Under R.C. Chapter 504, a township that adopts the limited self-government form of government is empowered to take certain actions by resolution and enforce the resolutions by the imposition of civil fines as statutorily authorized. R.C. 504.04(A); R.C. 504.05. Among such actions are the adoption of standard codes pertaining to fire, fire hazards, and fire prevention, in the manner provided for in R.C. 505.75. R.C. 504.04(B)(4); R.C. 504.13(A). Such actions may not, however, establish or revise water and sewer regulations, R.C. 504.04(B)(3), and nothing in R.C.

324-25 (1862). R.C. 4933.04 authorizes a board of township trustees to contract with a water company for supplying water to the township. A township also has authority to provide or regulate public water supplies in connection with its provision of a public water supply for firefighting purposes. *See, e.g.*, R.C. 505.37(A) ("[t]he board of township trustees may establish all necessary rules to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents, and may...purchase or otherwise provide any...fire hydrants, and water supply for fire-fighting purposes that seems advisable to the board"); R.C. 505.40; 1956 Op. No. 6541. It has been found that the authority of a township to provide a public water supply extends also to emergency situations that do not involve fires. *See, e.g.*, 1986 Op. Att'y Gen. No. 86-058; 1962 Op. Att'y Gen. No. 3066, p. 437 (a board of township trustees may furnish water of the township fire department to private citizens to protect their property and lives if drought or other causes have resulted in an emergency situation, and if the emergency so requires, may deliver the water for the use of the citizens). *But see* 1958 Op. Att'y Gen. No. 2341, p. 422, at 424 ("a township is not in the water business"); 1956 Op. No. 6541, at 346-47 ("there is no enabling statute permitting township trustees to supply water to residents of the township....[T]he authority of the township trustees being limited to procuring water supply for fire-fighting purposes, they cannot supply water through lines of the township to property owners or other residents"). Further, recently-adopted statutory provisions permit a board of township trustees to contract with the board of county commissioners for the township to pay all or part of the cost of constructing, maintaining, repairing, or operating any water supply improvement located within the township. R.C. 505.263; R.C. 6103.031; *see* Am. S.B. 75, 118th Gen. A. (1990) (eff. March 1, 1990). *See also* R.C. 6119.02 (permitting a township to be among the entities petitioning for the organization of a regional water and sewer district).

R.C. 6103.03 expressly requires municipal approval of water supply improvements before a county installs the improvements in a municipal corporation. Neither R.C. 6103.03 nor any similar provision of state statute requires approval by a township before the county installs water supply improvements in the township. It follows that approval by a township is not statutorily required. This distinction in treatment between townships and municipal corporations is consistent with the general scheme of R.C. Chapter 6103 that permits the county to exercise general authority over public water supplies in unincorporated areas; it reflects the fact that townships have limited, statutorily-defined water-supply powers, whereas municipal corporations have more general constitutionally-derived powers. *See generally, e.g., Board of County Commissioners v. City of Columbus*, 26 Ohio St. 3d 179, 497 N.E.2d 1112 (1986) (per curiam). *Compare* R.C. Chapter 6103 *with, e.g.*, R.C. 6119.06(Y) (providing that a regional water and sewer district may "[e]xercise the powers of the district without obtaining the consent of any other political subdivision," provided that property damaged or destroyed shall be restored or repaired, or compensation paid).

V. Duty of a County to Comply with Requirements Set Forth in a Township Fire Code

A. Statutory Provisions

An additional issue raised by your request is whether, in installing water improvements in an unincorporated area of the county, the county is obligated to comply with requirements set forth in a township fire code. That issue is not directly addressed by statute. *Compare* R.C. 505.373 *and* R.C. 6103.02 *with, e.g.*, R.C. 303.22 *and* R.C. 519.22 (providing, as between township and county

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Chapter 504 shall be construed as affecting the powers of counties with regard to water and sewer regulations, R.C. 504.04(B). If the county has a fire code, a township that adopts the limited self-government form of government may not adopt such a code; if a township has such a code and the county subsequently adopts one, the township code shall cease to be effective after one year, or at an earlier date if determined by the board of township trustees. R.C. 504.13(B). If there is a conflict between a resolution enacted by a township and a resolution enacted by a county, the resolution enacted by the township prevails. R.C. 504.04(D).

zoning regulations, which shall take precedence) *and* R.C. 505.78 (providing, as between township and county building regulations, which shall take precedence). *But see* note 3, *supra* (statutory provisions relating to a township that has adopted a limited self-government form of township government pursuant to R.C. Chapter 504).

The General Assembly has, by statute, imposed upon the board of county commissioners the responsibility of providing a safe water supply in unincorporated areas of the county. R.C. 6103.17 authorizes the legislative authority or board of health of a municipal corporation, the board of health of a general health district, or a board of township trustees to notify the Director of Environmental Protection of unsafe water supply conditions, and requires the Director to make an investigation. If the Director finds that it is necessary for the public health and welfare that water supply improvements be constructed, maintained, and operated for the service of any unincorporated territory, the Director notifies the board of county commissioners, and the board is required to establish a sewer district, provide necessary funds, and construct, maintain, repair, or operate the public water supplies, as required by order of the Director. The cost may be assessed upon the property benefited. *See also* R.C. 6109.05 (authorizing the Director of Environmental Protection to issue orders to the owner or operator of any public water system to take action necessary to deal with an emergency). Subject to approval by the Director of Environmental Protection, the board of county commissioners is responsible for approving the plans and specifications of water supplies in unincorporated areas and the county engineer is responsible for supervising the construction. R.C. 6103.02(A); R.C. 6109.07. A public water supply constructed by the county is specifically intended to also serve the purpose of "providing fire protection." R.C. 6103.02(A). The authority of Ohio EPA with respect to water supply extends to the provision of safe drinking water and the protection of the public health and welfare. *See, e.g.*, R.C. 6109.01(A); R.C. 6109.03; R.C. 6109.04(B); R.C. 6109.05-.07. Ohio EPA has no express responsibility to provide water for firefighting purposes, but the Director is instructed to consider "generally accepted standards for the construction and equipping of water systems." R.C. 6109.07(A).

As discussed above, a township has clear statutory authority to adopt a fire code, and that authority includes the power to adopt provisions relating to fire hydrants or other matters of water supply. There is no statutory provision that expressly precludes a township from adopting provisions in a fire code that may affect the provision of a water supply by the county, with the approval of Ohio EPA.

B. Case Law

The general rule applicable when different governmental entities have regulatory authority that overlaps was discussed by the Ohio Supreme Court in a case concerning a conflict between local zoning and powers of eminent domain. *Brownfield v. State*, 63 Ohio St. 2d 282, 285-87, 407 N.E.2d 1365, 1367-68 (1980), *overruled, in part, on other grounds, Racing Guild of Ohio v. Ohio State Racing Commission*, 28 Ohio St. 3d 317, 503 N.E.2d 1025 (1986), states, in part:

> We believe that the *correct approach* in these cases *where conflicting interests of governmental entities appear* would be in each instance *to weigh the general public purposes to be served by the exercise of each power, and to resolve the impasse in favor of that power which will serve the needs of the greater number of our citizens.*
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> ....
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> In most instances, the conflict between one government's power to condemn and another's power to restrict the use of land is more apparent than real....*Whenever possible, the divergent interests of governmental entities should be harmonized rather than placed in opposition*....Thus, unless there exists a direct statutory grant of immunity in a given instance, the condemning or land-owning authority must make a reasonable attempt to comply with the zoning restrictions of the affected political subdivision....
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> The issue of governmental immunity from zoning arises only after efforts to comply with municipal zoning have failed. Where compliance with zoning regulations would frustrate or significantly

> hinder the public purpose underlying the acquisition of property, a court should consider, *inter alia*, the essential nature of the government-owned facility, the impact of the facility upon surrounding property, and the alternative locations available for the facility, in determining whether the proposed use should be immune from zoning laws. (Emphasis added.)

These principles have been applied in a variety of circumstances concerning the regulatory powers of different governmental entities. For example, in *City of East Cleveland v. Board of County Commissioners*, 69 Ohio St. 2d 23, 430 N.E.2d 456 (1982), the Ohio Supreme Court considered "whether the county, as a state agency vested with the power of eminent domain, is subject to municipal building and fire code requirements that are in addition to those imposed by the state." *Id.* at 28, 430 N.E.2d at 460. The Court stated:

> [T]he trial court erred in holding that the county was absolutely immune from local regulations. This is as true of municipal building and fire codes as it is of municipal zoning ordinances....[W]e affirm the decision of the Court of Appeals to remand to the trial court for initial determination on the basis of the *Brownfield* balancing test and prior case law the question whether and to what extent the county must comply with the municipal building and fire codes.

Id. at 29, 430 N.E.2d at 461. The question whether and to what extent a county must comply with a township fire code appears to be analogous to the question whether and to what extent a county must comply with municipal building and fire codes. *See also, e.g., Taylor v. State Department of Rehabilitation and Correction*, 43 Ohio App. 3d 205, 540 N.E.2d 310 (Franklin County 1988) (in exercising powers of eminent domain for an essential state governmental function, the state must make a reasonable effort to comply with municipal land-use restrictions, but is not required to follow local procedures to obtain zoning approval; if reasonable efforts to comply with land-use restrictions have failed, the state may proceed with the proposed use unless enjoined by a court of competent jurisdiction that determines that the state is not immune from compliance with local zoning restrictions pursuant to the balancing test set forth in the *Brownfield* case). *See generally* 1988 Op. Att'y Gen. No. 88-051, at 2-228 ("when two authorities have the power to regulate an activity or use of land, there must be compliance with the regulations of both"); 1988 Op. Att'y Gen. No. 88-042.

In *City of Columbus v. Teater*, 53 Ohio St. 2d 253, 374 N.E.2d 154 (1978), a balancing test was applied to a conflict between a municipal interest in constructing water supply facilities and the state interest in protecting a scenic river area, with both entities deriving their power from the constitution. The Court stated: "Ultimately, the judiciary must determine the facts in such controversies, balance the rights of the state against those of the municipality and endeavor to protect the respective interests of each. In such instances, the outcome of the constitutional argument involved will depend upon the facts and circumstances of the case." *Id.* at 261, 374 N.E.2d at 159-60. The Ohio Supreme Court applied that balancing test in *Board of County Commissioners v. City of Columbus* to a situation in which Delaware County sought to enjoin the City of Columbus from constructing a proposed sewer line from the city's existing sanitary sewer in Franklin County to the Columbus Zoo and Amusement Park, located on city-owned land situated in Delaware County. The city obtained a permit from the Ohio EPA, but failed to comply with the requirement of R.C. 6117.01 that the plans for construction be approved by the county. The Court considered the fact that the state had enacted a comprehensive scheme for the regulation of sewers and sewage treatment works by the Ohio EPA under R.C. Chapters 6111 and 3745, 26 Ohio St. 3d at 183, 497 N.E.2d at 1115, and took note of R.C. 6117.01, which provides that county rules relating to such matters "shall not be inconsistent with the laws of this state or the rules of the director of environmental protection," *id.* at 184 n. 4, 497 N.E.2d at 1116 n. 4. The Court concluded that application of the provisions of R.C. 6117.01, requiring a municipal corporation to obtain approval from the board of county commissioners before constructing sewers or sewage treatment works within a countywide sewer district, "would be in conflict with the state police power as exercised by the OEPA." *Id.* at 184, 497 N.E.2d at 1116. *Board of Delaware County Commissioners v. City of Columbus* states:

> The statute granting the authority to create sewer districts within the county cannot be in conflict with other legislative enactments which establish a superior regulatory scheme to be administered by a state agency....It therefore appears that if the action of the state in its exercise of police power is superior in effect to that of the delegated power of the county, great weight must be given to the approval granted to the city by the OEPA as we endeavor to determine and balance the powers and rights respectively of the parties to this action.

Id. at 184, 497 N.E.2d at 1116-17. A concurring opinion by Justice Douglas states that, in light of the broad powers granted the Ohio EPA, it should be concluded that the Ohio EPA is vested with exclusive jurisdiction to regulate construction of a municipal sewer line within a countywide sewer district. *Id.* at 185, 497 N.E.2d at 1117. The Court's opinion does not, however, find that Ohio EPA's power to regulate necessarily excludes all powers given to other governmental entities. Rather, as discussed above, the Court applied a balancing test.

Even when a statute expressly prohibits political subdivisions from adopting regulations that alter, impair, or limit the authority granted in a permit issued by a state department, it has been found that a county or township may adopt a provision that affects the licensed facility, as long as the effect is not to alter, impair, or limit the authority granted in the permit. In *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986), the Ohio Supreme Court considered R.C. 3734.05(D)(3),[4] which stated:

> No political subdivision of this state shall require any additional zoning or other approval, consent, permit, certificate, or other condition for the construction or operation of a hazardous waste facility authorized by a hazardous waste facility installation and operation permit issued pursuant to this chapter, nor shall any political subdivision adopt or enforce any law, ordinance, or regulation that in any way alters, impairs, or limits the authority granted in the permit.

Id. at 215, 492 N.E.2d at 800. The *Fondessy* court concluded that a municipal corporation was authorized to enact an ordinance that imposed a monthly fee and certain recordkeeping requirements upon hazardous waste landfills located within the municipality, and that such an ordinance did not conflict with state regulation.

The conclusion that state statutes do not completely preempt local regulation of hazardous waste facilities has been extended also to townships. *See* 1988 Op. Att'y Gen. No. 88-099; 1988 Op. Att'y Gen. No. 88-053; *see also Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 442 N.E.2d 1278 (1982). *See generally Families Against Reily/Morgan Sites v. Butler County Board of Zoning Appeals*, 56 Ohio App. 3d 90, 94, 564 N.E.2d 1113, 1118 (Butler County) ("[c]learly, the legislature intended for the state through the Ohio EPA to preempt and solely occupy the licensing and regulation of solid waste disposal and sanitary landfill facilities. However,....[a permit issued by the Ohio EPA] is subject to those local zoning provisions which do not conflict with the environmental laws and regulations approved by the state"), *motion to certify overruled*, 46 Ohio St. 3d 709, 546 N.E.2d 944 (1989).

Hence, even where state statutes have prohibited local regulation that interferes with a state regulatory scheme, local regulation is not totally preempted; rather, it must be determined whether the local regulation has the prohibited effect. *See Set Products, Inc. v. Bainbridge Township Board of Zoning Appeals*, 31 Ohio St. 3d 260, 510 N.E.2d 373 (1987) (the power of townships to enact zoning resolutions to regulate surface mining has not been preempted by state laws providing for regulation of mining by the Ohio Department of Natural Resources); *Hulligan v. Columbia Township Board of Zoning Appeals*, 59 Ohio App. 2d 105, 392 N.E.2d 1272 (Lorain County 1978) (the purposes of local zoning and Ohio EPA regulations are distinct but harmonious; compliance with Ohio EPA regulation of a sanitary landfill does not excuse compliance with local zoning); *North Sanitary*

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[4] This provision, in nearly identical terms, now appears at R.C. 3734.05(E)(3).

Landfill, Inc. v. Board of County Commissioners, 52 Ohio App. 2d 167, 172, 369 N.E.2d 17, 21 (Montgomery County 1976) ("[w]hen different laws are adopted by a common authority, the initial presumption is that each relates to a different matter and that they are not incompatible or inconsistent"; Ohio EPA authority over refuse disposal systems does not preempt county authority to approve or disapprove such systems); *Columbia Township Trustees v. Williams*, 11 Ohio Op. 3d 233 (Ct. App. Franklin County 1976) (local zoning powers are not incompatible with the power of Ohio EPA to protect the environment, and the Director of Environmental Protection should consider local zoning in regulating solid waste facilities). *See generally* 1990 Op. Att'y Gen. No. 90-081 at 2-348 (discussing questions of state law preemption of local zoning authority and stating: "Where the statutory language is unclear, the question is resolved by examining whether the purposes of zoning are incompatible or inconsistent with the purposes of the other statutory scheme involved"); 1985 Op. Att'y Gen. No. 85-053, at 2-199 ("township zoning and DNR regulation of urban sediment pollution may coexist because they serve different purposes"). *But see, e.g., City of Eastlake v. Ohio Board of Building Standards*, 66 Ohio St. 2d 363, 422 N.E.2d 598 (discussing the test for determining whether an ordinance conflicts with general laws and concluding that a municipal ordinance imposing more restrictive standards of construction than mandated by state statute is in conflict with general laws), *cert. denied*, 454 U.S. 1032 (1981). *See generally Johnson's Markets, Inc. v. New Carlisle Department of Health*, 58 Ohio St. 3d 28, 567 N.E.2d 1018 (1991).

R.C. 6109.07(B) prohibits the construction, installation, or substantial change of a public water system except in accordance with plans approved by the Director of Environmental Protection. The need for such approval does not, by its terms, preclude compliance with a township fire code. *See generally Shipman v. Lorain County Board of Health*, 64 Ohio App. 2d 228, 414 N.E.2d 430 (Lorain County 1979); Op. No. 88-051, at 2-228 n. 2.

VI. Weighing and Balancing the Interests of the County and the Township

The General Assembly has, in R.C. Chapter 6103, delegated certain powers with respect to water supplies to boards of county commissioners. Such powers are subject to regulation and approval by the Ohio EPA under R.C. Chapter 6109. The General Assembly has also delegated certain powers with respect to water supplies for firefighting purposes to townships under R.C. 505.373. No statute directly addresses the question whether a county acting under R.C. Chapter 6103 must comply with provisions adopted under R.C. 505.373. It appears, accordingly, on the basis of the authorities discussed above, that, when a county installs water system improvements in an unincorporated area of the county under R.C. Chapter 6103 and in accordance with plans approved by the Director of Environmental Protection, the county must make a reasonable effort to comply with provisions of a township fire code that affect water system improvements. If, after making a reasonable effort, the county determines that it is unable to comply with provisions of the township fire code, then there must be a weighing and balancing of the interests of the township and the county to determine the extent to which the county is required to comply with the township fire code. This conclusion, which is based on relevant case law, requires that the question of compliance be determined on a case-by-case basis. It is impossible to perform the balancing function in a formal opinion of the Attorney General because of the need to make findings of fact.

VII. Conclusion

On the basis of the discussion set forth above, it is my opinion, and you are hereby advised, as follows:

1. There is no statutory requirement for township approval of water supply improvements prior to their installation by the county pursuant to R.C. Chapter 6103.

2. Pursuant to Ohio case law, when a county installs water system improvements in an unincorporated area of the county under R.C. Chapter 6103, the county must make a reasonable effort to comply with provisions of a township fire code that affect water system improvements.

3. If, after making a reasonable effort, the county determines that it is unable to comply with provisions of a township fire code as it installs water system improvements under R.C. Chapter 6103, then there must be a weighing and balancing of the interests of the township and the county to determine the extent to which the county is required to comply with the township fire code.

4 It is impossible to use an opinion of the Attorney General to perform the function of weighing and balancing the interests of various governmental entities in carrying out their regulatory schemes because that function requires findings of fact.