September 21, 1999

OPINION NO. 99-050

The Honorable David P. Joyce
Geauga County Prosecuting Attorney
Courthouse Annex
231 Main Street
Chardon, Ohio 44024

Dear Prosecutor Joyce:

You have requested an opinion whether R.C. 4513.221(E)(4) authorizes a board of township trustees to enact a regulation prohibiting the use of engine retarders on motor vehicles within the unincorporated area of the township. By way of background, you have stated:

> On February 17, 1998, the Board of Trustees of Parkman Township, Geauga County, Ohio unanimously passed Resolution 98-35 prohibiting the use of Engine Retarders, including so-called "Jake Brakes" in designated, populated parts of the Township…. From my understanding, Jake brakes (so named for the Jacobs Company, which manufactures the device) are diesel engine retarders which may be used in conjunction with traditional friction brakes, at the truck driver's discretion. When employed, these engine retarders produce an exceedingly loud noise.[1] (Footnote added.)

It is a fundamental principle that boards of township trustees possess only those powers expressly delegated to them by the General Assembly, and such powers as may be necessarily implied in order to exercise an express power. *Trustees of New London Township v. Miner,* 26

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[1] We have been informed that, in order to keep the brakes on a large truck cool and operating optimally, an engine retarder can be used to decrease the truck's rate of speed. Generally speaking, an engine retarder is a device that consists of a valve positioned within an internal combustion engine that temporarily reduces or stops the engine's exhaust gases from exiting through the exhaust system. When the valve is partially or completely closed exhaust gases exert back pressure on the truck's engine. The resulting compression of exhaust gases on the truck's engine slows the engine and correspondingly reduces the truck's rate of speed.

Ohio St. 452, 456 (1875); *see, e.g., Yorkavitz v. Board of Township Trustees*, 166 Ohio St. 349, 142 N.E.2d 655 (1957). Accordingly, a board of township trustees may enact a regulation prohibiting the use of engine retarders on motor vehicles within the unincorporated area of the township so long as the board has been conferred such authority by the General Assembly, whether expressly or by necessary implication.

The General Assembly has not conferred upon a board of township trustees general authority to regulate the flow of motor vehicle traffic on public roads located within the unincorporated area of the township. 1978 Op. Att'y Gen. No. 78-021 at 2-49. R.C. 505.17(A) does, however, grant a board of township trustees the power to regulate internal combustion engine noise within the township's territory. R.C. 505.17(A) provides, in pertinent part:

> Except in a township or portion thereof that is within the limits of a municipal corporation, the board of township trustees may make such regulations and orders as are necessary to control passenger car, motorcycle, and internal combustion engine noise, as permitted under section 4513.221 of the Revised Code…. All such regulations and orders shall be subject to the limitations, restrictions, and exceptions in sections 4511.01 to 4511.76 and 4513.02 to 4513.37 of the Revised Code.

R.C. 4513.221, in turn, lists the ways in which a board of township trustees may regulate internal combustion engine noise in the unincorporated area of the township. In particular, R.C. 4513.221(E)(1) and (4) provide as follows:

> A board of county commissioners of any county may regulate noise from passenger cars, motorcycles, or other devices using internal combustion engines in the unincorporated area of the county, and a board of township trustees may regulate such noise in the unincorporated area of the township, in any of the following ways:
>
> (1) By prohibiting operating or causing to be operated any motor vehicle, agricultural tractor, motorcycle, all-purpose vehicle, or snowmobile not equipped with a factory-installed muffler or equivalent muffler in good working order and in constant operation.
>
> ….
>
> (4) By prohibiting racing[2] the motor of any vehicle described in division (E)(1) of this section in such a manner that the exhaust system emits a

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[2] "[R]acing," as used in R.C. 4513.221(E)(4), is the gerund of the transitive verb "race," which means "to cause (an engine) to run at high speed with the gears disengaged." *Webster's New World Dictionary* 1169 (second college ed. 1986). *See generally* R.C. 1.42 ("[w]ords and

> loud, cracking, or chattering noise unusual to its normal operation. (Footnote added.)

The vehicles described in R.C. 4513.221(E)(1) include motor vehicles,[3] agricultural tractors, motorcycles, all-purpose vehicles, and snowmobiles. Accordingly, the plain language of R.C. 4513.221(E)(4) clearly and unequivocally authorizes a board of township trustees to enact a regulation prohibiting the racing of any vehicle's motor in such a manner that the exhaust system emits a loud, cracking, or chattering noise unusual to its normal operation.

Where the wording of a statute is clear and unambiguous, the statute is to be applied, not interpreted. *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five). Therefore, if a board of township trustees determines that the use of an engine retarder on a motor vehicle causes the vehicle's motor to race in such a manner as to cause the exhaust system

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phrases shall be read in context and construed according to the rules of grammar and common usage").

[3] As used in R.C. Chapters 4511 and 4513, the term "[m]otor vehicle" is defined as follows:

> "Motor vehicle" means *every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires*, except motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed of twenty-five miles per hour or less, threshing machinery, hay-baling machinery, agricultural tractors and machinery used in the production of horticultural, floricultural, agricultural, and vegetable products, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less. (Emphasis added.)

R.C. 4511.01(B); *see also* R.C. 4511.01(A) (as used in R.C. Chapters 4511 and 4513, "'[v]ehicle' means every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except motorized wheelchairs, devices moved by power collected from overhead electric trolley wires, or used exclusively upon stationary rails or tracks, and devices other than bicycles moved by human power").

to emit a loud, cracking, or chattering noise unusual to its normal operation, the board may enact a regulation prohibiting the use of engine retarders on motor vehicles within the unincorporated area of the township.

Whether an engine retarder on a motor vehicle causes the vehicle's motor to race in such a manner as to cause the exhaust system to emit a loud, cracking, or chattering noise unusual to its normal operation presents a question of fact that cannot be resolved by way of a formal opinion of the Attorney General. *See* notes one and two, *supra*. *See generally* 1991 Op. Att'y Gen. No. 91-016 at 2-82 n.2 ("[t]he opinion-rendering function of the Attorney General is not an appropriate forum for making findings of fact"). Instead, this determination must be made at the local level by the board of township trustees. *See generally* 1983 Op. Att'y Gen. No. 83-057 at 2-232 (the Attorney General's "office is not equipped to serve as a fact-finding body; that function may be served by [the office of the prosecuting attorney] or, ultimately, by the judiciary"). Such determination by the board of township trustees, however, must be reasonable. *See generally State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39, 40 (1918) ("[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty").

In conclusion, it is my opinion, and you are hereby advised that, pursuant to R.C. 505.17(A) and R.C. 4513.221(E)(4), a board of township trustees may enact a regulation prohibiting the use of engine retarders on motor vehicles within the unincorporated area of the township if the board reasonably determines that the use of an engine retarder on a motor vehicle causes the vehicle's motor to race in such a manner as to cause the exhaust system to emit a loud, cracking, or chattering noise unusual to its normal operation.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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Geauga County Prosecuting Attorney
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SYLLABUS: 99-050

Pursuant to R.C. 505.17(A) and R.C. 4513.221(E)(4), a board of township trustees may enact a regulation prohibiting the use of engine retarders on motor vehicles within the unincorporated area of the township if the board reasonably determines that the use of an engine retarder on a motor vehicle causes the vehicle's motor to race in such a manner as to cause the exhaust system to emit a loud, cracking, or chattering noise unusual to its normal operation.