August 31, 1998

OPINION NO. 98-032

The Honorable W. Duncan Whitney
Delaware County Prosecuting Attorney
15 West Winter Street
Delaware, Ohio 43015

Dear Prosecutor Whitney:

You have requested an opinion concerning the operation of a countywide 9-1-1 system and a countywide public safety communications system. Specifically, you wish to know the following:

1. Is a countywide 9-1-1 system a countywide public safety communications system, as defined by R.C. 307.63(A)?

2. If a countywide 9-1-1 system constitutes a countywide public safety communications system, as defined by R.C. 307.63(A), is the 9-1-1 system operated in accordance with the provisions of R.C. 307.63(F)?

3. If a countywide 9-1-1 system is expanded into a countywide public safety communications system, as defined by R.C. 307.63(A), is the 9-1-1 system operated by the board of county commissioners or the county sheriff?

4. If a countywide 9-1-1 system is funded by a tax levy adopted pursuant to R.C. 5705.19(BB), may the funds generated by that levy be used to fund a countywide public safety communications system, as defined by R.C. 307.63(A)?

Your first question asks whether a countywide 9-1-1 system is a countywide public safety communications system, as defined by R.C. 307.63(A). Pursuant to R.C. 307.63, a board of county commissioners is authorized to establish and maintain a countywide public safety communications system. *See* 1995 Op. Att'y Gen. No. 95-004 at 2-15 and 2-16. For purposes of R.C. 307.63, a "countywide public safety communications system" is defined as follows:

> "[C]ountywide public safety communications system" means a system of communications facilities, equipment, and services that helps to provide immediate field exchange of police, fire, and emergency medical services information between the county and participating states, political subdivisions, and other public entities, without regard to which jurisdiction holds title to real or personal property used in the system or employs the persons responsible to dispatch emergency personnel using the system.

R.C. 307.63(A).[1] A countywide public safety communications system thus is created and operated by a county to provide immediate field exchange of police, fire, and emergency medical services information between the county and participating political subdivisions. 1995 Op. Att'y Gen. No. 95-004 at 2-16.

Provisions pertaining to the creation and operation of a countywide 9-1-1 system are set forth in R.C. 4931.40-.53. Pursuant to these provisions, a county is authorized to operate and maintain a 9-1-1 system. *See generally State ex rel. DiFrangia v. Trumbull County Bd. of Comm'rs*, 99 Ohio App. 3d 569, 573, 651 N.E.2d 447, 450 (Trumbull County 1994) (a county has "the authority to purchase and maintain the equipment required for a countywide 9-1-1 system"), *appeal dismissed*, 72 Ohio St. 1421, 648 N.E.2d 513 (1995). As used in R.C. 4931.40-.53, "'9-1-1 system' means a system through which individuals can request emergency service using the telephone number 9-1-1." R.C. 4931.40(A). In addition, a county that operates a 9-1-1 system may provide basic or enhanced 9-1-1 service within its territory. *See* R.C. 4931.41(B) ("[a] countywide 9-1-1 system may be a basic or enhanced 9-1-1 system, or a combination of the two"); R.C. 4931.43(B)(2) (the proposal on the implementation of a countywide 9-1-1 system and the final plan adopted by the 9-1-1 planning committee shall specify whether basic or enhanced 9-1-1 service will be provided). The terms "basic 9-1-1" and "enhanced 9-1-1" are defined by R.C. 4931.40(B) and (C), respectively, for purposes of R.C. 4931.40-.53:

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[1] The General Assembly has not enacted a separate definition of the phrase "immediate field exchange of police, fire, and emergency medical services information" for purposes of R.C. 307.63(A). In light of the context in which it appears in R.C. 307.63(A), we interpret it as connoting the instantaneous communication of information between or among individual police, fire, and emergency medical services personnel of the state, political subdivisions, or other public entities, for the purpose or in the course of providing appropriate emergency aid or assistance to persons who have requested that aid or assistance. Thus, a countywide public safety communications system enables police, fire, and emergency medical services personnel of either the same or different political subdivisions to have direct communications with each other for the purpose of coordinating their provision of emergency aid or assistance.

> (B) "Basic 9-1-1" means a 9-1-1 system in which a caller provides information on the nature of and the location of an emergency, and the personnel receiving the call must determine the appropriate emergency service provider to respond at that location.
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> (C) "Enhanced 9-1-1" means a 9-1-1 system in which the telephone network system automatically provides to personnel receiving the call, immediately on answering the 9-1-1 call, information on the location and the telephone number from which the call is being made, and routes the call to emergency service providers that serve the location from which the call is made.

Pursuant to the definitions of "9-1-1 service," "basic 9-1-1," and "enhanced 9-1-1," as used in R.C. 4931.40-.53, it is readily apparent that a countywide 9-1-1 system is a communications system whereby the public can request emergency service. The primary purpose of a countywide 9-1-1 system is to dispatch the appropriate emergency service provider to a location. A countywide 9-1-1 system is not used to provide immediate field exchange of police, fire, and emergency medical services information between the county and other political subdivisions. Accordingly, because a countywide 9-1-1 system is not used to provide immediate field exchange of police, fire, and emergency medical services information between the county and other subdivisions, a countywide 9-1-1 system created and operated pursuant to R.C. 4931.40-.53 is not a countywide public safety communications system, as defined by R.C. 307.63(A).

Your second question asks whether, if a countywide 9-1-1 system constitutes a countywide public safety communications system, as defined by R.C. 307.63(A), is the 9-1-1 system operated in accordance with the provisions of R.C. 307.63(F). As determined above, however, a countywide 9-1-1 system is not a countywide public safety communications system, as defined by R.C. 307.63(A). It is, therefore, unnecessary for us to advise whether a countywide 9-1-1 system is operated in accordance with the provisions of R.C. 307.63(F).

Your third question asks whether, if a countywide 9-1-1 system is expanded into a countywide public safety communications system, as defined by R.C. 307.63(A), is the 9-1-1 system operated by the board of county commissioners or the county sheriff. Resolution of this question requires that we first determine whether a countywide 9-1-1 system may be expanded into a countywide public safety communications system.

It is a general rule that "[c]ounties … may exercise only those powers affirmatively granted by the General Assembly." *Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696, 699 (1993). No provision within the Revised Code states that a county is authorized to expand a countywide 9-1-1 system into a countywide public safety communications system. To the contrary, a review of the provisions authorizing counties to create and operate 9-1-1 systems, R.C. 4931.40-.53, and public safety communications systems, R.C. 307.63, indicates that such authority has not been granted by the General Assembly to counties.

As stated above, countywide 9-1-1 systems and countywide public safety communications systems serve different purposes. A countywide 9-1-1 system is used by the citizens of the county to contact and obtain the services of an emergency service provider, while a countywide public safety communications system is used to provide immediate field exchange of police, fire, and emergency medical services information between the county and other political subdivisions. *See* note one, *supra*. Accordingly, use of a countywide 9-1-1 system to provide immediate field exchange of police, fire, and emergency medical services information between the county and other subdivisions would be for a purpose not contemplated by the General Assembly when it enacted R.C. 4931.40-.53. *See generally Henry v. Central Nat'l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph two) (the primary purpose in the interpretation of statutes is to determine legislative intent). In addition, the use of a countywide 9-1-1 system in such a manner would permit a county to provide immediate field exchange of police, fire, and emergency medical services information between the county and other subdivisions in a manner different than that prescribed by the General Assembly in R.C. 307.63. *See generally Akron Transp. Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493, 497 (1951) ("when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner"); 1987 Op. Att'y Gen. No. 87-050 (determining that a statute that permits a board of township trustees to sell by public auction township property it no longer needs does not permit the sale of such property by any method other than public auction). Finally, county moneys that are intended to be used to finance a countywide 9-1-1 system would be used for a purpose other than to dispatch the appropriate emergency service provider to a location.[2] *See generally State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 363-64, 106 N.E. 41, 45 (1914) (where the expenditure of public moneys is limited by statute, the moneys may only be spent in accordance with the statutory provisions).

Based on the provisions of R.C. 4931.40-.53 and R.C. 307.63, it is our opinion that a county thus lacks statutory authority to use a countywide 9-1-1 system to perform the functions of a countywide public safety communications system. Therefore, a countywide 9-1-1 system created and operated pursuant to R.C. 4931.40-.53 may not be expanded into a countywide public safety communications system, as defined by R.C. 307.63(A).

Your final question asks whether, if a countywide 9-1-1 system is funded by a tax levy adopted pursuant to R.C. 5705.19(BB), may the funds generated by that levy be used to fund a countywide public safety communications system, as defined by R.C. 307.63(A). R.C.

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[2] A county may fund a countywide 9-1-1 system from charges on improved realty, R.C. 4931.51, monthly charges to telephone bills, R.C. 4931.52, proceeds from a tax levy, R.C. 5705.19(BB), or moneys from its general fund, *see* R.C. 5705.09(A); *Porter v. Hopkins*, 91 Ohio St. 74, 84, 109 N.E. 629, 632 (1914).

5705.19(BB) authorizes a county to levy a tax "[f]or the establishment and operation of a 9-1-1 system, as defined in section 4931.40 of the Revised Code." A tax levied by a county pursuant to R.C. 5705.19(BB) for the establishment and operation of a countywide 9-1-1 system is a special levy. *See* R.C. 5705.19(PP) (a resolution to levy a tax in excess of the ten-mill limitation "shall be confined to the purpose or purposes described in one division of [R.C. 5705.19], to which the revenue derived therefrom shall be applied").

In 1998 Op. Att'y Gen. No. 98-023, slip op. at 7, we addressed the use of tax moneys derived from a special levy and stated:

> Proceeds derived from a special levy must, in accordance with R.C. 5705.10, "be credited to a special fund for the purpose for which the levy was made" and "be used only for the purposes for which such fund is established." *See* 1988 Op. Att'y Gen. No. 88-101 at 2-500; 1986 Op. Att'y Gen. No. 86-103; *see also* Ohio Const. art. XII, § 5 ("[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied").

See Clark Restaurant Co. v. Evatt, 146 Ohio St. 86, 64 N.E.2d 113 (1945) (syllabus, paragraph three) ("[i]n the construction and application of taxing statutes, their provisions cannot be extended by implication beyond the clear import of the language used; nor can their operation be so enlarged as to embrace subjects not specifically enumerated"); 1977 Op. Att'y Gen. No. 77-097 at 2-323 ("the purpose set forth in the levy resolution, as in the case of any taxing statute, must be strictly construed, and may not be enlarged to embrace subjects not specifically enumerated therein"). Accordingly, the proceeds from a tax levied under R.C. 5705.19(BB) may be expended only for the purposes authorized therein.

The proceeds of a tax levied by a county pursuant to R.C. 5705.19(BB) may be used to establish and operate a countywide 9-1-1 system. R.C. 5705.19(BB) does not authorize the expenditure of tax proceeds for a countywide public safety communications system, as defined by R.C. 307.63(A). Moreover, R.C. 5705.19(KK) authorizes a county to levy a tax "[f]or a countywide public safety communications system under section 307.63 of the Revised Code." Thus, the proceeds of a tax levied under R.C. 5705.19(KK) are to be used to fund a countywide public safety communications system, rather than the proceeds of a tax levied under R.C. 5705.19(BB). The proceeds of a tax levy passed pursuant to R.C. 5705.19(BB) for the establishment and operation of a countywide 9-1-1 system, therefore, may not be used to fund a countywide public safety communications system, as defined by R.C. 307.63(A).

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A countywide 9-1-1 system created and operated pursuant to R.C. 4931.40-.53 is not a countywide public safety communications system, as defined by R.C. 307.63(A).

2. A countywide 9-1-1 system created and operated pursuant to R.C. 4931.40-.53 may not be expanded into a countywide public safety communications system, as defined by R.C. 307.63(A).

3. Proceeds of a tax levy passed pursuant to R.C. 5705.19(BB) for the establishment and operation of a countywide 9-1-1 system may not be used to fund a countywide public safety communications system, as defined by R.C. 307.63(A).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

August 31, 1998

The Honorable W. Duncan Whitney
Delaware County Prosecuting Attorney
15 West Winter Street
Delaware, Ohio 43015

SYLLABUS: 98-032

1. A countywide 9-1-1 system created and operated pursuant to R.C. 4931.40-.53 is not a countywide public safety communications system, as defined by R.C. 307.63(A).

2. A countywide 9-1-1 system created and operated pursuant to R.C. 4931.40-.53 may not be expanded into a countywide public safety communications system, as defined by R.C. 307.63(A).

3. Proceeds of a tax levy passed pursuant to R.C. 5705.19(BB) for the establishment and operation of a countywide 9-1-1 system may not be used to fund a countywide public safety communications system, as defined by R.C. 307.63(A).