March 26, 2001

OPINION NO. 2001-011

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 provision of emergency medical services by counties and townships. By way of background, you explain that in 1971, the county began providing emergency medical services throughout the entire county. After the initiation of this service, several townships within the county, through their fire departments, also began providing emergency medical services within their boundaries. Given this development, you have asked the following questions:

1. If both a county and township provide emergency medical services, are the emergency medical services personnel of the county or township responsible for providing these services within the township?

2. If emergency medical services personnel of a county emergency medical service organization and a township fire department respond to a call for emergency medical services within the township, do the personnel of the county or the township exercise control of the administration of medical care and treatment at the scene of the medical emergency?

Let us begin with your first question. As a general matter, neither a county nor a township is required to provide emergency medical services. 1997 Op. Att'y Gen. No. 97-060 at 2-367; 1979 Op. Att'y Gen. No. 79-042 (syllabus, paragraph four). *See generally* R.C. 4765.01(G) (for purposes of R.C. Chapter 4765 (division of emergency medical services), the term "'[e]mergency medical service' means any of the services described in [R.C. 4765.35 and R.C. 4765.37-.39] that are preformed by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics"). However, pursuant to R.C. 307.05 and R.C. 505.37(A), respectively, a county and township are authorized to provide such services. *See also* R.C. 9.60; 505.44; R.C. 5705.19.

R.C. 307.05 states, in part, that a board of county commissioners may operate an emergency medical service organization or enter into a contract with one or more counties, townships, municipal corporations, nonprofit corporations, joint emergency medical districts, fire and ambulance districts, or private ambulance owners in order to obtain the services of emergency medical service organizations. For purposes of R.C. 307.05, "emergency medical service organization" is defined by R.C. 4765.01(H) as "a public or private organization using first responders, EMTs-basic, EMTs-I, or paramedics, or a combination of first responders, EMTs-basic, EMTs-I, and paramedics, to provide emergency medical services." R.C. 307.05 thus authorizes a county to provide emergency medical services. 1985 Op. Att'y Gen. No. 85-059 at 2-217; *see also* R.C. 9.60; R.C. 5705.19(U); 1979 Op. Att'y Gen. No. 79-042 at 2-139 and 2-140.

R.C. 505.37(A) provides, in pertinent part:

> The board of township trustees may establish all necessary rules to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents, and may … purchase or otherwise provide any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes that seems advisable to the board.

This statute has been interpreted in prior opinions of the Attorneys General as authorizing a township to provide emergency medical services "through the township fire department or a volunteer fire department regardless of whether the emergency involves a fire." 1994 Op. Att'y Gen. No. 94-076 at 2-383; *accord* 1997 Op. Att'y Gen. No. 97-060 at 2-367. Accordingly, a township is authorized by R.C. 505.37(A) to provide emergency medical services within the township through its fire department. 1989 Op. Att'y Gen. No. 89-028 at 2-119; 1962 Op. Att'y Gen. No. 3332, p. 793; 1953 Op. Att'y Gen. No. 2416, p. 114; s*ee also* R.C. 9.60; R.C. 5705.19(I), (JJ).

A county or township that provides emergency medical services pursuant to R.C. 307.05 or R.C. 505.37(A), respectively, may not exclude a portion of the county or township from the provision of such service unless it is expressly authorized to do so.[1] 1997 Op. Att'y Gen. No. 97-060 at 2-367; 1985 Op. Att'y Gen. No. 85-059. In other words, the duty of a county or township to provide emergency medical services extends to the boundaries of the county or township, respectively. In light of this duty, it is clear that if a county or township provides emergency medical services, emergency medical services personnel of the county or township are responsible for providing such services throughout the entire territory of the county or township. It follows, therefore, that when a county and a township within the county provide

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[1] Pursuant to R.C. 505.37(C), a township is authorized to create a fire district to provide emergency rescue services only within the territory of the fire district. 1997 Op. Att'y Gen. No. 97-060 at 2-367 through 2-369.

emergency medical services throughout their respective territories pursuant to R.C. 307.05 and R.C. 505.37(A), the emergency medical services personnel of both the county and township are responsible for providing such services within the township.

Although county and township emergency medical services personnel are both responsible for providing emergency medical services within the township, the county may, pursuant to R.C. 307.05, fulfill its responsibility through a contract with the township. As explained previously, R.C. 305.07 authorizes a county to provide emergency medical services either directly through a county operated emergency medical service organization, or indirectly through a contract with a public or private emergency medical service organization. *See also* R.C. 9.60 (authorizing a county to enter into firefighting agreements). Because a township fire department that uses emergency medical services personnel to provide emergency medical services is a public emergency medical service organization for purposes of R.C. 307.05, *see* R.C. 4765.01(H), a county that provides emergency medical services through a county operated emergency medical service organization may enter into a contract with the township, pursuant to R.C. 307.05, whereby the township's fire department assumes the county's responsibility for providing emergency medical services within the township. *See* 1966 Op. Att'y Gen. No. 66-114 (a township that operates a fire department that does not have a convenient entrance to a limited access highway may, pursuant to statutory authority, enter into a contract with another political subdivision whereby the fire department of the subdivision assumes responsibility for fighting fires on the portion of the highway within the township). *See generally* 11 Ohio Admin. Code 4765-3-04(B) ("[i]n order to assist in developing and maintaining appropriate emergency medical services in its region, each [regional physician advisory board] shall provide the following services: … [f]acilitate agreements for mutual aid and assistance between [emergency medical service] organizations in the region").

By entering into this type of contract, the county fulfills its duty to provide emergency medical services to all the territory within the county, and the emergency medical services personnel of the county are relieved of their responsibility to respond to medical emergencies within the township. Additionally, the county and township avoid providing duplicative emergency medical services within the township.

Your second question asks whether emergency medical services personnel of the county or township exercise control of the administration of medical care and treatment at the scene of a medical emergency within the township when both respond to a call for emergency medical services. You are specifically concerned with the authority to make immediate decisions regarding the administration of medical care and treatment to injured persons, including the specific emergency medical services that are to be performed.

No provision of law expressly addresses the relationship that exists between county and township emergency medical services personnel, or the precise hierarchy of authority that

governs, when both respond to the scene of a medical emergency.[2] As explained previously, however, R.C. 505.37(A) authorizes a township to provide emergency medical services through its fire department regardless of whether the emergency involves a fire. 3 Ohio Admin. Code 1301:7-1-03(I) provides "[a]uthority at fires and *emergencies*: The fire chief or his authorized representative shall be in charge at the scene of a fire or *other emergency* involving the protection of life and/or property, and shall remain in charge until authority is relinquished." (Emphasis added.) R.C. 505.37(A) and rule 1301:7-1-03(I) have been interpreted as authorizing a township fire department to exercise control over the personnel and equipment directly involved in responding to an emergency within the township's territory.

In 1994 Op. Att'y Gen. No. 94-076 the Attorney General advised that R.C. 505.37(A) and rule 1301:7-1-03(I) authorize a township fire department to take whatever actions are reasonably necessary to protect life or property at the scene of a fire or other emergency. *See* 1997 Op. Att'y Gen. No. 97-046 at 2-286 and 2-287; 1987 Op. Att'y Gen. No. 87-099 at 2-659. In this regard, the opinion stated:

> Because local authorities, such as townships acting pursuant to R.C. 505.37(A), or municipalities acting pursuant to R.C. 737.11, have the power to expand the duties of a fire department to non-fire-related emergencies, however, it is not necessary to rely solely on [rule 1301:7-1-03(I)] as a source of authority for fire department emergency squad personnel at the scene of such a non-fire-related emergency. It is axiomatic that when legislation confers the authority or duty to perform a task, but does not specify the manner of performance, the responsible public officer has the "implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded." *State ex rel. Hunt v. Hildebrandt*, 93 Ohio St. 1, 12, 112 N.E. 138, 141 (1915), *aff'd*, 241 U.S. 565 (1916). *Thus, when a board of township trustees, acting pursuant to R.C. 505.37(A), has designated a township fire department as the provider of emergency medical services in the township, that designation vests in the fire department the authority to accomplish acts necessary and essential to the provision of such services. The effective delivery of emergency services requires at a minimum the authority to control the personnel and equipment directly involved in responding to the emergency.* (Emphasis added.)

1994 Op. Att'y Gen. No. 94-076 at 2-385.

Accordingly, when a board of township trustees, acting pursuant to R.C. 505.37(A), designates a township fire department to serve as the provider of emergency medical services in the township, that designation vests in the township fire department the authority to exercise

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[2] As a general matter, emergency medical services personnel are required to exhibit respect for their peers when providing emergency medical services. 11 Ohio Admin. Code 4765-9-01(B); 11 Ohio Admin. Code 4765-12-10(B).

control of the emergency medical services personnel at the scene of a medical emergency within the township. This authority is not limited to exercising control of township emergency medical services personnel, but also extends to county or other emergency medical services personnel that respond to a medical emergency call within the township. In addition, such authority necessarily includes the related power to exercise control of the administration of medical care and treatment by emergency medical services personnel at the scene of a medical emergency.

Because a township fire department is in command at the scene of a medical emergency within the township when both county and township emergency medical services personnel respond to the emergency call, township emergency medical services personnel are authorized to make immediate decisions regarding the administration of medical care and treatment to injured persons, including the specific emergency medical services that are to be performed. Any medical care or treatment provided by township emergency medical services personnel, however, must be provided in accordance with the provisions of R.C. Chapter 4765, any administrative rules adopted pursuant thereto, and the medical protocols of the township fire department. R.C. 4765.35(A); R.C. 4765.37(A); R.C. 4765.38(A); R.C. 4765.39(A); 11 Ohio Admin. Code 4765-9-01(D); 11 Ohio Admin. Code 4765-12-10(D). *See generally* rule 4765-3-04(A) ("[e]ach [regional physician advisory board] shall develop and recommend written medical protocols for [emergency medical service] providers, organizations, and personnel operating in the area served by the [board]").

In light of the foregoing, it is clear that a township fire department is vested with the authority to exercise control at the scene of a medical emergency within the township's territory. There is no similar grant of authority conferred upon an emergency medical services organization operated by a county pursuant to R.C. 307.05.[3] Therefore, pursuant to R.C. 505.37(A) and rule 1301:7-1-03(I), when county and township emergency medical services personnel respond to a call for emergency medical services within the township, the township's emergency medical services personnel are authorized to exercise control of the administration of medical care and treatment at the scene of the medical emergency.

Although a township's emergency medical services personnel are conferred such authority, the interaction of county and township emergency medical service personnel at the scene of a medical emergency within the township "should be marked by cooperation, rather than competition for control." 1994 Op. Att'y Gen. No. 94-076 at 2-386. The emergency medical needs of injured persons may be compromised should township emergency medical

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[3] Unlike townships and municipal corporations, a county is not statutorily authorized to establish and operate a county fire department. *See generally* R.C. 505.37-.44 (township fire protection); R.C. 737.08-.14 (city fire protection); R.C. 737.21-.27 (fire department in city or village). The position of fire chief thus does not exist at the county level. 3 Ohio Admin. Code 1301:7-1-03(I), therefore, does not authorize an emergency medical service organization operated by a county pursuant to R.C. 307.05 to take command at the scene of a fire or other emergency.

services personnel ignore legitimate health and safety concerns expressed by county emergency services personnel as they seek to provide emergency medical services to injured persons. Such concerns should be accommodated whenever it is possible to do so, in order to arrive at an amicable resolution of any disagreements that may arise between county and township emergency medical services personnel as they carry out their duties. *See id.*; 1987 Op. Att'y Gen. No. 87-039 at 2-264. *See generally* 1994 Op. Att'y Gen. No. 94-081 at 2-405 (discussing need for cooperation between the county sheriff and municipal corporation police department during homicide investigations). In particular, township emergency medical services personnel should exercise their control of the administration of medical care and treatment at the scene of a medical emergency in such a manner as to accommodate legitimate health and safety concerns expressed by county emergency medical services personnel about the administration or desirability of particular medical care or treatment.

Accordingly, we would recommend that the county and township work together to formulate and implement a treatment protocol that will govern in these situations of overlapping jurisdiction. Absent a formal contract between the county and township under R.C. 307.05, *see* note four, *infra*, a written protocol describing the hierarchy of command and treatment regimen at the scene of medical emergencies that occur within the township will help to ensure that all proper measures are taken for the health and safety of injured persons.[4]

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

1. When a county and a township within the county provide emergency medical services throughout their respective territories pursuant to R.C. 307.05 and R.C. 505.37(A), the emergency medical services personnel of both the county and the township are responsible for providing such services within the township.

2. Pursuant to R.C. 505.37(A) and 3 Ohio Administrative Code 1301:7-1-03(I), when emergency medical services personnel of a county emergency medical service organization and a township fire department respond to a call for emergency medical services within the township, the township fire

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[4] In order to avoid disagreements that may arise between county and township emergency medical services personnel as they carry out their duties when responding to emergency calls within a township, the county may wish to consider entering into a contract with the township, pursuant to R.C. 307.05, whereby the township fire department assumes the county's responsibility for providing emergency medical services within the township. *See* 1966 Op. Att'y Gen. No. 66-114; *see also* R.C. 9.60; 11 Ohio Admin. Code 4765-3-04(B). Under such a contract, county emergency medical services personnel would not be required to respond to medical emergencies within the township, thus avoiding disagreements with township emergency medical services personnel regarding the medical care and treatment that should be provided to injured persons.

department's emergency medical services personnel are authorized to exercise control of the administration of medical care and treatment at the scene of the medical emergency.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

March 26, 2001

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

SYLLABUS: 2001-011

1. When a county and a township within the county provide emergency medical services throughout their respective territories pursuant to R.C. 307.05 and R.C. 505.37(A), the emergency medical services personnel of both the county and the township are responsible for providing such services within the township.

2. Pursuant to R.C. 505.37(A) and 3 Ohio Administrative Code 1301:7-1-03(I), when emergency medical services personnel of a county emergency medical service organization and a township fire department respond to a call for emergency medical services within the township, the township fire department's emergency medical services personnel are authorized to exercise control of the administration of medical care and treatment at the scene of the medical emergency.