

March 17, 2014

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street
Courthouse
West Union, Ohio 45693

SYLLABUS:

2014-013

A county may use tax revenue generated pursuant to R.C. 5705.19(U) to pay a portion of its share of the costs of establishing, equipping, furnishing, operating, and maintaining a countywide 9-1-1 system's public safety answering point, as set forth in the final plan implementing the countywide 9-1-1 system. The portion of the costs that is paid with tax revenue generated pursuant to R.C. 5705.19(U) must be attributable to expenses incurred by the public safety answering point in making ambulance service, emergency medical service, or both available throughout the county.



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OPINION NO. 2014-013

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street
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West Union, Ohio 45693

Dear Prosecutor Kelley:

You have requested an opinion concerning the proper use of tax revenue derived from a levy imposed pursuant to R.C. 5705.19(U). In 2010, the voters of Adams County approved a tax levy for the purpose of “providing ambulance service, emergency medical service, or both” pursuant to R.C. 5705.19(U). You have asked the following questions regarding this tax levy:

1. May proceeds of a tax levied pursuant to R.C. 5705.19(U) be used to support the operation of a countywide 9-1-1 system?
2. If the answer to question one is in the negative, may the current rate of the 2010 levy be reduced if it is put on the ballot for renewal?¹

A Countywide 9-1-1 System and a County’s Role in Funding the System

Your first question relates to the funding of a countywide 9-1-1 system. It is therefore helpful to begin with a brief description of a countywide 9-1-1 system and how it is funded. A countywide 9-1-1 system is “a system through which individuals can request emergency service using the telephone number 9-1-1.” R.C. 128.01(A). When a person in Ohio dials 9-1-1, the call is routed to a public safety answering point of a countywide 9-1-1 system. Personnel at the public safety answering point obtain information from the caller regarding the emergency situation and act to dispatch the appropriate emergency service provider to the location of the emergency. *See* R.C. 128.01(P) (defining a “[p]ublic safety answering point” as “a facility to which 9-1-1 system calls for a specific territory are initially routed for response and where personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a

¹ We have reworded your questions and combined your first and third questions for ease of discussion.

message to the appropriate provider, or transferring the call to the appropriate provider”). *See generally* R.C. 128.01(N) (defining “[e]mergency service” for purposes of R.C. Chapter 128 as “emergency law enforcement, firefighting, ambulance, rescue, and medical service”); R.C. 128.01(O) (defining “[e]mergency service provider” for purposes of R.C. Chapter 128 as “the state highway patrol and an emergency service department or unit of a subdivision or that provides emergency service to a subdivision under contract with the subdivision”).

A countywide 9-1-1 system is established through the joint efforts of a county and the municipal corporations and townships in the county. It is created when a final plan for implementation of the system is approved by the board of county commissioners, the legislative authority of a municipal corporation that contains at least thirty percent of the county’s population, if any, and the legislative authorities of municipal corporations and townships containing a certain percentage of the county’s overall population. R.C. 128.08(B). Once a final plan is approved, the 9-1-1 system operates countywide and includes all of the territory of the townships and municipalities in the county, except for any territory served by a telephone company that cannot meet the technical and economic requirements of providing the network portion of the system. R.C. 128.03(A); 2000 Op. Att’y Gen. No. 2000-044, at 2-269; *see also State ex rel. DiFrangia v. Trumbull Cnty. Bd. of Comm’rs*, 99 Ohio App. 3d 569, 572, 651 N.E.2d 447 (Trumbull County 1994) (“[i]t is clear that in enacting R.C. 4931.40 *et seq.*, [now R.C. Chapter 128,] the legislature envisioned the county itself as being the geographic boundary for each 9-1-1 system”). Every emergency service provider that provides emergency service within the territory of a countywide 9-1-1 system must participate in the system. R.C. 128.03(C). The responsibilities and duties of the county and the other subdivisions participating in the countywide 9-1-1 system are set forth in the final plan or an amended final plan adopted under R.C. 128.12. *See* 2011 Op. Att’y Gen. No. 2011-031, at 2-252 n.6; *see also* R.C. 128.08(C) (“[a]fter a countywide plan approved in accordance with this section is adopted, all of the telephone companies, subdivisions, and regional councils of governments included in the plan are subject to the specific requirements of the plan and to [R.C. Chapter 128]”). *See generally* R.C. 128.01(M) (defining “[s]ubdivision” for purposes of R.C. Chapter 128).

Pursuant to R.C. Chapter 128, the costs associated with establishing and operating a countywide 9-1-1 system are shared among several entities, including participating telephone companies, *see* R.C. 128.18(C); their customers, R.C. 128.18(B), R.C. 128.42; and subdivisions served by the countywide 9-1-1 system, R.C. 128.03(D)-(E). Costs associated with establishing, equipping, furnishing, operating, and maintaining the system’s public safety answering points are a local responsibility and are paid in the manner set forth in the final plan. *See* R.C. 128.07(B)(5); *see also* R.C. 128.03(D)-(E). The final plan may specify that costs associated with the system’s public safety answering points shall be paid, in whole or in part, with revenue derived from charges imposed on improved real property in the county pursuant to R.C. 128.22. R.C. 128.07(B)(5). To the extent that the costs associated with a public safety answering point are not paid from charges imposed under R.C. 128.22, the subdivision that operates the public safety answering point must pay all of the costs associated therewith and then “allocate those costs among itself and the subdivisions served by the answering point based on the allocation formula [set forth] in a final plan.” R.C. 128.03(D)(2); 2000 Op. Att’y Gen. No. 2000-044, at 2-270; *see also* R.C. 128.03(E) (obligation of each subdivision served by a public safety answering point to pay the subdivision operating the answering point its

share of the costs in accordance with the allocation formula). Thus, except as provided in R.C. 128.22, “a subdivision that operates or is served by a public safety answering point is required to provide funding for that public safety answering point.” 2008 Op. Att’y Gen. No. 2008-014, at 2-154. Accordingly, a county is responsible for paying its share of the costs of establishing, equipping, furnishing, operating, and maintaining the countywide 9-1-1 system’s public safety answering points, as set forth in the final plan implementing the system.

Your first question asks whether a county may use tax revenue generated from a levy imposed under R.C. 5705.19(U) to fund the operation of a countywide 9-1-1 system. Based on the statutory plan governing the funding of countywide 9-1-1 systems, we believe you wish to know whether the county may use tax revenue generated from a levy imposed under R.C. 5705.19(U) to pay its share of the costs of establishing, equipping, furnishing, operating, and maintaining the countywide 9-1-1 system’s public safety answering points, as set forth in the final plan implementing the countywide 9-1-1 system. To address this question, we will begin by examining a county’s authority to levy a tax under R.C. 5705.19(U).

Special Levy for Purpose of Providing Ambulance Service, Emergency Medical Service, or Both

R.C. 5705.19 authorizes the taxing authority of a subdivision to propose to the voters a variety of tax levies in excess of the ten-mill limitation.² *See generally* R.C. 5705.01(A), (C) (defining “[s]ubdivision” and “[t]axing authority” for purposes of R.C. Chapter 5705, Ohio’s uniform tax levy law). A board of county commissioners, as the taxing authority of a county, may adopt a resolution to submit to the voters the question of levying a tax in excess of the ten-mill limitation for any one of the purposes listed in R.C. 5705.19. Division (U) of R.C. 5705.19 authorizes a board of county commissioners to propose to the voters a tax levy for the purpose of “providing ambulance service, emergency medical service, or both[.]” The purpose of the 2010 tax levy with which you are concerned, as stated in the resolution adopted by the Adams County Board of Commissioners and subsequently stated on the ballot, is “providing ambulance service, emergency medical service, or both” in accordance with R.C. 5705.19(U).³

² The ten-mill limitation provides that no property may be taxed in excess of one percent (ten mills) of its true value in money for state and local purposes unless approved by the voters or as provided for by a municipal charter. Ohio Const. art. XII, § 2; R.C. 5705.02; *see also* 2006 Op. Att’y Gen. No. 2006-047, at 2-453 n.11.

³ The resolution and ballot language placing a tax levy under R.C. 5705.19(U) before the voters may be narrower than the statutory language authorizing the levy. *See* 2013 Op. Att’y Gen. No. 2013-036, at 2-370 n.3; 2011 Op. Att’y Gen. No. 2011-037, at 2-301 n.7. Here, however, the language appearing in the resolution and on the ballot mirrors the language set forth in R.C. 5705.19(U).

A tax levied by a board of county commissioners pursuant to R.C. 5705.19(U) is a special levy. *See generally* 1992 Op. Att’y Gen. No. 92-058, at 2-239 n.1 (while the term “special levy” is not statutorily defined, it has been interpreted to mean “a levy for a specific purpose, as opposed to a general levy for current expenses”). Tax revenue that is derived from a special levy must be deposited into a special fund and used only for the purpose for which the levy was imposed. R.C. 5705.10(C), (I); 2006 Op. Att’y Gen. No. 2006-028, at 2-253 n.7; *see also* Ohio Const. art. XII, § 5 (“every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied”); 1997 Op. Att’y Gen. No. 97-030, at 2-176 (“[i]t is ... fundamental under Ohio law that money that is derived from a particular tax levy may be expended only for the purpose for which that levy was adopted”). Revenue generated by a special levy may only be expended for purposes that are within the language set forth in the board of county commissioners’ resolution and on the ballot. *See* 2006 Op. Att’y Gen. No. 2006-028, at 2-259 n.10 (“the language of the resolution and ballot controls the purpose for which revenues may be expended”); 1990 Op. Att’y Gen. No. 90-069, at 2-292 (“no levy moneys may be expended for purposes that are not within the ballot language”). *See generally In re Petition for Transfer of Funds by Perry Twp.*, 52 Ohio App. 3d 1, 2, 556 N.E.2d 191 (Montgomery County 1988) (Article XII, § 5 of the Ohio Constitution “prevents taxes levied for a specific purpose which the voters approve [from] being used for a purpose the voters did not approve”).

“[A]s a general rule, where the particular expenditures [that a county] 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.” 1982 Op. Att’y Gen. No. 82-037, at 2-108. “[T]ax levy revenue may be used for projects that were neither contemplated nor anticipated when the tax levy was originally authorized, so long as the expenditure is reasonable and otherwise consistent with the tax levy’s authorizing resolution and ballot language.” 2012 Op. Att’y Gen. No. 2012-014, at 2-120. *See generally* 1976 Op. Att’y Gen. No. 76-032 (syllabus, paragraph 2) (while a ballot placing a tax levy before the voters “shall state the statutory purpose of the proposal, [it] need not state the specific anticipated use of the proceeds of the levy”). Accordingly, tax revenue derived from the 2010 levy may be used for expenditures that are reasonable and consistent with the purpose of “providing ambulance service, emergency medical service, or both.” To answer your first question, we must therefore determine whether the costs of establishing, equipping, furnishing, operating, and maintaining a countywide 9-1-1 system’s public safety answering points are consistent with the purpose of “providing ambulance service, emergency medical service, or both.”⁴

⁴ R.C. 5705.19(BB) authorizes a board of county commissioners to levy a tax in excess of the ten-mill limitation “[f]or the establishment and operation of a 9-1-1 system, as defined in [R.C. 128.01.]” This grant of authority does not, in itself, prohibit the proceeds of a tax levied pursuant to R.C. 5705.19(U) from being used to fund the costs of establishing, equipping, furnishing, operating, and maintaining a countywide 9-1-1 system’s public safety answering point. *See* R.C. 5705.19(YY) (“[t]he existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or

The term “providing” is not statutorily defined for purposes of R.C. 5705.19(U). Accordingly, it is appropriate to use the ordinary dictionary definition of this term when interpreting R.C. 5705.19(U). See R.C. 1.42; 1989 Op. Att’y Gen. 89-091, at 2-434. One common definition of the term “provide” is “to supply or make available.” *Merriam-Webster’s Collegiate Dictionary* 1001 (11th ed. 2005); accord *The American Heritage Dictionary* 997 (2d college ed. 1985). Applying this definition, revenue derived from a tax levied pursuant to R.C. 5705.19(U) may be used for expenditures that are consistent with the purpose of supplying or making available ambulance service, emergency medical service, or both. Thus, we must consider whether a countywide 9-1-1 system’s public safety answering points supply or make available ambulance service, emergency medical service, or both.

A countywide 9-1-1 system is a system through which individuals can request “*emergency law enforcement, firefighting, ambulance, rescue, and medical service*” using the telephone number 9-1-1. R.C. 128.01(N) (emphasis added); see also R.C. 128.01(A); 1998 Op. Att’y Gen. No. 98-032, at 2-180 (“[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”). Thus, a countywide 9-1-1 system is a system through which individuals can request, *inter alia*, ambulance service and emergency medical service. A countywide 9-1-1 system and its public safety answering points are designed to make ambulance service, emergency medical service, and other emergency services readily available to the public. While the public may request emergency service by contacting an emergency service provider directly, doing so requires a caller to dial the emergency service provider’s seven or ten-digit phone number. See generally R.C. 128.03(G) (“[e]ach emergency service provider participating in a countywide 9-1-1 system shall maintain a telephone number in addition to 9-1-1”). Because an emergency service provider’s seven or ten-digit phone number may not be known or readily obtained in an emergency situation, the General Assembly has authorized the creation of countywide 9-1-1 systems “to encourage the establishment of a uniform emergency telephone number system throughout the state.” 1985-1986 Ohio Laws, Part II, 4544, 4544 (Am. Sub. H.B. 491, eff. June 18, 1985).

This uniform emergency telephone number system provides the public a quick and reliable method of requesting emergency service from anywhere in the state. By simply dialing 9-1-1, an emergency caller is automatically connected to the appropriate public safety answering point based on the caller’s location. See R.C. 128.01(P). Personnel at the public safety answering point obtain information from the caller regarding the location, nature, and priority of the emergency situation. That information is then used to coordinate, assign, and dispatch appropriate emergency service personnel and resources to the location of the emergency. *Id.*; see also 1998 Op. Att’y Gen. No. 98-032, at 2-180 (“[t]he 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 and its public safety

purposes of the division under which the resolution is adopted”); 1986 Op. Att’y Gen. No. 86-103, at 2-570 n.1 (“[t]he fact that a construction fund is provided for by a separate division of R.C. 5705.19 does not prevent a tax from being levied for construction purposes pursuant to [R.C. 5705.19(L)]”).

answering points thus make ambulance service and emergency medical service available to the public by processing emergency calls requesting those services and by dispatching the appropriate response.

Accepting emergency calls and dispatching appropriate emergency personnel are activities that are inherently incidental to the provision of ambulance service and emergency medical service. *See Lyons v. Teamhealth Midwest Cleveland*, Cuyahoga App. No. 96336, 2011-Ohio-5501, 2011 WL 5118447, at ¶47 (Oct. 27, 2011) (“[t]he Columbiana County Sheriff Department’s dispatch service, which aids in responding to emergency medical calls, is an integral part of the provision or nonprovision of ... emergency medical [and] ambulance ... services”); 1995 Op. Att’y Gen. No. 95-008, at 2-36 (“[i]t is clear that the dispatching of ambulances is an integral part of the delivery of emergency medical services”); 1995 Op. Att’y Gen. No. 95-004, at 2-19 (the power to dispatch emergency personnel is necessarily implied by the authority to provide emergency medical service); Bryan E. Bledsoe et al., *Paramedic Emergency Care 24* (Kathryn Pavelec et al. eds., 1991) (“[e]mergency medical dispatching is the nerve center of an [emergency medical services] program. The activities of medical dispatchers are crucial to the efficient operation of the system”). In order for a county to adequately provide ambulance or emergency medical services to the public, the public must be able to request such services as they become necessary. Obviously, emergency medical service personnel will not be able to respond to an emergency unless and until they are made aware of the emergency’s existence. Because most people today request emergency service via the telephone, accepting emergency phone calls and dispatching the appropriate response have become activities that are necessary and integral to the provision of ambulance and emergency medical services. *See generally* J. David Bergeron & Gloria Bizjak, *First Responder 3* (Lois Berlowitz et al. eds., 5th ed. 1999) (“[m]ost citizens activate [the emergency medical services system] by way of a 911 phone call to an emergency dispatcher”).⁵

⁵ When an emergency service provider receives direct phone calls from the public requesting ambulance service or emergency medical service, costs associated with taking those calls (*e.g.*, personnel costs, costs of maintaining the phone line, telephone equipment costs, etc.) come within the scope of “providing ambulance service, emergency medical service, or both” and thus may be paid with tax revenue derived from a levy imposed under R.C. 5705.19(U). This is because answering emergency calls is an activity that is inherent and necessary to the provision of ambulance and emergency medical services. *See* 1995 Op. Att’y Gen. No. 95-008, at 2-36 (“[i]t is clear that the dispatching of ambulances is an integral part of the delivery of emergency medical services”); 1995 Op. Att’y Gen. No. 95-004, at 2-19 (the power to dispatch emergency personnel is necessarily implied by the authority to provide emergency medical service). That is, an emergency service provider will not be able to provide adequate and efficient ambulance service or emergency medical service unless it has the equipment and personnel necessary to accept emergency calls requesting those services. *See generally* 1973 Op. Att’y Gen. No. 73-057, at 2-218 (“each specific detail of the carrying out of an express purpose need not be expressly stated before [a public entity] may exercise its authority with respect to such detail, for an express authority to do an act carries with it the authority to do the

A countywide 9-1-1 system and its public safety answering points thus make ambulance and emergency medical services readily available to the public by providing the public with an efficient and reliable means of requesting those services. They also make ambulance and emergency medical services available throughout the county by coordinating, assigning, and dispatching the appropriate emergency service provider in response to an emergency call. Because a countywide 9-1-1 system and its public safety answering points are designed to make ambulance and emergency medical services readily available throughout the county, costs associated with establishing, equipping, furnishing, operating, and maintaining the system's public safety answering points come within, and are consistent with, the purpose of "providing ambulance service, emergency medical service, or both." Therefore, tax revenue generated from a levy imposed under R.C. 5705.19(U) may be used to pay costs incurred in establishing, equipping, furnishing, operating, and maintaining a countywide 9-1-1 system's public safety answering points.

However, not all of a county's expenses incurred in establishing, equipping, furnishing, operating, and maintaining a countywide 9-1-1 system's public safety answering points may be paid with tax revenue derived from a levy imposed under R.C. 5705.19(U). This is because not all of the costs associated with establishing, equipping, furnishing, operating, and maintaining a countywide 9-1-1 system's public safety answering points are attributable to the provision of ambulance service or emergency medical service. In addition to making ambulance service and emergency medical service available throughout a county, a countywide 9-1-1 system and its public safety answering points are designed to make emergency law enforcement, firefighting, and rescue services available. *See* R.C. 128.01(N). A public safety answering point may therefore handles calls that are wholly unrelated to the provision of ambulance service or emergency medical service.

In order to comply with the constitutional and statutory mandate that tax revenue be expended only for the purpose for which it was levied, care must be taken to ensure that revenue generated pursuant to R.C. 5705.19(U) is used to fund a public safety answering point only to the extent that the public safety answering point makes ambulance service, emergency medical service, or both available throughout the county. Accordingly, in order for a county to use tax revenue generated pursuant to R.C. 5705.19(U) to fund a portion of its share of the costs of establishing, equipping, furnishing, operating, and maintaining a public safety answering point, a board of county commissioners must establish administrative procedures for ensuring that the portion of the county's share of those costs that is paid with tax revenue generated pursuant to R.C. 5705.19(U) is attributable to expenses incurred by the public safety answering point in making ambulance service, emergency medical service, or both available throughout the county. The board of county commissioners has discretion to adopt reasonable procedures for ensuring that tax revenue generated pursuant to R.C. 5705.19(U) is used to fund the county's share of the costs associated with a public safety answering point only to the extent that the public safety answering point makes ambulance service, emergency medical service, or both available throughout the county. *Cf.* 2004 Op. Att'y Gen. No. 2004-036, at 2-325 (a board of

necessary incidental acts to accomplish the purpose for which the express authority was given as fully as though each such incidental detail were expressly authorized in separate and distinct terms").

township trustees has discretion to adopt reasonable procedures for ensuring that the portion of a fire district employee's salary that is paid from the ambulance and emergency medical services fund (EMS fund) reflects the proportionate amount of time the employee spent providing ambulance and emergency medical services, as opposed to providing fire protection services). These administrative procedures must ensure that the proportion of the county's share that is paid with tax revenue generated pursuant to R.C. 5705.19(U) reflects the proportion of calls handled by the public safety answering point that result in the provision of ambulance or emergency medical services. For example, if 65 percent of calls received by a public safety answering point are related to the provision of ambulance service or emergency medical service, a county may pay no more than 65 percent of its share of the costs associated with that public safety answering point, as set forth in the final plan implementing the countywide 9-1-1 system, with tax revenue generated pursuant to R.C. 5705.19(U). Cf. 2004 Op. Att'y Gen. No. 2004-036, at 2-325 (a portion of a township trustee's salary may be paid from the township's EMS fund; however, in order to satisfy the requirement that the EMS fund be used only for ambulance and emergency medical services, the board of township trustees "would be required to establish administrative procedures for assuring that the proportionate amount paid from the EMS Fund for trustees' salaries properly reflected the proportion of time each trustee spent on EMS matters relative to other township matters").

Having determined that tax revenue generated pursuant to R.C. 5705.19(U) may be used to fund a portion of the county's share of the costs associated with a countywide 9-1-1 system's public safety answering point, it is not necessary for us to address your second question.

Conclusion

A county may use tax revenue generated pursuant to R.C. 5705.19(U) to pay a portion of its share of the costs of establishing, equipping, furnishing, operating, and maintaining a countywide 9-1-1 system's public safety answering point, as set forth in the final plan implementing the countywide 9-1-1 system. The portion of the costs that is paid with tax revenue generated pursuant to R.C. 5705.19(U) must be attributable to expenses incurred by the public safety answering point in making ambulance service, emergency medical service, or both available throughout the county.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is fluid and cursive, with the first name "Michael" being larger and more prominent than the last name "Dewine".

MICHAEL DEWINE
Ohio Attorney General