

November 18, 2021

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

SYLLABUS:

2021-026

1. A board of township trustees is a “local authority” as that term is defined in R.C. 4511.01(AA).
2. A board of township trustees does not have open-ended authority to promulgate traffic regulations. A board of township trustees may, however, promulgate traffic regulations when the legislature has specifically given townships authority to promulgate a traffic regulation.
3. Pursuant to R.C. 5571.01(E), a board of township trustees may, at the intersection of two township roads, erect and maintain traffic-control devices that make the intersection a multi-way stop. The traffic-control devices and their placement must conform with the requirements of the Ohio Manual of Uniform Traffic Control Devices.
4. Pursuant to R.C. 5571.01(E) and (G), a board of township trustees may, at the intersection of a township road and a county road, erect and maintain traffic-control devices that make the intersection a multi-way stop. Before erecting the devices, the board of township trustees must obtain permission from the county engineer.

The traffic-control devices and their placement must conform with the requirements of the Ohio Manual of Uniform Traffic Control Devices.

5. A board of township trustees is not required to obtain an engineering study before erecting traffic-control devices that make the intersection of two township roads a multi-way stop.



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OPINION NO. 2021-026

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

Dear Prosecutor Bevan Walsh:

You have asked for an opinion on several questions related to the authority of a board of township trustees to designate an intersection of township roads a multi-way stop. I have framed your questions as follows:

1. Is a board of township trustees a “local authority” as defined in R.C. 4511.01(AA)?
2. If a board of township trustees is a local authority under that section, may it promulgate traffic regulations, or is it limited to informing the public of already-existing regulations through the maintenance of signage?
3. At the intersection of two township roads, is a board of township trustees authorized to change the traffic pattern from a two-way stop to a four-way stop by erecting traffic-control devices (such as stop signs)?
4. Is the answer to Question 3 different if a township road intersects a county road instead of another township road?

5. If the answer to Question 3 is “yes,” is the township required to get an engineering study before erecting the traffic-control devices.

The township in question has not adopted a home-rule form of government. I also note that Summit County has adopted a charter form of government. I do not analyze whether any provision of Summit’s charter would impact the answers to these questions. Interpretation of county charter provisions is not within the opinion rendering function of the Attorney General. 1995 Op. Att’y Gen. No. 95-035, at 2-186.

I

You first ask whether a board of township trustees is a “local authority” as that term is defined in R.C. 4511.01(AA)? The answer, based on controlling Ohio Supreme Court precedent, is “yes.”

R.C. 4511.01(AA) defines “local authorities” as “every county, municipal, or other local board or body having authority to adopt police regulations under the constitution and laws of this state.” This definition has remained the same since the adoption of the Revised Code in 1953.

The Ohio Supreme Court has held that boards of township trustees are local authorities under the statute. *Royce v. Smith*, 68 Ohio St.2d 106, 109, 429 N.E.2d 134 (1981) (“Township trustees are ‘local authorities’ for purposes of R.C. Chapter 4511”). You note in your request that the Supreme Court does not provide significant analysis for this holding. But the statement is not dicta—it is a holding, as the statement is necessary for the Court’s ultimate conclusion. *Royce v. Smith* has not been overruled, and R.C. 4511.01(AA) remains the same as it was in 1981. *See also* 1955 Op. Att’y Gen. No. 55-5437, syllabus, paragraph 1 (finding that township trustees are local authorities) (cited

approvingly by 2010 Op. Att’y Gen. No. 2010-008, at 2-48, fn.4).

Therefore, the answer to your first question is “yes.”

II

You next ask: If boards of township trustees are local authorities, are they authorized to promulgate traffic regulations? The answer to your question is a qualified “yes.” Boards of township trustees may promulgate traffic regulations, but only if a statute gives them authority to do so in a specific area.

Township trustees are creatures of statute and may exercise only those powers that are specifically conferred by statute or that may be necessarily implied therefrom. *In re Petition for Incorporation of the Village of Holiday City*, 70 Ohio St.3d 365, 369, 639 N.E.2d 42 (1994); *see also* 2010 Op. Att’y Gen. No. 2010-008, at 2-46. Therefore, boards of township trustees may promulgate traffic regulations only if a statute gives them authority to do so.

There is no statute that gives boards of township trustees general authority to regulate traffic in all situations. R.C. 4511.07 could conceivably be read to provide boards of township trustees this authority. The Ohio Supreme Court, however, has held that R.C. 4511.07 is a *limiting statute*, and is not a grant of authority to local authorities to regulate traffic. *Geauga Cty. Bd. of Commrs. v. Munn Rd. Sand & Gravel*, 67 Ohio St.3d 579, 580, 621 N.E.2d 696 (1993).

R.C. 4511.11(A) could also conceivably be read to give townships this authority. But that statute has also been construed not to give township trustees broad authority to regulate traffic. *See, e.g.*, 2010 Op. Att’y Gen. No. 2010-008, at 2-49 to 2-50; 1978 Op. Att’y Gen. No. 78-021, at 2-49 to 2-50; 1955 Op. Att’y Gen. No. 55-5437, at 313. For example, R.C.

4511.11(A) does not give township trustees authority to ban thru-trucks on township roads. 2010 Op. Att'y Gen. No. 2010-008, at 2-50 to 2-51.

If, however, a statute gives township trustees authority to regulate traffic in specific areas, the township may do so. For example, in certain circumstances, township trustees have authority to change speed limits, R.C. 4511.21, and authority to require permits to access township roads, R.C. 5552.02.

III

You next ask whether a board of township trustees is authorized to make the intersection of two township roads a multi-way (four-way) stop by installing stop signs? I find that it may do so pursuant to R.C. 5571.01(E), so long as the signs and their placement conform with the requirements of the Ohio Manual of Uniform Traffic Control Devices.

R.C. 5571.01(E) states:

Subject to divisions (F) and (G) of this section, a board of township trustees may purchase or lease and erect and maintain at intersecting roads, at least one of which is a township road, suitable traffic control devices and traffic control signals. The traffic control devices and traffic control signals and their placement and maintenance shall conform with the manual and specifications adopted under section 4511.09 of the Revised Code. In purchasing or leasing and erecting and maintaining the traffic control devices and traffic control signals, the board may expend any moneys that are available to it that

legally may be expended for that purpose.

Stop signs are traffic-control devices. R.C. 4511.01(QQ); *see also City of Painesville v. Kincaid*, 2015-Ohio-5532, 57 N.E.3d 152, ¶ 19 (11th Dist.). I find that the plain language of R.C. 5571.01(E) gives boards of township trustees authority to erect stop signs at the intersection of two township roads, so long as the placement conforms with the manual adopted under R.C. 4511.09.

The manual adopted pursuant to R.C. 4511.09 is the Ohio Manual of Uniform Traffic Control Devices issued by the Ohio Department of Transportation (hereinafter “Manual”). *See generally Bibler v. Stevenson*, 150 Ohio St.3d 144, 2016-Ohio-8449, 80 N.E.3d 424, ¶ 8-18 (discussing legal status of Manual). The Manual authorizes, and recommends, creating multi-way stops by installing stop signs at intersections with specified characteristics. OMUTCD Section 2B.04-07 (2012 Ed.).

Thus, pursuant to their authority to erect and maintain traffic-control devices at intersecting roads, R.C. 5571.01(E), a board of township trustees may make an intersection a multi-way stop by installing stop signs, so long as the intersection has the characteristics set forth in the Manual. The board must also follow any requirements in the Revised Code regarding specific types of roads. *See, e.g., R.C. 4511.65* (regarding through highways); *Bibler v. Stevenson*, 150 Ohio St.3d 144, 2016-Ohio-8449, 80 N.E.3d 424, ¶16 (the Manual does not override requirements of Revised Code).

Your letter questions this conclusion by suggesting that there might be a distinction between the authority to decide that an intersection should be a multi-way stop and the authority to notify the public of that decision by placing stop signs. *See, e.g., 1978 Op. Att’y Gen. No. 78-021*, at 2-50 (“Thus, under R.C.

4511.11, boards of township trustees serve merely as an administrative body with respect to regulation of traffic, their only powers being limited to the placement and maintenance of traffic-control devices.”)

There is no support in the Revised Code or Manual for such a distinction. There is no section in the Revised Code that separates the decision to make an intersection of two township roads a multi-way stop from the decision to place stop signs or stop lights notifying drivers of this decision. Nor is there such a section in the Manual. Moreover, pursuant to the Manual, the decision to install multi-way stop signs at *any* township intersection is arguably discretionary. *See* OMUTCD Section 2B.07 (2012 Ed.) (section on multi-way stop signs using the word “should,” not “shall”); *see also Bibler v. Stevenson*, 150 Ohio St.3d 144, 2016-Ohio-8449, 80 N.E.3d 424, ¶14. But clearly the Manual intends that *some* township intersections should be multi-way stops. And the board of township trustees’ authority to erect suitable traffic-control devices on its township’s roads in conformity with the specifications of the Manual includes the authority to exercise this discretion.

IV

You next ask whether the answer to Question 3 is different if the township road intersects a county road, rather than a second township road.

R.C. 5571.01(G) states that “[i]f one of the intersecting roads as provided in division (E) of this section is a county road, a board of township trustees shall not erect a traffic-control device or traffic-control signal at the intersection without prior permission of the county engineer of the county in which the intersection is located.”

Therefore, prior to erecting stop signs that make the intersection of township and county roads a multi-

way stop, the board of township trustees must obtain permission from the county engineer.

V

Finally, you ask: If a board of township trustees can designate an intersection a multi-way stop, is it required to obtain an engineering study before doing so? I conclude that it is not required to obtain an engineering study.

Section 2B.07 of the Manual states that “[t]he decision to install multi-way stop control should be based on an engineering study.” OMUTCD Section 2B.07 (2012 Ed.). You ask whether this section *requires* an engineering study or simply *recommends* one. The use of the word “should,” as opposed to “shall,” indicates that the study is optional. *See, e.g., Bibler v. Stevenson*, 150 Ohio St.3d 144, 2016-Ohio-8449, 80 N.E.3d 424, ¶ 14; *Henry v. Delaware Cty. Commrs.*, 5th Dist. Delaware No. 06CAE080054, 2007-Ohio-2323, ¶ 50; *Perkins v. Ohio Dept. of Transp.*, 65 Ohio App.3d 487, 493, 584 N.E.2d 794 (10th Dist.1989). In addition, the statement regarding an engineering study for multi-way stops is under a section titled “guidance.” The Manual states that guidance sections are “a statement of recommended, but not mandatory, practice in typical situations.” OMUTCD Section 1A.13(B) (2012 Ed.); *see also Deitz v. Harshbarger*, 2017-Ohio-2917, 89 N.E.3d 1271, ¶ 23 (3d Dist.).

Nor does R.C. 5571.01 require a board of township trustees to get an engineering study before placing stop signs at an intersection. The legislature knows how to require a board of township trustees to get an engineering study if the legislature wants to. *See, e.g., R.C. 4511.21(K)*. The absence of any such language in this statute thus suggests a deliberate choice by the General Assembly.

In sum, a board of township trustees is not required to obtain an engineering study before making an intersection of township roads a multi-way stop.

I caution, however, that the Manual recommends an engineering study for good reason—engineers have a better understanding of traffic flow and safety than do township trustees. The trustees, therefore, may validly choose to follow this recommendation.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

1. A board of township trustees is a “local authority” as that term is defined in R.C. 4511.01(AA).
2. A board of township trustees does not have open-ended authority to promulgate traffic regulations. A board of township trustees may, however, promulgate traffic regulations when the legislature has specifically given townships authority to promulgate a traffic regulation.
3. Pursuant to R.C. 5571.01(E), a board of township trustees may, at the intersection of two township roads, erect and maintain traffic-control devices that make the intersection a multi-way stop. The traffic-control devices and their placement must conform with the requirements of the Ohio Manual of Uniform Traffic Control Devices.
4. Pursuant to R.C. 5571.01(E) and (G), a board of township trustees may, at the intersection of a township road and a county road, erect and maintain traffic-control devices that make the intersection a multi-way stop. Before erecting the devices, the board of township trustees must obtain permission from the county engineer. The traffic-control devices and their placement must conform with the requirements of the Ohio Manual of Uniform Traffic Control Devices.

5. A board of township trustees is not required to obtain an engineering study before erecting traffic-control devices that make the intersection of two township roads a multi-way stop.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping "D" and "Y".

DAVE YOST
Ohio Attorney General