July 24, 2026

The Honorable William L. Archer, Jr.
Vinton County Prosecuting Attorney
100 E. Main Street
McArthur, Ohio 45651

SYLLABUS: 2026-008

1. A township resolution levying an additional excise lodging tax under R.C. 5739.08 is not required to identify the statutory authority upon which it relies.

2. A township resolution levying an excise lodging tax under R.C. 5739.08 does not become invalid merely because it identifies a specific establishment to which the tax may apply.

3. A township resolution may levy an additional excise lodging tax under R.C. 5739.08(B) that increases the rate imposed by a prior resolution adopted under R.C. 5739.08(A).

4. A township resolution levying an additional excise lodging tax under R.C. 5739.08 remains enforceable even if the taxing authority elects not to adopt written regulations governing the administration and allocation of the tax.

5. For purposes of levying an excise lodging tax under R.C. 5739.08, a township may apply the definition of "hotel" in R.C. 5739.01(M) or adopt an alternative definition authorized by R.C. 5739.091 that includes establishments with fewer than five guest rooms.

ANDY WILSON
OHIO ATTORNEY GENERAL

Opinions Section
Office (614) 752-6417
Fax (614) 466-0013

30 East Broad Street, 25th Floor
Columbus, Ohio 43215
www.ohioattorneygeneral.gov

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OPINION NO. 2026-008

The Honorable William L. Archer, Jr.
Vinton County Prosecuting Attorney
100 E. Main Street
McArthur, Ohio 45651

Dear Prosecutor Archer:

You have requested an opinion regarding the levying of lodging excise taxes in your community. For clarity of analysis, I have reframed your questions as follows:

1. Is a township resolution levying an additional excise lodging tax pursuant to R.C. 5739.08 valid even if it does not specify its statutory authority?

2. Is an excise lodging tax pursuant to R.C. 5739.08 valid even though it identifies a specific establishment to which it may apply?

3. Is a township resolution levying an additional excise lodging tax pursuant to R.C. 5739.08(B) valid and enforceable when it increases the tax rate of a prior resolution brought pursuant to R.C. 5739.08(A)?

4. Can a township resolution levying an additional excise lodging tax pursuant to R.C. 5739.08 still be enforceable if the township does not establish written regulations that "provide for the administration and allocation of the tax?"

5. Does a township have the authority by resolution to change the statutory definition of "hotel" in R.C. 5739.01(M) to an alternative definition permitted by R.C. 5739.091 for purposes of levying a tax under R.C. 5739.08?

For the reasons that follow, I have determined the answer to all of these questions is "yes."

I

R.C. 5739.08 governs how cities, villages, and townships may adopt and implement excise taxes on hotel lodging in addition to the state excise tax levied pursuant to R.C. 5739.02.

For background, you have related to members of my staff that Brown Township in Vinton County levied a three percent excise tax on lodging as authorized by R.C. 5739.08(A) sometime before 2001. Thereafter in September 2001, the Brown Township Trustees adopted a resolution increasing the lodging tax from three percent to six percent. The resolution stated, in relevant part, "The Brown Township Trustees move to increase the current 3% excise bedding tax received from Lake Hope State Park to the maximum of 6% starting in November of 2001." The resolution took the form of an oral motion that was made, voted upon, and recorded in the township's meeting minutes. The township clerk certified the minutes with the clerk's signature. The resolution was not recorded in a separate written document.

At a trustees' meeting on December 12, 2001, the township trustees voted to expand the definition of "hotel" for purposes of the lodging tax to include establishments with one or more units, rather than the default definition in R.C. 5739.01(M) ("a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests").

This resolution was also adopted by oral motion, supported by a majority vote, recorded in the township's minutes, and signed by the township clerk. Again, this resolution was not recorded in a separate written document. At the time these township resolutions were enacted, there was no countywide lodging tax in effect under R.C. 5739.09.

II

A

Your first three questions are interrelated; I will discuss them jointly. The initial question concerns whether the 2001 Brown Township resolution to increase the lodging tax rate from three percent to six per cent is valid even though it did not state its authority for doing so. It is.

Begin with the text of R.C. 5739.08(B). That provision authorizes, with certain limitations, a township (or municipal corporation) that has previously levied a three percent lodging excise tax to levy up to an additional three percent lodging excise tax if three conditions are met:

> (1) The municipality or township is not "wholly or partly located in a county" that levies its own lodging excise tax at the time the resolution is adopted;
>
> (2) Fifty percent of the tax revenue is deposited into a special fund for "contributions to convention and visitors' bureaus operating within the county" with the remainder deposited in the general fund; and
>
> (3) The township (or municipality) adopts regulations sufficient to administer and allocate the tax, which "may prescribe the time for payment of the tax, and may provide for the imposition of a penalty or interest, or both, for late payments."

R.C. 5739.08(B).

The answer to your question depends on what constitutes a township "resolution," as that term is used here, because "resolution" is not defined in R.C. 5739.08. Terms not defined in a statute must be read according to their common, ordinary meaning. *See* R.C. 1.42 ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage.”). Black’s Law Dictionary defines a “resolution” as “[a] main motion that formally expresses the sense, will, or action of a deliberative assembly.” (12th Ed. 2024). Furthermore, the Ohio Supreme Court has often emphasized that statutes must be applied as written without “delet[ing] words used” or “insert[ing] words not used.” *Wayt v. DHSC, L.L.C.*, 2018-Ohio-4822, ¶34, quoting *Bernardini v. Bd. of Edn.*, 58 Ohio St.2d 1, 4 (1979).

The September 2001 resolution clearly expressed the sense and will of the Brown Township Trustees to increase the three percent excise lodging tax to the maximum permitted rate of six percent. Because this three percent increase follows an initial levy of three percent under R.C. 5739.08, this subsequent three-percent raise falls under 5739.08(B). The record reflects that this resolution stood alone; it did not purport to amend any other resolution. A plain reading of R.C. 5739.08(B) provides authority for the trustees to take this action, and I have located no statute or other authority holding a township resolution invalid merely because it fails to identify the particular statute authorizing the action undertaken.

Nor do I find any reason to invalidate the resolution because it references one property to which the tax may apply. The trustees did not specifically raise the tax on Lake Hope State Park; rather, they raised the tax throughout the township and noted that doing so would increase revenues received from the park. While the wording may have been inartful, it does not render the resolution invalid.

In sum, the resolution, by its plain terms, expressly levies an increase in the excise tax. It was approved by a majority of the township trustees and duly formalized in the meeting minutes. As such, it is an action plainly authorized by R.C. 5739.08(B), valid, and enforceable.

B

Your fourth question asks whether the validity of an otherwise enforceable excise lodging tax would lapse if a township failed to adopt regulations for administering the tax.

At issue is the statutory language contained in R.C. 5739.08(B), which requires a township (or municipality) to "establish all regulations *necessary* to provide for the administration and allocation of the tax. The regulations *may* prescribe the time for payment of the tax and *may* provide for the imposition of a penalty or interest, or both, for late payments . . . ." (Emphasis added.)

The only regulations that must be established are those the township determines are *necessary*. We have no record of what regulations, if any, the Brown Township Trustees determined were necessary to "provide for the administration and allocation of the tax." R.C. 5739.08(B). In this situation, the rule is that "[w]hen a statute authorizes performance of a particular act but does not specify how that act is to be done, the general inference is that the act is to be carried out in a reasonable manner." *State v. Gaul*, 117 Ohio App.3d 839, 850 (1997), citing *State ex rel. Attorney General v. Morris*, 63 Ohio St. 496, 512 (1900); *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878). Thus, so long as Brown Township is able to administer the lodging excise tax it enacted, the board of township trustees has discretion to determine what is reasonable and necessary.

The township is also entitled to a "presumption of regularity" unless evidence shows the lodging tax has been improperly administered. *State ex rel. Hicks v. Clermont Cty. Bd. of Commrs.*, 2022-Ohio-4237, at ¶21-22; 1979 Ohio Atty.Gen.Ops. No. 79-110, at 2-363, citing *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 590 (1953). The six-percent lodging tax has been in place for more than two decades, during which the Auditor of State has regularly audited the township without noting any irregularities or concerns with the tax. The Auditor is responsible for assessing the township's compliance with applicable law and regulations. *See* R.C. 117.11(A). Therefore, in the absence of contrary evidence or complaints, I must presume that the township's regulations governing the lodging tax are reasonable, meet the township's needs, and fulfill the statutory requirements.

C

Your final question asks whether a township has the authority to define the term "hotel" for purposes of levying an excise lodging tax, rather than relying on the default definition in R.C. 5739.01(M). The answer, again, is yes. R.C. 5739.091 specifically provides that a county, township, or municipality "may adopt a resolution or ordinance at any time" expanding the definition of a hotel to include lodging with fewer than five guest rooms. Additionally, under R.C. 5739.091(B), the resolution or ordinance may apply to an existing excise lodging tax, provided that it expressly states so, but it may *not* impose that tax retroactively on lodging transactions involving lodging that was not previously covered.

The Brown Township Trustees therefore had ample statutory authority to revise the definition of "hotel" for purposes of its lodging tax, specifically from an establishment having five or more rooms for guests to include an establishment with one or more guest rooms.

Conclusion

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

1. A township resolution levying an additional excise lodging tax under R.C. 5739.08 is not required to identify the statutory authority upon which it relies.

2. A township resolution levying an excise lodging tax under R.C. 5739.08 does not become invalid merely because it identifies a specific establishment to which the tax may apply.

3. A township resolution may levy an additional excise lodging tax under R.C. 5739.08(B) that increases the rate imposed by a prior resolution adopted under R.C. 5739.08(A).

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Respectfully,

D. ANDREW WILSON
Ohio Attorney General