OPINION NO. 82-037

Syllabus:

1. Pursuant to section three (uncodified) of Am. S.B. 491, 112th Gen. A. (1978) (eff. July 13, 1978), if the voters of a township have approved a tax levy under R.C. 5705.19(I) prior to July 13, 1978, and the board of township trustees has appropriated funds from such levy to a fire department or fire fighting company to purchase ambulance equipment or to provide ambulance or emergency medical services, the board of township trustees may continue to use the funds for such purpose for the duration of the period of the levy.

2. Pursuant to its power to fix the compensation of township employees, a board of township trustees may provide uninsured or underinsured motorist coverage within an automobile or motor vehicle liability insurance policy as a fringe benefit for those township employees whose compensation is fixed by the board. A board of township trustees is without authority, however, to provide such insurance for township officers. (1971 Op. Att'y Gen. No. 71-034 and 1967 Op. Att'y Gen. No. 67-008, modified.)

To: W. Duncan Whitney, Delaware County Prosecuting Attorney, Delaware, Ohio
By: William J. Brown, Attorney General, May 28, 1982

I have before me your request for my opinion concerning the authority of a township to expend funds generated by a special tax levy under R.C. 5705.19 and also to purchase insurance for township vehicles.

In regard to your first question, you indicated that the levy was passed in 1977, pursuant to R.C. 5705.19(I). The purpose of the levy, as stated in the

resolution passed by the board of trustees and subsequently stated on the ballot, is as follows: "[f]or the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time or volunteer firemen or [fire fighting] companies to operate the same. . . ." It is my understanding that there was no additional language in the resolution or on the ballot concerning the purpose for which the tax was to be levied. You ask whether the township may use part of the revenue generated by the levy to purchase ambulance equipment or to provide ambulance and emergency medical services operated by a fire department or a fire fighting company.

I note, initially, that R.C. 5705.19 states, with certain exceptions which are not here applicable, that the resolution for a special levy under that section "shall be confined to a single purpose." Further, R.C. 5705.10 requires that "[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made." R.C. 5705.10 also specifies that "[m]oney paid into any fund shall be used only for the purposes for which such fund is established." Thus, as a general rule, where the particular expenditures which a taxing authority wishes to make are not specifically enumerated in the statement of purpose for the levy, whether the proposed expenditures may be made depends upon whether such uses come within the purpose as stated in the resolution and on the ballot. See 1962 Op. Att'y Gen. No. 2997, p. 337 (syllabus, paragraph two). With respect to whether the purpose of the levy in question includes the purchase of ambulance equipment or the provision of ambulance and emergency medical services, the legislative history behind R.C. 5705.19(I) is significant.

Prior to its amendment in July, 1978, R.C. 5705.19(I) permitted the taxing authority of a subdivision to request that the voters approve a levy for the following purpose: "providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time, or volunteer firemen or fire fighting companies to operate the same." The language of this provision was adopted verbatim by the trustees and voted upon by the electorate in your situation. Prior to July, 1978, the purpose stated in R.C. 5705.19(I) did not expressly include ambulance or emergency medical equipment or services. Until August 30, 1974, however, the use of revenue derived from a levy authorized under R.C. 5705.19(I) for the purpose of ambulance services was permissible. See 1969 Op. Att'y Gen. No. 69-123, overruled by 1978 Op. Att'y Gen. No. 78-014 as a result of the enactment of R.C. 5705.19(U). In 1974 the General Assembly enacted R.C. 5705.19(U), 1974 Ohio Laws, vol. II, 1151 (Am. Sub. H.B. 1173, eff. Aug. 30, 1974), which provided express authority for special levies "[f]or providing ambulance service, emergency medical service, or both," and thereby negated any implied power to use the proceeds of a levy under R.C. 5705.19(I) for such purpose. See 1978 Op. Att'y Gen. No. 78-014, overruled by 1979 Op. Att'y Gen. No. 79-072 as a result of Am. S.B. 491.

In 1977-78 Ohio Laws, vol. I, 1293 (Am. S.B. 491, eff. July 13, 1978), the General Assembly again amended R.C. 5705.19 to add at the end of division (I), "or to purchase ambulance equipment or to provide ambulance or emergency medical services operated by a fire department or fire fighting company." The legislature further provided in section three (uncodified) of Am.S.B. 491 as follows:

> In any subdivision in which the voters have approved the levy of tax under division (I) of section 5705.19 of the Revised Code prior to the effective date of this act and where the taxing authority has appropriated funds raised by a tax levied under that division to a fire department or fire fighting company to provide ambulance or emergency medical services or both, the taxing authority of the subdivision may continue to use the taxes levied under that division for that purpose after the effective date of this act for the duration of the period for which the levy was approved by the voters.

This portion of Am. S.B. 491 expressly authorizes a taxing authority to continue under certain circumstances to use funds raised pursuant to a levy imposed under

R.C. 5705.19(I) prior to this amendment for the provision of ambulance or emergency medical services, two of the items added to that division by the July, 1978 amendment. Pursuant to section three (uncodified) of Am. S.B. 491 where the voters of a subdivision have approved a tax levy under R.C. 5705.19(I) prior to July 13, 1978, and where the taxing authority has appropriated funds from such levy to a fire department or fire fighting company to provide ambulance or emergency medical services, the taxing authority may continue to use the funds for such purposes for the duration of the period of the levy.

I note, however, that section three (uncodified) of Am. S.B. 491 does not specify the purchase of ambulance equipment as a permissible expenditure of funds generated by a tax levied under R.C. 5705.19(I) prior to its amendment in July, 1978. Yet, the purchase of ambulance equipment is expressly mentioned as a distinct item in addition to ambulance or emergency medical services in that portion of Am. S.B. 491 which amends R.C. 5705.19(I). It is, therefore, unclear whether the General Assembly intends that funds raised by a tax levied under R.C. 5705.19(I) prior to July, 1978 may continue to be used to purchase ambulance equipment. Application of the rule of statutory construction, expressio unius est exclusio alterius, would require the conclusion that such funds may not be used to purchase equipment, since the General Assembly failed to specifically mention such use in section three but did so elsewhere in Am. S.B. 491. This very literal interpretation of section three, however, in my opinion would produce an unreasonable result, not feasible of execution. Under such interpretation, a subdivision would be authorized to continue to use the levy funds to render ambulance service but would be prohibited from using such funds to purchase the equipment necessary to do so. In accordance with R.C. 1.47 (C) and (D), I shall, therefore, presume that the General Assembly intended that for the purpose of section three (uncodified) of Am. S.B. 491 the authority to continue to use funds raised by a tax levied under R.C. 5705.19(I) prior to July, 1978 to provide ambulance or emergency medical services includes the authority to continue to use such funds to purchase necessary ambulance equipment.

You also ask whether a board of township trustees may "purchase uninsured motorist and under insured bodily injury liability coverage for [township] vehicles." As creatures of statute, townships have only those powers expressly granted by statute or necessarily implied therefrom. Yorkavitz v. Board of Township Trustees, 166 Ohio St. 349, 142 N.E.2d 655 (1957). Whether a board of township trustees may purchase the types of insurance described in your request depends, therefore, on whether such authority is granted or necessarily implied by statute.

R.C. 3937.18 describes uninsured motorist coverage as "coverage for bodily injury or death. . .for the protection of persons insured [under an automobile liability or motor vehicle liability policy of insurance] who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom." For purposes of R.C. 3937.181, which discusses the provision of "underinsured motorist coverage" generally, that term is described as:

> coverage in an automobile or motor vehicle liability policy protecting an insured against loss for bodily injury, sickness, or disease, including death, where the limits of coverage available for payment to the insured under all bodily injury liability bonds and insurance policies covering persons liable to the insured are insufficient to pay the loss up to the insured's uninsured motorist coverage limits.

R.C. 9.83, which specifically authorizes a township to purchase certain insurance for its officers and employees, states that a township may procure certain motor vehicle liability insurance for its officers and employees. Both uninsured and underinsured motorist coverage in an automobile or motor vehicle liability policy are designed to compensate the insured for bodily injury, sickness, disease or death for which a third party is liable to the insured. Such coverage does not, therefore, constitute liability insurance. See Motorists Mutual Insurance Co. v. Speck, 59 Ohio App. 2d 224, 393 N.E.2d 500 (Summit County 1977). Thus, R.C. 9.83 does not authorize a township to purchase either type of coverage since that statute authorizes the procurement of liability insurance only.

Although there is no express statutory authority for a township to purchase uninsured or underinsured motorist coverage as part of an automobile or motor vehicle liability policy, a question remains as to whether the trustees have the implied authority to purchase such insurance.

A board of township trustees is authorized to fix the compensation of various township employees. See, e.g., R.C. 505.37 (members of volunteer fire company); R.C. 505.75 (township building inspector); R.C. 507.021 (power to employ assistants to township clerk or deputy clerk). Pursuant to its power to employ and compensate its employees, a board of township trustees may also grant fringe benefits to such employees, provided that there are no statutory restrictions on granting such benefit. See Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). Because a fringe benefit is merely something provided at the expense of the employer to induce an employee to continue his employment, Madden v. Bower, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969), the provision of uninsured and underinsured motorist coverage for township employees may properly be characterized as a fringe benefit. See 1981 Op. Att'y Gen. No. 81-061 (fringe benefits for township employees). It is, therefore, necessary to determine whether there are any statutory restrictions on the trustees' authority to provide uninsured and underinsured motorist coverage as a fringe benefit to township employees.

There are no express statutory prohibitions against the trustees' granting of such a benefit. I note, however, that because the general purpose of procuring these types of insurance would be to compensate township employees for bodily injury or death caused by another motorist and occuring while they are driving township vehicles, it is necessary to examine the statutory scheme governing workers' compensation to determine whether it in any way limits the trustees' authority to provide the benefit in question.

Pursuant to Ohio Const. art. II, §35, workers' compensation "shall be in lieu of all other rights to compensation, or damages, for. . .death, injuries, or occupational disease [occasioned in the course of a worker's employment], and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease." The provisions of R.C. Chapter 4123, which govern the workers' compensation system, establish an employer's immunity from liability for death, injuries or occupational disease arising from or in the course of an individual's employment, and void all contracts which attempt to insure or indemnify an employer for such occurrences.

There may be situations, however, where an employee is entitled to recover against a third party in addition to receiving his workers' compensation benefits. Trumbull Cliffs Furnace Co. v. Schachovsky, 111 Ohio St. 791, 796-797, 146 N.E. 306, 308 (1924) ("compensation provided by the Workmen's Compensation Law is in the nature of an occupational insurance, and, like general insurance, cannot be deducted and treated as an offset for claims [against a third party] for damages for wrongful injury or death"). It is the liability of a third party to the employee which is being insured against by uninsured or underinsured motorist coverage. Such liability being separate from that of the employer, I do not believe that Ohio Const. art. II, §35 or R.C. Chapter 4123 prohibits a board of township trustees from purchasing uninsured or underinsured motorist coverage for those township employees whose compensation is fixed by the board. See Bartlett v. Nationwide Mutual Insurance Co., 30 Ohio App. 2d 145, 283 N.E.2d 658 (Franklin County 1972) (R.C. 3937.18(D) precludes an exclusion or reduction in the amount of uninsured motorist coverage because of any workers' compensation benefits payable). I note, however, that because a township has no authority to provide fringe benefits for township officers whose compensation is set by the General Assembly, e.g., trustees (R.C. 505.24), clerk (R.C. 507.09), a township may not provide uninsured or underinsured motorist coverage as a fringe benefit to such officers.

In 1971 Op. Att'y Gen. No. 71-034, I concluded that a board of education could not purchase uninsured motorist coverage as provided in R.C. 3937.18. Similarly, in 1967 Op. Att'y Gen. No. 67-008, one of my predecessors concluded that county commissioners were without authority to purchase uninsured motorist coverage for

its officers and employees. Both opinions were, however, issued prior to the Supreme Court's decision in Ebert. In 1981 Op. Att'y Gen. No. 81-052, I considered the impact of Ebert upon the authority of a board of education to compensate its employees and concluded that a board of education may grant fringe benefits to its employees as part of their compensation, absent any constricting statutory authority. Based upon Op. No. 81-052 and the analysis set forth above, I believe that pursuant to its power to fix compensation, a board of education may provide uninsured motorist coverage for its employees, and to that extent modify Op. No. 71-034.

Op. No. 67-008 concluded that the board of county commissioners had no authority to purchase uninsured motorist coverage for its officers and employees. While I agree, for the reasons stated above, that the county commissioners may not provide uninsured motorist coverage as a fringe benefit for its officers, I believe that an appointing authority at the county level may, pursuant to its authority to fix the compensation of its employees, procure uninsured motorist coverage as a fringe benefit for such employees. See 1981 Op. Att'y Gen. No. 81-082 (dental and eye care benefits for county welfare department employees). I, therefore, modify Op. No. 67-008 as it applies to the purchase of uninsured motorist coverage for county employees.

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

1. Pursuant to section three (uncodified) of Am. S.B. 491, 112th Gen. A. (1978) (eff. July 13, 1978), if the voters of a township have approved a tax levy under R.C. 5705.19(I) prior to July 13, 1978, and the board of township trustees has appropriated funds from such levy to a fire department or fire fighting company to purchase ambulance equipment or to provide ambulance or emergency medical services, the board of township trustees may continue to use the funds for such purposes for the duration of the period of the levy.

2. Pursuant to its power to fix the compensation of township employees, a board of township trustees may provide uninsured or underinsured motorist coverage within an automobile or motor vehicle liability insurance policy as a fringe benefit for those township employees whose compensation is fixed by the board. A board of township trustees is without authority, however, to provide such insurance for township officers. (1971 Op. Att'y Gen. No. 71-034 and 1967 Op. Att'y Gen. No. 67-008, modified.)