March 28, 1995

OPINION NO. 95-005

The Honorable David E. Bowers
Allen County Prosecuting Attorney
Court of Appeals Building, Suite 302
204 North Main Street
Lima, Ohio 45801

Dear Prosecutor Bowers:

You have requested an opinion concerning the authority of a board of township trustees to provide police protection services on a tract of land deeded to the United States. You state in your letter that the tract of land is located within the township, and that the Lima Army Tank Plant (LATP) occupies the tract of land. LATP is operated under the direction of an installation commander who is responsible for the efficient and economical operation, administration, service and supply of all individuals, units, and activities assigned to or under the jurisdiction of LATP, *see* Army Regulation 210-10, Ch. 2-1, and for maintenance of law and order at LATP, *see* Army Regulation 210-10, Ch. 2-9. *See generally Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, 893 (1961) ("[i]t is well settled that a Post Commander can, under the authority conferred on him by statutes and regulations, in his discretion, exclude private persons and property therefrom, or admit them under such restrictions as he may prescribe in the interest of good order and military discipline (1918 Dig. Op. J. A. G. 267 and cases cited)" (quoting JAGA 1925/680.44, 6 October 1925)).

Federal Jurisdiction over LATP

Materials submitted with your request state further that the federal government has accepted exclusive jurisdiction over the tract of land occupied by LATP. *See* U.S. Const. art. I, § 8, cl. 17; 40 U.S.C. § 255 (1988); *see also* R.C. 159.04(A) ("[e]xclusive jurisdiction in and over any land acquired by the United States under section 159.03 of the Revised Code[1] is hereby ceded to the

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[1] R.C. 159.03 states:

> The consent of the state is given, in accordance with clause 17, Section 8, Article 1, United States Constitution, to the acquisition, between May 6, 1902, and the effective date of this amendment, by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom houses, courthouses, post offices, arsenals, or other public buildings whatever, or for any

United States, for all purposes except the service upon such sites of all civil and criminal process of the courts of this state"); 1992 Op. Att'y Gen. No. 92-046 at 2-183 ("[w]hen the federal government acquires land within a state, the state may cede to the federal government jurisdiction in and over that land, and the federal government may accept either exclusive or partial jurisdiction"). *See generally* 1952 Op. Att'y Gen. No. 1877, p. 720 at 722 ("[p]ursuant to the provisions of the act of October 9, 1940, 40 U.S. Code Section 255, ... the Secretary of War, by a letter received by the Governor of Ohio on December 5, 1945, gave notice of the acceptance by the United States of _exclusive jurisdiction over all lands acquired by it for military purposes within the State of Ohio, title to which has heretofore vested in the United States._ This letter of acceptance is set out in full in [1945 Op. Att'y Gen. No. 649, p. 806]"). "Where the federal government has exclusive jurisdiction, state and local law enforcement entities do not have jurisdiction to conduct investigations or carry out law enforcement." Op. No. 92-046 at 2-183; *see, e.g.*, 1972 Op. Att'y Gen. No. 72-037 (a county coroner has no authority to conduct an investigation into the cause of death within an area that the federal government has exclusive jurisdiction); 1952 Op. No. 1877 (syllabus) ("[w]here exclusive federal jurisdiction has been obtained over lands within a military reservation ... the responsibility for the enforcement of traffic regulations on [a state] highway [within that reservation] lies with the federal authorities, and the state authorities are without jurisdiction to enforce state traffic regulations thereon").

Because a township is neither required nor permitted to provide police protection services on land under the exclusive jurisdiction of the federal government, the installation commander of LATP and the township wish to enter into a contract whereby the township will agree to provide police protection services to LATP. Based on these facts, you ask whether a board of township trustees may enter into a contract with the federal government whereby the township provides police protection services on a tract of land that is under the exclusive jurisdiction of the federal government.[2]

Authority of a Board of Township Trustees

It is a well established principle in Ohio that a board of township trustees possess only such

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> other purposes of the government. On and after the effective date of this amendment, the consent of the state is given, in accordance with clause 17, Section 8, Article I, United States Constitution, to the acquisition by the United States by purchase, condemnation, or otherwise, of any land in this state required for sites for national parks, national monuments, or national recreational areas provided acquisition of such land commenced prior to the effective date of this amendment.

[2] This opinion does not purport to examine the authority of the federal government to obtain police protection services through a contract with a local governmental entity, or to relinquish to Ohio the federal jurisdiction over the tract of land occupied by LATP. *See generally* 1988 Op. Att'y Gen. No. 88-008 at 2-25 (Attorney General may advise statutory clients only to the extent of their duties).

powers as are expressly conferred upon the trustees by statute or are by necessary implication requisite to perform the duties imposed upon them. *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); 1994 Op. Att'y Gen. No. 94-004 at 2-12; 1990 Op. Att'y Gen. No. 90-010 at 2-43. Thus, it is necessary to examine the statutory scheme set forth in R.C. Chapter 505 governing townships and police protection services.

R.C. 505.43, providing for contracts for police protection, states in relevant part:

> In order to *obtain* police protection, or to *obtain* additional police protection in times of emergency, any township may enter into a contract with one or more townships, municipal corporations, park districts created pursuant to section 511.18 or 1545.01 of the Revised Code, or county sheriffs or with a governmental entity of an adjoining state upon any terms that are agreed to by them, for services of police departments or use of police equipment, *or the interchange of the service of police departments or use of police equipment within the several territories of the contracting subdivisions,* if the contract is first authorized by respective boards of township trustees or other legislative bodies. The cost of the contract may be paid for from funds received pursuant to the passage of a levy authorized pursuant to division (J) of section 5705.19 and section 5705.25 of the Revised Code. (Emphasis added.)

A township thus may contract under R.C. 505.43 to provide police protection to a township, municipal corporation, park district, county sheriff, or a governmental entity of an adjoining state only if the township obtains police protection or additional police protection in times of emergency from the entity receiving the township's police protection services. *See* 1989 Op. Att'y Gen. No. 89-059 at 2-250 (R.C. 505.43 "is clearly limited to the situation where a township seeks to obtain some form of police protection, rather than where a township seeks only to provide police protection").

Similarly, R.C. 505.50 states in part:

> The board of trustees of any township may enter into a contract with one or more townships, a municipal corporation, a park district created pursuant to section 511.18 or 1545.01 of the Revised Code, or the county sheriff upon any terms that are mutually agreed upon for the provision of police protection services or additional police protection services either on a regular basis or for additional protection in times of emergency. The contract shall be agreed to in each instance by the respective board or boards of township trustees, the county commissioners, the board of park commissioners, or the legislative authority of the municipal corporation involved. Such contract may provide for a fixed annual charge to be paid at the time agreed upon in the contract.

The authority of a board of township trustees to enter into a contract to provide police protection services under R.C. 505.50 was discussed in Op. No. 89-059. The opinion states that "[a]lthough the operation of R.C. 505.50 has been addressed by my predecessors in circumstances where a township has sought to obtain, rather than to provide, police protection services, the language of R.C. 505.50

appears also to encompass situations where a township seeks to provide such services." *Id.* at 2-251 (citations omitted). As explained in Op. No. 89-059 at 2-251:

> At the time the General Assembly enacted R.C. 505.50 in 1963 Ohio Laws 212, 1814 (Am. H.B. 744, eff. Sept. 24, 1963), R.C. 505.441 (currently at R.C. 505.43) authorized townships specifically to obtain police protection or additional police protection pursuant to contract. R.C. 505.50 was then enacted authorizing the board of trustees of any township to contract with certain public entities "for the provision of" certain types of police protection services, without specifying whether the township was thereby to obtain or to provide such services. Since, pursuant to R.C. 505.441 (now R.C. 505.43), townships were already empowered to obtain police protection services or additional police protection services by contract from a township, municipality, or county sheriff, the authority for a township to contract with those entities under R.C. 505.50 "for the provision of" such services must be read as including the authority to provide such services to the other contracting entity; otherwise, that portion of R.C. 505.50 would have no purpose. *See generally United Sales Promotion Co. v. Anderson*, 100 Ohio St. 58, 125 N.E. 106 (1919). After the enactment of R.C. 505.43, the General Assembly enacted R.C. 505.431 in 1979-1980 Ohio Laws, Part I, 328 (Am. S.B. 98, eff. Oct. 6, 1980), expressly authorizing township police departments to "provide" police protection to various other governmental entities, but specifically "without a contract." It is a fundamental rule of statutory construction that, in interpreting a statute, it is necessary "to give effect to all its terms and provisions; and to render it compatible with other and related enactments whenever and wherever possible." *Commonwealth Loan Co. v. Downtown Lincoln Mercury Co.*, 4 Ohio App. 2d 4, 6, 211 N.E.2d 57, 59 (Hamilton County 1964). A reading of R.C. 505.50 which authorizes a township to contract to provide police protection services to one of the designated entities, thus, appears to comport with the statutory scheme set forth in R.C. Chapter 505 governing townships and police protection services. (Footnote omitted.)

R.C. 505.50 thus authorizes a township to enter into a contract to provide police protection services to townships, municipal corporations, or county sheriffs. *See* Op. No. 89-059.

In addition to R.C. 505.43 and R.C. 505.50, R.C. 505.431 authorizes a township to provide police protection without a contract to certain designated entities:

> The police department of any township or township police district may provide police protection to any county, municipal corporation, or township of this state, to a park district created pursuant to section 511.18 or 1545.01 of the Revised Code, or to a governmental entity of an adjoining state without a contract to provide police protection, upon the approval, by resolution, of the board of township trustees of the township in which the department is located and upon authorization by an officer or employee of the police department providing the police protection who is designated

> by title of office or position, pursuant to the resolution of the board of township trustees, to give such authorization.

A township thus, pursuant to R.C. 505.431, may provide police protection, without a contract, to any county, municipal corporation, or township of this state, to a park district, or to a governmental entity of an adjoining state, if the board of township trustees adopts an appropriate resolution authorizing the provision of such police protection by its police department.

A Board of Township Trustees May Not Enter Into a Contract with the Federal Government to Provide Police Protection Services

No provision within R.C. 505.43, R.C. 505.431, or R.C. 505.50 authorizes a township to enter into a contract to provide police protection services to the federal government. Further, none of these statutes may be read as implying such authority. Rather, application of the maxim of statutory construction that the expression of one thing in a statute implies the exclusion of another, *see, e.g., Craftsman Type, Inc. v. Lindley*, 6 Ohio St. 3d 82, 82, 451 N.E.2d 768, 769 (1983); *Kroger Co. v. Bowers*, 3 Ohio St. 2d 76, 209 N.E.2d 209 (1965), indicates that having designated the entities that a township may enter into a contract with to provide police protection services, the General Assembly has thereby limited the entities that a board of township trustees may contract with to provide police protection services. *See* 1989 Op. Att'y Gen. No. 89-074 at 2-340 ("the principle of *expressio unius est exclusio alterius*, the _expression of one thing implies exclusion of another,_ indicates that naming of the particular entities with which the sheriff may contract implies that a contract with any other entity is not authorized pursuant to [R.C. 311.29]" (citations omitted)). Therefore, it is clear that a board of township trustees may not enter into a contract with the federal government whereby the township agrees to provide police protection services on a tract of land that is under the exclusive jurisdiction of the federal government.

Conclusion

For the reasons discussed above, it is my opinion, and you are advised, that no provision of the Revised Code authorizes a board of township trustees to enter into a contract with the federal government whereby the township agrees to provide police protection services on a tract of land that is under the exclusive jurisdiction of the federal government.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

March 28, 1995

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Allen County Prosecuting Attorney
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SYLLABUS: 95-005

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