

OPINION NO. 98-014**Syllabus:**

1. A nonchartered village may not donate real property to a township for the improvement or expansion of a township fire department that serves the village.

2. Pursuant to the powers of local self-government conferred upon it by Ohio Const. art. XVIII, § 3, a nonchartered village may, for such consideration as it deems proper, convey or lease to a township for the improvement or expansion of a township fire department that serves the village real property that is not needed for any municipal purpose. However, when a nonchartered village exercises its powers of local self-government to convey or lease real property to a township, the village must comply with those state statutes that address procedural matters of local self-government.
3. Pursuant to R.C. 721.01, a nonchartered village may, for such consideration as it deems proper, convey or lease to a township for the improvement or expansion of the township fire department that serves the village real property that is not needed for any municipal purpose, provided the conveyance or lease is executed in accordance with the provisions of R.C. 721.01-26.

**To: Thomas F. Grennan, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Betty D. Montgomery, Attorney General, March 10, 1998**

You have requested an opinion regarding the authority of a nonchartered village to convey real property to a township that provides fire protection to the village. By way of background, you have stated that the township is preparing a tax levy for purposes of expanding the township fire department, which is currently located on property owned by the village. The village also owns additional property adjacent to the property on which the township fire department is located. The township would like to purchase the adjacent property for the expansion of the township fire department. The village is willing to donate the property to the township, however. Consequently, you wish to know whether a nonchartered village may donate real property to a township for the improvement or expansion of a township fire department that serves the village, and if not, whether the village may lease the property to the township for ninety-nine years at one dollar per year.

Your specific inquiry requires an examination of the authority of a village to dispose of real property that is no longer needed for municipal purposes. Pursuant to the provisions of Ohio Const. art. XVIII, a village is authorized to govern its own affairs. In this regard, Ohio Const. art. XVIII, § 3, states: "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."¹

It has been concluded that the authority of a village to exercise the powers of local self-government conferred by Ohio Const. art. XVIII, § 3 includes the power to convey or lease real property no longer needed for any municipal purpose. See *Young v. City of Dayton*, 12 Ohio St. 2d 71, 72, 232 N.E.2d 655, 656 (1967); *Babin v. City of Ashland*, 160 Ohio St. 328, 337, 116 N.E.2d 580, 586 (1953); *City of Steubenville ex rel. Blackburn v. Targoss*, 3 Ohio App. 2d 21, 27, 209 N.E.2d 486, 492 (Jefferson County 1965); *Hugger v. City of Ironton*, 83 Ohio App. 21, 28, 82 N.E.2d 118, 121 (Lawrence County 1947), *appeal dismissed*, 148 Ohio St. 670, 76 N.E.2d 397 (1947). As stated in *State ex rel. Leach v. Redick*, 168 Ohio St. 543, 157 N.E.2d 106 (1959) (syllabus, paragraph one):

¹Under Ohio Const. art. XVIII, § 1 and R.C. 703.01, municipal corporations are classified as villages and cities.

Article XVIII of the Ohio Constitution, conferring the power of local self-government upon municipalities, authorizes a municipal corporation to convey or lease property owned by it and not needed for municipal purposes, and such conveyance or lease may be made in accordance with the provisions of a charter adopted by such municipality.

A nonchartered village is not bound by state statutes that deal with the substantive right of a village to dispose of real property. *See* 1985 Op. Att'y Gen. No. 85-089 at 2-375; *see also Northern Ohio Patrolmen's Benevolent Ass'n v. City of Parma*, 61 Ohio St. 2d 375, 378, 402 N.E.2d 519, 522 (1980); *Village of Bellville v. Beal*, 7 Ohio App. 3d 291, 292, 455 N.E.2d 683, 685 (Richland County 1982). Therefore, pursuant to the powers of local self-government conferred upon it by Ohio Const. art. XVIII, § 3, a nonchartered village may convey or lease to a township real property that is no longer needed for any municipal purpose.

However, a nonchartered village must comply with state statutes that address procedural matters of local self-government. *See Northern Ohio Patrolmen's Benevolent Ass'n v. City of Parma*; 1985 Op. Att'y Gen. No. 85-089 at 2-375. "[A] procedural matter of local self-government has to do with the organization of local government and the methods to be utilized by a municipality in exercising its substantive powers." 1985 Op. Att'y Gen. No. 85-089 at 2-375; *see Northern Ohio Patrolmen's Benevolent Ass'n v. City of Parma*, 61 Ohio St. 2d at 382, 402 N.E.2d at 524. Accordingly, when a nonchartered village exercises its powers of local self-government conferred upon it by Ohio Const. art. XVIII, § 3 to convey or lease to a township real property that is no longer needed for any municipal purpose, the village must comply with those state statutes that address procedural matters of local self-government.

The power of a village to convey or lease real property is also reflected in R.C. 721.01, which provides as follows:

Municipal corporations have special power to sell or lease real estate or to sell personal property belonging to the municipal corporation, when such real estate or personal property is not needed for any municipal purpose. Such power shall be exercised in the manner provided by sections 721.01 to 721.26, inclusive, of the Revised Code.

A nonchartered village, therefore, is also authorized by R.C. 721.01 to convey or lease real property to a township, provided the property is no longer needed for any municipal purpose and the conveyance or lease is executed in accordance with the provisions of R.C. 721.01-26.

A nonchartered village's power to dispose of real property no longer needed for any municipal purpose is not unlimited, however. In the absence of a statute to the contrary, a village may not dispose of real property by way of donation. *See City of Cleveland v. Public Library Board*, 94 Ohio St. 311, 114 N.E. 247 (1916); *City of Steubenville ex rel. Blackburn v. Targoss*; *cf.* R.C. 715.21 (a municipal corporation may donate real property to the state for the erection of an armory). *See generally* 1988 Op. Att'y Gen. No. 88-039 at 2-190 n.3 (a municipal corporation may not donate funds to the county). Any conveyance or lease of a village's real property to another political subdivision must be made for consideration. The conveyance or lease may be made for consideration other than money when the conveyance or lease serves a public purpose of interest and advantage to the inhabitants of the village. *See City of Cleveland v. Public Library Board*;² *City of Steubenville ex rel. Blackburn v. Targoss*.

²One might take the position that more recent decisions of the Ohio Supreme Court under the lending aid and credit provisions of article VIII, §§ 4 and 6 of the Ohio Constitution have

See generally 1988 Op. Att'y Gen. No. 88-039 at 2-190 n.3 ("the public purpose limitation is commonly recognized to be a doctrine based on due process of law ... that the taking of one's money by taxation is lawful only when the expenditure of those monies fulfills a public purpose. Viewed in this light, the public purpose is the consideration which supports the expenditures. Thus the municipality may not simply donate funds to the county, but must achieve some public purpose by making the funds available" (quoting 1977 Op. Att'y Gen. No. 77-049 at 2-175)); 1957 Op. Att'y Gen. No. 1150, p. 545, at 549 ("the city of Cleveland may dispose of municipal property no longer needed for public use upon such terms and conditions as it sees fit, providing, of course, its officials act in good faith").

Based on the principles discussed above, a conveyance or lease of real property from a village to a township must be supported by some form of consideration. The requirement that consideration be provided appears to be, in essence, a requirement that the conveyance or lease serve a public purpose that benefits the municipal corporation. *See, e.g., Babin v. City of Ashland; City of Steubenville ex rel. Blackburn v. Targoss.* *See generally* 1974 Op. Att'y Gen. No. 74-048 at 2-213 ("a municipality may use public funds to pay a reward for information leading to the apprehension and conviction of suspected felons in the community if its legislative authority determines that such payments serve a public municipal purpose"). Absent such consideration, a village may not convey or lease real property to a township.³ Accordingly, it is our conclusion that a nonchartered village may not donate real

obviated the need for consideration when one political subdivision wishes to transfer public property to another political subdivision. *See generally, e.g., Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968); *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955); *State ex rel. Kauer v. Defenbacher*, 153 Ohio St. 268, 91 N.E.2d 512 (1950). Nonetheless, the court has not explicitly overruled its decision in *City of Cleveland v. Public Library Board*, 94 Ohio St. 311, 114 N.E. 247 (1916), nor has the court otherwise indicated its disagreement with decisions of the lower courts that have endorsed the need for consideration in these types of transactions. We believe, therefore, that the prudent approach is to advise that adequate consideration must be provided to the village for the real property. In this instance the additional benefits that the village will receive as a consequence of the township fire department's expansion may be adequate consideration for the real property that the village conveys or leases to the township. *See note three, infra.*

³Our research discloses no limitation upon a village's discretion in determining the length of time property may be leased or the amount to be paid under a conveyance or lease, except that such discretion must be exercised in a reasonable manner. *See State ex rel. Gordon v. Rhodes*, 156 Ohio St. 81, 97, 100 N.E.2d 225, 233 (1951) (the determination of what constitutes a public municipal purpose made by the legislative authority of a municipal corporation "will not be rejected or reversed by the court unless manifestly arbitrary or unreasonable"). *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"); 1980 Op. Att'y Gen. No. 80-028 (the lease of township property may not be for a term of unreasonable length). Because the Attorney General has no authority to exercise on behalf of another governmental entity discretion that has been bestowed upon that entity, 1986 Op. Att'y Gen. No. 86-076 at 2-422, we are unable, in this opinion, to make the determination whether a lease of village real property to a township for ninety-nine years at one dollar per year is a reasonable exercise of discretion by the village's legislative authority. *But see generally* 1941 Op. Att'y Gen. No. 3802, p. 393 (a township may lease its real property; however, a lease of ninety-nine years is unquestionably unreasonable). Rather, any exercise of discretion in

property to a township for the improvement or expansion of a township fire department that serves the village, but it may, pursuant to the powers of local self-government conferred upon it by Ohio Const. art. XVIII, § 3, or, alternatively, the provisions of R.C. 721.01, convey or lease to a township for that purpose and for such consideration as it deems proper real property that is not needed for any municipal purpose.⁴

Although it has been determined that a nonchartered village is authorized to convey or lease real property to a township, it also must be determined whether a township is authorized to purchase or lease real property from a village for the expansion or improvement of the township fire department. A board of township trustees, as a creature of statute, has only those powers that the General Assembly has either expressly or by necessary implication conferred upon it. *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875).

regard to the length of time property may be leased or the amount to be paid under a lease remains with a village's legislative authority. See 1980 Op. Att'y Gen. No. 80-028 at 2-117.

Similarly, it is inappropriate to use the opinion-rendering function to determine what constitutes adequate consideration for the property in question. See generally 1987 Op. Att'y Gen. No. 87-082 at 2-540 (syllabus, paragraph three) ("R.C. 109.14 does not authorize the Attorney General to decide questions of fact by means of an opinion"); 1986 Op. Att'y Gen. No. 86-076 at 2-422 (it is inappropriate "to use the opinion-rendering function to make findings of fact or determinations as to the rights of particular individuals"). However, as noted above, the expansion of the township fire department upon the real property that is conveyed or leased by the village to the township may result in the provision of additional or more efficient fire protection services to the village and its residents. It is entirely appropriate, therefore, for the village legislative authority to evaluate the worth of these enhanced fire protection services and determine whether they will constitute adequate consideration for the conveyance or lease of this real property.

⁴In addition to R.C. 721.01 and the powers of local self-government conferred upon it by Ohio Const. art. XVIII, § 3, a nonchartered village may dispose of real property pursuant to R.C. 723.121, which provides, in relevant part:

The legislative authority of any municipal corporation may convey the fee simple estate or any lesser estate or interest in, or permit the use of, for such period as it shall determine, any lands owned by such municipal corporation and acquired or used for ... public grounds ... or in connection with any such purposes or as incidental to the acquisition of land for any of such purposes, provided that it shall determine, and enter its determination in the minutes of its proceedings, that the property or interest so to be conveyed or be permitted to be used is not needed by the municipal corporation for any of such purposes.

Accordingly, if the real property that the village proposes to lease to the township constitutes public grounds that are no longer needed by the village for any of the purposes listed in R.C. 723.121, the legislative authority of the village is authorized to lease such property to the township in accordance with the provisions of R.C. 723.121. See generally *Marshall v. City of Portsmouth*, 11 Ohio Misc. 123, 124, 229 N.E.2d 665, 666 (C.P. Scioto County 1967) ("[g]iving the term 'public grounds' its widest meaning, it might be concluded that any ground owned by the public would be within the statute. That such a definition is improper is seen in the Supreme Court decisions wherein the grounds must be open to the public travel and the public invited to use it"). Since you have not indicated to the contrary, it is assumed, for purposes of this opinion, that the real property in question does not constitute "public grounds" for purposes of R.C. 723.121.

Pursuant to R.C. 505.37(A), a board of township trustees "shall provide for the care and maintenance of fire equipment, and, for such purposes, may purchase, lease, or *construct* and maintain necessary buildings." (Emphasis added.)

The language of R.C. 505.37(A) unequivocally mandates that a board of township trustees provide for the care and maintenance of township fire equipment. *See generally State ex rel. Village of Botkins v. Laws*, 69 Ohio St. 3d 383, 385, 632 N.E.2d 897, 900 (1994) ("[i]t is axiomatic that when used in a statute, the word shall denotes that compliance with the commands of that statute is mandatory unless there appears a clear and unequivocal legislative intent that it receive a construction other than its ordinary usage"). The statute further authorizes a board of township trustees to either purchase, lease, or construct buildings for the township fire department. Because no other statute addresses a township's duty to provide for the care and maintenance of township fire equipment, it is reasonable to conclude that, in order to discharge this duty, the power conferred upon a board of township trustees to construct a building to provide for the care and maintenance of township fire equipment must inevitably include the implied authority to acquire ownership of, or a tenancy in, the real property on which the building is to be constructed. As stated in 1946 Op. Att'y Gen. No. 1190, p. 651, at 654, "[t]he erection of a public building would certainly involve the acquisition of a site therefor, and therefore the power to provide such site seems necessarily to be implied." *See* 1925 Op. Att'y Gen. No. 2803, p. 625, at 626 ("[i]t is believed reasonable to conclude that the county commissioners in the event that there is no site which contains a building suitable to purchase for such purpose, and in the event that it is essential to have such a building to house such tools, that the commissioners under such circumstances would be justified in purchasing real estate on which to erect a building, if in its judgment and discretion the same is necessary and essential to properly preserve the tools").

A board of township trustees thus is authorized to purchase or lease the real property on which the board intends to construct a building to provide for the care and maintenance of the township's fire equipment. *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"); R.C. 505.39 (a board of township trustees may levy a sufficient tax to provide buildings and sites for fire apparatus and appliances); R.C. 505.40 ("[n]o bonds shall be issued by the board of township trustees for the purpose of providing fire apparatus and appliances, buildings or sites therefor ... unless approved by vote of the people in a township ... in the manner provided by section 133.18 of the Revised Code"). *See generally* 1956 Op. Att'y Gen. No. 6909, p. 597 (syllabus) ("[a] board of township trustees, desiring to construct a fire house under authority of Section 505.37, Revised Code, may expend public funds on such construction when the land on which the building is to be erected is held under a long-term lease, extending or renewable for the expected life of the building"). Accordingly, pursuant to R.C. 505.37, a board of township trustees may purchase or lease real property from a village for the improvement or expansion of the township fire department.

In light of the aforementioned authorities, it is our conclusion that, pursuant to the powers of local self-government conferred upon it by Ohio Const. art. XVIII, § 3, a nonchartered village may, for such consideration as it deems proper, convey or lease to a township for the improvement or expansion of a township fire department that serves the village real property that is not needed for any municipal purpose. However, when a nonchartered village exercises its powers of local self-government to convey or lease real property to a township, the village must comply with those state statutes that address procedural matters of local self-government. Additionally, pursuant to R.C. 721.01, a nonchartered village may, for such consideration as it deems proper, convey or lease to a township for the improvement or expansion of the township fire department that serves the

village real property that is not needed for any municipal purpose, provided the conveyance or lease is executed in accordance with the provisions of R.C. 721.01-.26.

It is, therefore, my opinion, and you are advised, that:

1. A nonchartered village may not donate real property to a township for the improvement or expansion of a township fire department that serves the village.
2. Pursuant to the powers of local self-government conferred upon it by Ohio Const. art. XVIII, § 3, a nonchartered village may, for such consideration as it deems proper, convey or lease to a township for the improvement or expansion of a township fire department that serves the village real property that is not needed for any municipal purpose. However, when a nonchartered village exercises its powers of local self-government to convey or lease real property to a township, the village must comply with those state statutes that address procedural matters of local self-government.
3. Pursuant to R.C. 721.01, a nonchartered village may, for such consideration as it deems proper, convey or lease to a township for the improvement or expansion of the township fire department that serves the village real property that is not needed for any municipal purpose, provided the conveyance or lease is executed in accordance with the provisions of R.C. 721.01-.26.