May 19, 2003

The Honorable Rebecca J. Ferguson
Preble County Prosecuting Attorney
103 N. Barron Street
Eaton, Ohio 45320

SYLLABUS: 2003-017

1. Pursuant to R.C. 505.44, a board of township trustees may procure ambulance or emergency medical services from a village by means of a contract that provides for the payment of a fixed annual charge, plus moneys received from billings of township users of the ambulance or emergency medical services, only if the payment of moneys received from billings is included in the fixed annual charge or is structured in terms of a stipulated price for each run, call, or emergency, or the elapsed time of service required in such run, call, or emergency, or a combination of these types of payments. Any other arrangement for paying the village moneys received from billings of township users falls outside the authority granted by R.C. 505.44 and is not permitted.

2. A board of township trustees may procure ambulance or emergency medical services from a village government by means of a contract under which the township authorizes the village to act on behalf of the township to bill township users of ambulance or emergency medical services for the charges established by the township pursuant to R.C. 505.84; however, the discretion to determine whether to waive all or part of the charge for any resident has been vested in the board of township trustees and cannot be delegated to the village.

3. A village that contracts with a board of township trustees to provide ambulance or emergency medical services to township users and bill those users on behalf of the township may, if the contract allows it, arrange for the billing services to be provided by a third-party billing company.

4. When a board of township trustees procures ambulance or emergency medical services from a village and authorizes the village to bill township users and collect fees for the use of the services, the village is required by R.C. 9.38 and R.C. 505.84 to turn those fees over to the township for

deposit in the ambulance and emergency medical services fund. (1984 Op. Att'y Gen. No. 84-048, modified.)

5. If a township enters into a contract to procure ambulance or emergency medical services from a village in exchange for compensation that is to come in part from proceeds of tax levies and in part from insurance billings, the township clerk is required by R.C. 5705.41(D) to certify the total value of the contract or, if the contract is a continuing contract to be performed in whole or in part in an ensuing fiscal year, to certify the amount required to meet the obligation under the contract in the fiscal year in which the contract is made. If the contract is entered into, in whole or in part, on a per unit basis, the township clerk may base the certification on an estimate of the amount to become due on a per unit basis during the current year.

6. Funds that a township receives or anticipates receiving from insurance billings for the use of ambulance or emergency medical services pursuant to R.C. 505.84 must be included in the township budget certification and appropriations process pursuant to R.C. Chapter 5705.

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3428
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

May 19, 2003

OPINION NO. 2003-017

The Honorable Rebecca J. Ferguson
Preble County Prosecuting Attorney
103 N. Barron Street
Eaton, Ohio 45320

Dear Prosecutor Ferguson:

We have received your request for an opinion on several question regarding contracts between a township and a village for the provision of ambulance or emergency medical services (EMS). Your questions may be stated as follows:

1. May a board of township trustees enter into a contract for ambulance/EMS services with a village government in which the pricing under the contract is an annual fixed charge plus any moneys received from billings of township users of the ambulance/EMS services on an unlimited basis? If this type of arrangement is not permissible, would such a contract (if one already existed) be void or voidable?

2. May a board of township trustees enter into a contract for ambulance/EMS services with a village government in which the board of trustees authorizes the village to bill township users for the service on behalf of the township and also delegates to the village the authority to waive all or part of the billed charges for any resident? May a board of township trustees hold the village harmless for any such waiver of charges?

3. May a village that provides ambulance/EMS services to a township under a contract that authorizes the village to provide billing services on behalf of the township enter into a contract for those billing services with a third-party billing company?

4. If a board of township trustees enters into a contract for ambulance/EMS services with a village government and authorizes the village to bill and

collect fees for the use of the services, must the village turn those fees over to the township?

5. Must a township clerk certify the total value of a contract for ambulance/EMS services where some of the funds being certified are from tax levies and some of the funds are from insurance billings?

6. Must those funds received or anticipated to be received from insurance billings for the use of ambulance/EMS services be included in the township budget certification and appropriations process?

As your letter notes, townships have long been authorized to provide ambulance or emergency medical services, contract for those services, bill residents and nonresidents for the use of the services, and raise funds through tax levies. In recent years, financial pressures have led townships to look for alternative sources of funding, including the billing of users' insurance carriers. Your questions concern funds raised by this method.[1]

We note initially that townships are political subdivisions of the state, with such powers as they are granted by law, either expressly or by necessary implication. *See, e.g.*, Ohio Const. art. X, §§ 1 and 2; *Cook-Johnson Realty Co. v. Bertolini*, 15 Ohio St. 2d 195, 199, 239 N.E.2d 80 (1968); *State ex rel. Schramm v. Ayres*, 158 Ohio St. 30, 33, 106 N.E.2d 630 (1952); *Hopple v. Trs. of Brown Township*, 13 Ohio St. 311, 324-25 (1862). R.C. Chapter 504 authorizes a township to adopt a limited home rule government, under which the township may exercise a greater measure of authority, in a greater number of matters, than a township that has not adopted a limited home rule government. *See, e.g.*, R.C. 504.04; 2002 Op. Att'y Gen. No. 2002-032. Your questions are not addressed specifically to limited home rule townships. Therefore, this opinion uses the term "township" to mean only a township that has not adopted a limited home rule form of government, and addresses the powers of only these townships.

Authority for a township to obtain ambulance or emergency medical services from a village by contract

We begin with a brief review of the statutes authorizing a township to procure ambulance or emergency medical services from a village by contract. R.C. 505.44 provides generally that, in order to obtain ambulance or emergency medical services, a township may enter into a

---

[1] Through conversations with your representative, we have learned that the arrangements in question generally provide for the billing of all users of ambulance or emergency medical services, with the intention of collecting any Medicaid, Medicare, or private insurance benefits that may be available. You have not raised any issues concerning the determination of who may be charged or when waivers may be granted, and those matters are not discussed in this opinion. *See, e.g.*, R.C. 505.84; 1990 Op. Att'y Gen. No. 90-065; 1988 Op. Att'y Gen. No. 88-042; 1984 Op. Att'y Gen. No. 84-048; 1981 Op. Att'y Gen. No. 81-023.

contract with one or more of a variety of public and private entities, including municipal corporations, "upon such terms as are agreed to by them," to furnish or receive services. Additional authority is granted by R.C. 9.60, which authorizes arrangements for the provision of fire protection or emergency medical services between various public and private entities, including townships and municipal corporations. *See also* R.C. 505.37; R.C. 715.05; R.C. 737.11; R.C. 737.21. Thus, there is clear authority for a township to secure ambulance or emergency medical services from a village pursuant to contract.

The authority for a township to charge persons who use ambulance or emergency medical services is granted by R.C. 505.84, which states that a board of township trustees "may establish reasonable charges" for the use of ambulance or emergency medical services, may establish different charges for township residents and nonresidents, and "may at its discretion waive all or part of the charge for any resident."[2] A prior Attorney General concluded that the authority to establish and collect these charges exists when the township obtains the services by contract, as well as when the township provides the services directly. 1981 Op. Att'y Gen. No. 81-023; *see also* 1990 Op. Att'y Gen. No. 90-065; 1984 Op. Att'y Gen. No. 84-048. We concur in this conclusion.

We find, accordingly, that there is clear authority for a township to secure ambulance or emergency medical services from a village pursuant to contract and to bill residents and nonresidents for the use of these services. We turn now to your specific questions.

Question 1: May a board of township trustees enter into a contract for ambulance or emergency medical services with a village government in which the pricing under the contract is an annual fixed charge plus any moneys received from billings of township users of the services on an unlimited basis?

---

[2] The relevant portion of R.C. 505.84 reads as follows:

> As used in this section, "authorized medicare reimbursement rate" means such rate established for the locality under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended.
>
> *A board of township trustees may establish reasonable charges for the use of ambulance or emergency medical services. The board* may establish different charges for township residents and nonresidents, and *may at its discretion waive all or part of the charge for any resident*. The charge for nonresidents shall be an amount not less than the authorized medicare reimbursement rate, except that if prior to the effective date of this amendment the board had different charges for residents and nonresidents and the charge for nonresidents was less than the authorized medicare reimbursement rate, the board may charge nonresidents less than the authorized medicare reimbursement rate. (Emphasis added.)

Your first question asks whether a board of township trustees may procure ambulance or emergency medical services from a village government by means of a contract that provides for payment of an annual fixed charge, plus any moneys received from billings of township users of the services on an unlimited basis. You also ask, if this type of arrangement is not permissible, whether a contract purporting to adopt such an arrangement would be void or voidable.

R.C. 505.44, which authorizes a township to obtain ambulance or emergency medical services from a village pursuant to contract, also prescribes the type of compensation that a township may pay for the services, as follows:

> The contract may provide for a fixed annual charge to be paid at the times agreed upon and stipulated in the contract, or for compensation based upon a stipulated price for each run, call, or emergency, or the elapsed time of service required in such run, call, or emergency, or any combination thereof.

R.C. 505.44. A township is thus permitted to contract to pay, for the provision of ambulance or emergency medical services, any combination of three types of compensation: (1) a fixed annual charge; (2) compensation based upon a stipulated price for each run, call, or emergency; and (3) compensation based upon the elapsed time of service required in each run, call, or emergency.

The fact that particular types of compensation are listed indicates that these are the only types of compensation that are permitted. *See State v. Droste*, 83 Ohio St. 3d 36, 39, 697 N.E.2d 620 (1998) ("[u]nder the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded"). This conclusion is supported by the language of R.C. 505.44 stating expressly that "any combination" of the listed types is permissible. The statute thus expressly authorizes the listed types of compensation, in any combination, and by clear implication excludes compensation determined in any other manner. *See generally Akron Transp. Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493 (1951) (quoting *Utah Rapid Transit Co. v. Ogden City*, 89 Utah 546, 551, 58 P.2d 1 (1936), *overruled in part by Rich v. Salt Lake City Corp.*, 20 Utah 2d 339, 437 P.2d 690 (1968)) ("[i]t is one of the well recognized canons of statutory construction that when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner").

The fact that the statute uses the word "may," which is ordinarily construed as permissive, rather than mandatory, does not change this result. *See Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1). "May" indicates that the township has discretion to decide whether to provide monetary compensation for ambulance or emergency medical services[3] and, if it does provide monetary compensation,

---

[3] R.C. 505.44 permits a wide variety of contracts for the provision of ambulance or emergency medical services. Under some of them – for example, contracts for the interchange

has discretion to decide how to structure that compensation, within the statutory limitations. Use of the word "may" does not provide the township with discretion to select a method of providing compensation that is not authorized by statute.

This conclusion is further supported by the fact that, when the General Assembly has intended that an entity contracting with a township should be permitted to keep the charges it collects for services rendered, the General Assembly has adopted statutory language expressly so stating. In this regard, for example, R.C. 505.31 states:

> When a board of township trustees contracts with an independent contractor for the collection, transfer, and disposal of solid wastes under section 505.27 of the Revised Code, the contract may provide for the independent contractor to collect and keep the service charges for the waste disposal services the contractor provides.

R.C. 505.31(B). No similar language is included in R.C. 505.44, thereby indicating a lack of authority for a township to include a provision of this type in a contract for ambulance or emergency medical services. Hence, a township that procures ambulance or emergency medical services by contract may provide monetary compensation for those services only in the manner authorized by R.C. 505.44. There is no statutory authority for the contract to permit the entity providing the services to simply retain amounts collected for services rendered.

The contract described in your first question is a contract that provides as compensation a fixed annual charge, plus moneys received from billings of township users of the services. The fixed annual charge is clearly authorized by R.C. 505.44. However, the payment of moneys received from billings of township users of the services is authorized by R.C. 505.44 only if it fits within one, or a combination, of the types of compensation permitted. The payment to the village of moneys received from billings of township users of ambulance or emergency medical services thus is permitted by R.C. 505.44 if it is included in the annual fixed charge, if it is structured in terms of compensation based upon a stipulated price for each run, call, or emergency, or the elapsed time of service required in such run, call, or emergency, or if it consists of some combination of the types of payment authorized. For example, if billings received from township users of ambulance or emergency medical services are paid to the village in the form of a stipulated price for each run, call, or emergency, or the elapsed time of service required in such run, call, or emergency, then the compensation paid to the village is of the type permitted by R.C. 505.44.

Any arrangement for paying the village moneys received from billings that falls outside the authority granted by R.C. 505.44 is not permitted. For example, a contract under which the township provides for the village to receive whatever amounts might be collected by billing

---

of services – the parties might choose not to provide for monetary compensation, and R.C. 505.44 allows that result.

township users of the services is not authorized by R.C. 505.44, because it is not a fixed annual charge, and it bases compensation upon amounts collected, rather than upon a stipulated price for each run, call, or emergency, or the elapsed time of service required.

You have asked whether a contract providing for a particular type of pricing arrangement not authorized by R.C. 505.44, if it already existed, would be void or voidable. We note, initially, that it is not possible, by means of this formal opinion, to determine the rights of parties under a particular contract. Rather, the authority to make determinations of rights in particular circumstances rests with the courts. *See, e.g.*, 1989 Op. Att'y Gen. No. 89-010, at 2-40; 1988 Op. Att'y Gen. No. 88-076, at 2-371; 1983 Op. Att'y Gen. No. 83-087, at 2-342 (the Attorney General is "without authority to render an opinion interpreting a particular agreement or contract" because the "determination of particular parties' rights is a matter which falls within the jurisdiction of the judiciary"). Our discussion, therefore, consists of general principles of law that may be applied to particular facts, as appropriate.

In general terms, a contract that is void is a nullity, of no legal effect whatsoever. In contrast, a contract that is voidable is subject to being affirmed or rejected by one of the parties; it is valid unless that party chooses to treat it as void. *See Black's Law Dictionary* 326 (7th ed. 1999) (defining "voidable contract" and "void contract"); *see also, e.g., Terrill v. Auchauer*, 14 Ohio St. 80 (1862); 1983 Op. Att'y Gen. No. 83-027, at 2-97. Some statutory provisions specify the effect of failure to comply with their provisions. For example, R.C. 5705.41(D)(1), discussed more fully below, states expressly that a contract made without a certificate of available funds "shall be void." R.C. 505.44 does not specify the consequences of a failure to comply with the compensation arrangements it prescribes, and we are aware of no judicial decisions addressing that issue.

Contracts entered into by public authorities without substantial compliance with applicable statutes are commonly considered to be illegal and void. *See, e.g., Buchanan Bridge Co. v. Campbell*, 60 Ohio St. 406, 419-20, 54 N.E. 372 (1899) ("in this state the public policy, as indicated by our constitution, statutes and decided cases, is, that to bind the state, a county or city for supplies of any kind, the purchase must be substantially in conformity to the statute on that subject, and that contracts made in violation or disregard of such statutes are void, not merely voidable"). Under general principles of law, a contract made by a public body is void if it does not comply with applicable statutes that are found to be mandatory, although failure to comply with provisions that are merely directory will not render the contract void. *See, e.g., Pincelli v. Ohio Bridge Corp.*, 5 Ohio St. 2d 41, 213 N.E.2d 356 (1966); *State v. Kuhner*, 107 Ohio St. 406, 140 N.E. 344 (1923).[4] As discussed above, the provisions of R.C. 505.44 governing the types of

---

[4] It has been held that, when it is determined that a public contract is void, "[c]ourts will leave the parties to such unlawful transaction where they have placed themselves, and will refuse to grant relief to either party." *Buchanan Bridge Co. v. Campbell*, 60 Ohio St. 406, 54 N.E. 372 (1899) (syllabus); *see also Shampton v. City of Springboro*, 98 Ohio St. 3d 457, 2003-Ohio-1913, 786 N.E.2d 883; *State ex rel. Hess v. City of Akron*, 56 Ohio App. 28, 33, 10 N.E.2d 1

compensation allowed appear to be mandatory, and failure to comply with these provisions thus would render a contract void. Again, however, this opinion cannot determine the rights or remedies of parties under a particular contract.[5]

In response to your first question we conclude, accordingly, that pursuant to R.C. 505.44, a board of township trustees may procure ambulance or emergency medical services from a village by means of a contract that provides for the payment of a fixed annual charge, plus moneys received from billings of township users of the ambulance or emergency medical services, only if the payment of moneys received from billings is included in the fixed annual charge or is structured in terms of a stipulated price for each run, call, or emergency, or the elapsed time of service required in such run, call, or emergency, or a combination of these types of payments. Any other arrangement for paying the village moneys received from billings of township users falls outside the authority granted by R.C. 505.44 and is not permitted.

Question 2: May a board of township trustees enter into a contract for ambulance or emergency medical services with a village government in which the board of trustees authorizes the village to bill township users for the service on behalf of the township and also delegates to the village the authority to waive all or part of the billed charges for any resident?

(Summit County 1936) ("[m]any unenforceable agreements are voluntarily performed. The law does not disturb the *status quo* thus created"), *aff'd*, 132 Ohio St. 305, 7 N.E.2d 411 (1937). *See generally* 1988 Op. Att'y Gen. No. 88-076 (except as provided by statute, contracts of a governmental entity are governed by the same principles applicable to contracts between individuals, and a valid contract may be renegotiated only by agreement of the parties).

[5] Your first question indicates that the moneys to be paid by the township from billings of township users would be determined on an "unlimited basis" – that is, all money collected by billing township users, whatever the amount, would be paid to the municipality without limit. As discussed above, R.C. 505.44 provides for compensation to be paid to the village as a fixed annual charge, as a stipulated price for each run, call, or emergency or the elapsed time of service required in each run, call, or emergency, or as a combination of these types of payment. As discussed more fully in connection with your fifth question, it is possible for a valid contract to provide for compensation to be paid on a "per unit" basis, and thus to provide for an open-ended amount of compensation to be paid under the contract, depending upon the quantity of services actually rendered. In such circumstances, however, it is necessary to estimate the amount that will become due under the contract and certify that sufficient funds will be available to meet the estimated amount. *See* R.C. 5705.41(D); 1987 Op. Att'y Gen. No. 87-069; *cf.* 1999 Op. Att'y Gen. No. 99-049 (to be valid, a contract with an indemnification or hold harmless clause imposing an obligation on a subdivision must set a maximum dollar amount of the obligation and that amount must be certified as available in accordance with R.C. 5705.41(D)(1)).

Your second question asks whether a board of township trustees may procure ambulance or emergency medical services from a village government by means of a contract that authorizes the village to bill users on behalf of the township and also delegates to the village the authority to waive all or part of the billed charges for any resident. You ask also if the board of township trustees may hold the village harmless for this type of waiver of charges.

As noted above, 1981 Op. Att'y Gen. No. 81-023 concluded that a township may impose charges for ambulance or emergency medical services pursuant to R.C. 505.84 whether the township provides the services directly or acquires them by contract. 1984 Op. Att'y Gen. No. 84-048 concluded, in addition, that the township may authorize the entity that provides ambulance or emergency medical services pursuant to contract to collect the charges established by the township, provided that the charges are ultimately paid to the township and deposited in the ambulance and emergency medical services fund, as required by R.C. 505.84.[6]

These conclusions were based on the fact that the language of R.C. 505.84 authorizing the establishment of reasonable charges for the use of ambulance or emergency medical services does not distinguish between services provided directly by a township and those provided pursuant to contract, and does not specify a method of collection. 1984 Op. Att'y Gen. No. 84-048, at 2-157; 1981 Op. Att'y Gen. No. 81-023, at 2-86; *see* note 2, *supra*. Thus, R.C. 505.84 confers upon the board of township trustees authority to collect charges for the use of ambulance or emergency medical services and vests the board with discretion to establish the method of collection, so long as the discretion is exercised in a reasonable manner. *See generally Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) ("[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner"); 1985 Op. Att'y Gen. No. 85-008, at 3-32 ("a governmental agency or entity has the implied authority to delegate a purely

---

[6] 1984 Op. Att'y Gen. No. 84-048 stated that charges under R.C. 505.84 collected by a private ambulance owner pursuant to contract must be "paid over to the township trustees and deposited by them in the ambulance and emergency medical services fund." 1984 Op. Att'y Gen. No. 84-048 (syllabus, paragraph 2). While this is an acceptable procedure for complying with R.C. 505.84, it would also be permissible for the charges to be paid to the township clerk, who serves as fiscal officer of the township, and to be deposited by the township clerk in the ambulance and emergency medical services fund. *See* R.C. 9.38 (requiring a public official of local government to deposit all public moneys received by that official with the treasurer of the public office or properly designated depository, and requiring a public official who receives money for another public office to pay that money to the proper public official of the proper public office); R.C. 507.04; R.C. 507.07; R.C. 5705.01(D); R.C. 5705.09. *Compare* R.C. 505.84 *with* R.C. 505.31 (giving the township clerk responsibility for collecting service charges for waste disposal service, to be kept in a separate fund for a specified purpose). Therefore, we modify 1984 Op. Att'y Gen. No. 84-048 on the matter of the procedure by which charges collected under R.C. 505.84 are paid to the township and deposited in the ambulance and emergency medical services fund.

ministerial statutory duty, that is, a duty that requires a mere physical act, or which does not require judgment and discretion in its performance"); 1984 Op. Att'y Gen. No. 84-066; *see also* R.C. 9.35 (authorizing a public official to contract for the performance of mechanical, clerical, or record-keeping services necessary in the performance of the public official's duties).

This analysis supports the conclusion that R.C. 505.84 permits a township to contract with a village for the provision of ambulance or emergency medical services and to authorize the village to act on behalf of the township in billing township users of the services. *See, e.g.*, 1984 Op. Att'y Gen. No. 84-048, at 2-157 ("I am aware of nothing which prohibits the collection of charges by the private ambulance owner [providing services pursuant to contract] initially, especially if this is the most efficient and economical means available").

A different analysis applies, however, with regard to the question whether the board of township trustees may delegate to the village the authority to waive all or part of the billed charges for any resident. The relevant statutory language states expressly that the board of township trustees "may at its discretion waive all or part of the charge for any resident." R.C. 505.84. The responsibility for exercising discretion has thus been given directly to the township trustees, as a duty of their office, and the exercise of that discretion cannot be delegated to anyone else, including the government of a village that provides ambulance and emergency medical services pursuant to contract. *See Burkholder v. Lauber*, 6 Ohio Misc. 152, 154, 216 N.E.2d 909 (C.P. Fulton County 1965) ("[w]here the powers of judgment and discretion are by law reposed in a public officer, the presumption is that such officer was selected because of his fitness and competency to exercise that judgment and discretion, and unless the authority to do so is expressly conferred upon him, he may not delegate his powers and duties to another"); 2000 Op. Att'y Gen. No. 2000-024, at 2-164 to 2-165.

We conclude, therefore, that a board of township trustees may procure ambulance or emergency medical services from a village government by means of a contract under which the township authorizes the village to act on behalf of the township to bill township users of ambulance or emergency medical services for the charges established by the township pursuant to R.C. 505.84; however, the discretion to determine whether to waive all or part of the charge for any resident has been vested in the board of township trustees and cannot be delegated to the village.

Because the authority to determine whether to waive charges cannot be delegated to the village, it is unnecessary to address the issue of holding the village harmless for waivers it might grant. We note, however, that it would be possible for the village and township to cooperate in certain respects with regard to the issuance of waivers. For example, the village might provide the board of township trustees with recommendations of instances in which charges should be waived, and the board of township trustees could then consider and act upon the recommendations.

Question 3: May a village that provides ambulance or emergency medical services to a township under a contract that authorizes the village to provide billing services on behalf of the township enter into a contract for those billing services with a third-party billing company?

Your third question asks whether a village that is under a contract with a board of township trustees to provide ambulance or emergency medical services and bill township users for those services may enter into a contract for those billing services with a third-party billing company. It is clear, initially, that a subcontract of this sort is not permissible if it would conflict with the terms of the contract. Therefore, this question may arise only if the contract does not prohibit the village from procuring billing services from a third-party billing company. *See generally* 1988 Op. Att'y Gen. No. 88-076 (general contract law applies to government contracts, except as provided by law); 1971 Op. Att'y Gen. No. 71-066, at 2-224 ("the statute is silent as to the method of collection. Its mandate is fulfilled as long as the clerk ultimately receives the charges in his office and deposits them in the proper fund").

To determine whether the township and village have authority to enter into a contract that permits the village to procure billing services from a third party, we look initially at R.C. 505.84. As discussed previously, this statute authorizes the board of township trustees to establish reasonable charges for the use of ambulance or emergency medical services and grants the board discretion to establish the method of collecting the fees in any reasonable manner. Even as the statute allows the board of township trustees to permit the village to collect the charges on behalf of the township, the statute also allows the board of township trustees to permit the village to engage a third-party billing company, if the board finds that to be a reasonable manner of providing for the collection of charges.

A village is a municipal corporation with powers derived both from statutory provisions and from the Ohio Constitution. *See, e.g.*, Ohio Const. art. XVIII, §§ 1, 3, and 7; R.C. Chapter 715. A village clearly has authority to enter into a contract to provide ambulance or emergency medical services to township users and to bill those users on behalf of the township. R.C. 9.60. A village also has authority to enter into contracts to acquire services, including billing services, to assist it in the exercise of its functions. *See, e.g.*, Ohio Const. art. XVIII, § 3; R.C. 9.35; 1984 Op. Att'y Gen. No. 84-066 (authority of public body to contract for administrative services connected with insurance plan).

Thus, a township is authorized to contract with a village for ambulance or emergency medical services, and a village is authorized to contract for billing services to assist it in carrying out its functions. Therefore, a village that contracts with a board of township trustees to provide ambulance or emergency medical services to township users and bill those users on behalf of the township may, if the contract allows it, arrange for the billing services to be provided by a third-party billing company.

Question 4: If a board of township trustees enters into a contract for ambulance or emergency medical services with a village government and authorizes the village to bill and collect fees for the use of the services, must the village turn those fees over to the township?

Your fourth question concerns a situation in which a board of township trustees procures ambulance and emergency medical services from a village government pursuant to a contract that authorizes the village to bill and collect fees for the use of the services. The question is whether the village must turn the fees over to the township.

R.C. 505.84, which authorizes a board of township trustees to establish charges for the use of ambulance or emergency medical services, also prescribes what is to be done with amounts received in payment of those charges. On this point, it states:

> *Charges collected under this section shall be kept in a separate fund* designated as "the ambulance and emergency medical services fund," and *shall be appropriated and administered by the board* [of township trustees]. Such funds *shall be used for the payment of the costs of the management, maintenance, and operation of ambulance and emergency medical services in the township*. If the ambulance and emergency medical services are discontinued in the township, any balance remaining in the fund *shall be paid into the general fund of the township.*

R.C. 505.84 (emphasis added).

This statute thus provides that all charges collected for ambulance or emergency medical services pursuant to R.C. 505.84 "shall" be kept in a separate fund that is appropriated and administered by the board of township trustees. The moneys so collected "shall" be used to pay the costs of providing ambulance and emergency medical services in the township. If the provision of these services is discontinued, any remaining moneys "shall" be paid into the general fund of the township.

Use of the word "shall" indicates that the statutory provisions are mandatory. *See Dorrian v. Scioto Conservancy Dist.* R.C. 505.84 thus requires that all charges collected for ambulance and emergency medical services within the township be kept in a separate fund of the township, appropriated and administered by the board of township trustees, and used for specified purposes. To satisfy the requirements of R.C. 505.84, it is essential that all charges collected for ambulance and emergency services be paid to the township. *Compare* R.C. 505.84 *with* R.C. 505.31 (providing an exception from the requirement that the township clerk collect waste disposal service fees by permitting a contract to allow an independent contractor who provides the services to collect and keep the service charges); *see also* note 6, *supra*.

This conclusion is consistent with general provisions of law governing the receipt of public moneys. The charges in question, collected pursuant to authority granted to a township by statute, are public moneys. *See generally* R.C. 117.01(C) ("'public money' means any money

received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office"); 1983 Op. Att'y Gen. No. 83-055, at 2-216. They are moneys collected on behalf of the township for appropriate deposit and subsequent expenditure in accordance with law. *See generally* 1994 Op. Att'y Gen. No. 94-003, at 2-10 ("township funds, as public funds, may be disbursed only by clear authority of law").

Pursuant to statutory requirements, if a village collects charges under R.C. 505.84 on behalf of a township, whether directly or through a third-party billing company, the village is required to pay the money collected to the township for proper deposit. *See* R.C. 9.38 ("[i]f a person who is a public official receives public moneys for a public office of which that person is not a public official, that person shall, during the first business day of the next week, pay to the proper public official of the proper public office the moneys so received during the current week"); R.C. 505.84. Even if the payments made to the village for the provision of ambulance and emergency medical services are exactly the same in amount as the charges collected by the village for services rendered, it is mandatory that the charges collected be paid to the township and deposited in the appropriate fund before they are paid to the village. R.C. 9.38; R.C. 505.84. *See generally* 2003 Op. Att'y Gen. No. 2003-005, slip op. at 4 ("[i]t is a paramount concern of the general public that public moneys be accounted for accurately at all times and spent only for their intended purposes"); note 6, *supra*.

We conclude, accordingly, that when a board of township trustees procures ambulance or emergency medical services from a village and authorizes the village to bill township users and collect fees for the use of the services, the village is required by R.C. 9.38 and R.C. 505.84 to turn those fees over to the township for deposit in the ambulance and emergency medical services fund.

Question 5: Must a township clerk certify the total value of a contract for ambulance or emergency medical services where some of the funds being certified are from tax levies and some of the funds are from insurance billings?

Your fifth question asks if it is necessary for a township clerk to certify the total value of a contract for ambulance or emergency medical services where the funds being certified come in part from tax levies and in part from insurance billings. The certification requirement to which this question relates appears in R.C. 5705.41, as follows:

> *No subdivision* or taxing unit *shall*:
>
> …
>
> (D)(1) Except as otherwise provided in division (D)(2) of this section and section 5705.44 of the Revised Code, *make any contract* or give any order involving the expenditure of money *unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the obligation* or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the

> fiscal year in which the contract is made, *has been lawfully appropriated for such purpose and is in the treasury or in process of collection* to the credit of an appropriate fund free from any previous encumbrances…. *Every such contract made without such a certificate shall be void*, and no warrant shall be issued in payment of any amount due thereon.

R.C. 5705.41 (emphasis added). This language provides, subject to limited exceptions, that a subdivision (including, as defined in R.C. 5705.01(A), a township) may enter into a valid contract only if the fiscal officer (under R.C. 5705.01(D), the clerk of a township) has certified that the amount obligated under the contract has been appropriated and is in the treasury or in the process of collection. In the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount that must be certified is the amount required to meet the obligation under the contract in the fiscal year in which the contract is made. R.C. 5705.01(D)(1); *see also* R.C. 5705.44; 1987 Op. Att'y Gen. No. 87-069 (continuing contracts).

The certification requirement, by its terms, is definite and mandatory. Exceptions apply to certain county purchases of limited amounts, to contracts on which payments are to be made from the earnings of a publicly operated water works or public utility, and to county boards of mental retardation and developmental disabilities in certain circumstances. R.C. 5705.41(D)(2); R.C. 5705.44. There are various other specific provisions that govern such matters as line-item appropriation accounts, per unit contracts, federal or state grants, and current payrolls. R.C. 5705.41(D)(3); R.C. 5705.42; R.C. 5705.46. Apart from matters specifically addressed by statute, the certification requirement applies to all contracts of a subdivision or taxing unit, including a township, regardless of the source of the funds. The certification requirement thus applies to all amounts obligated under a contract, including both tax proceeds and amounts received from fees, insurance billings, or other charges. *See generally, e.g.*, 1999 Op. Att'y Gen. No. 99-049, at 2-303 to 2-304; 1998 Op. Att'y Gen. No. 98-002, at 2-11; 1991 Op. Att'y Gen. No. 91-031; 1982 Op. Att'y Gen. No. 82-011, at 2-38 to 2-39.[7]

Therefore, the certification requirement of R.C. 5705.41 applies to a township's contract to procure ambulance or emergency medical services from a village. To be valid, a contract of this type must have a certificate of the township clerk that the amount required to meet the obligation under the contract (or, for a continuing contract to be performed in whole or in part in

---

[7] It has been argued that the certification requirement of R.C. 5705.41 applies only to contracts funded by tax proceeds and not to contracts funded by other sources, such as fees. *See, e.g.*, 1980 Op. Att'y Gen. No. 80-060, at 2-237 to 2-238. That argument has been rejected, however, based on the clear statutory language, on case law, and on the fact that the enactment of specific exceptions indicates that other exceptions are not intended. *Id.*; *see also, e.g., Pincelli v. Ohio Bridge Corp.*, 5 Ohio St. 2d 41, 45, 213 N.E.2d 356 (1966) (R.C. 5705.41 "declares void every contract or order involving the expenditure of money by a subdivision or taxing unit unless there is an attached certificate that the amount appropriated is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances").

an ensuing fiscal year, the amount required to meet the obligation under the contract in the year in which the contract is made) has been lawfully appropriated and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances. A contract that does not have such a certificate is void. R.C. 5705.41(D)(1).

A contract of the sort that you describe may be entered into, in whole or in part, upon a "per unit" basis and thus be subject to provisions governing per unit contracts. R.C. 5705.41(D)(3); *see* 1987 Op. Att'y Gen. No. 87-069. If a contract for ambulance or emergency medical services provides for compensation based upon a stipulated price for each run, call, or emergency, or the elapsed time of service required in such run, call, or emergency, that compensation would be determined on a "per unit" basis. The amount of compensation due under the contract would depend upon the number of runs, calls, or emergencies, or the amount of time they would require. Therefore, the amount of compensation due under the contract could not be known definitely in advance for purposes of certification under R.C. 5705.41(D)(1).

This type of situation is addressed by statute as follows:

> In any case in which a contract is entered into upon a per unit basis, the head of the department, board, or commission for the benefit of which the contract is made shall make an estimate of the total amount to become due upon such contract, which estimate shall be certified in writing to the fiscal officer of the subdivision. Such a contract may be entered into if the appropriation covers such estimate, or so much thereof as may be due during the current year. In such a case the certificate of the fiscal officer based upon the estimate shall be a sufficient compliance with the law requiring a certificate.

R.C. 5705.41(D)(3). Thus, in the case of a per unit contract, the head of the department, board, or commission for the benefit of which the contract is made must make an estimate of the total amount that will become due under the contract. The contract may be entered into if there are sufficient funds to cover the total amount estimated, or the part of that amount that may become due during the current year. *See* 1987 Op. Att'y Gen. No. 87-069 (syllabus, paragraph 5) ("[p]ursuant to R.C. 5705.41(D), a contract may not be entered into on a per unit basis unless the fiscal officer has certified the availability of sufficient funds to satisfy the amount estimated as becoming due upon the contract in the current year"). The township clerk may rely upon the estimate in certifying the availability of funds for the contract under R.C. 5705.41(D)(1).

In conclusion, if a township enters into a contract to procure ambulance or emergency medical services from a village in exchange for compensation that is to come in part from proceeds of tax levies and in part from insurance billings, the township clerk is required by R.C. 5705.41(D) to certify the total value of the contract or, if the contract is a continuing contract to be performed in whole or in part in an ensuing fiscal year, to certify the amount required to meet the obligation under the contract in the fiscal year in which the contract is made. If the contract is entered into, in whole or in part, on a per unit basis, the township clerk may base the

certification on an estimate of the amount to become due on a per unit basis during the current year.

Question 6: Must the funds received or anticipated to be received from insurance billings for the use of ambulance or emergency medical services be included in the township budget certification and appropriations process?

Your sixth question asks if funds received or anticipated to be received from insurance billings for the use of ambulance or emergency medical services must be included in the township budget certification and appropriations process. To address this question, it is helpful to review the statutes governing the township budget certification and appropriations process.

Subject to certain exceptions, Ohio law provides for the taxing authority of each subdivision or other taxing unit, including a board of township trustees, to prepare a tax budget for each fiscal year and submit that budget to the county auditor. R.C. 5705.01(A) and (C); R.C. 5705.28-.30.[8] The tax budget must include a statement of the township's anticipated expenses and receipts for the fiscal year. R.C. 5705.29. The tax budget is not restricted to amounts received from tax levies but includes, more generally, "[a]n estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current fiscal year, and the funds to which such estimated receipts are credited." R.C. 5705.29(B)(1). The county auditor presents to the county budget commission the annual tax budgets received from townships and other subdivisions or taxing units. R.C. 5705.31.

The county budget commission is permitted to waive the requirement that the taxing authority adopt a tax budget as provided in R.C. 5705.28 and to require, instead, that the taxing authority provide whatever information the budget commission needs to perform its duties under R.C. Chapter 5705. R.C. 5705.281. After the county budget commission receives that information and the tax budgets presented by the county auditor, the county budget commission reviews and approves the various tax levies, adjusting them as necessary to comply with applicable provisions of law. R.C. 5705.31-.32. The county budget commission also examines "the estimate of balances and receipts from all sources for each fund," revises and adjusts them as appropriate, and determines the total appropriations that may be made from each fund. R.C. 5705.32(A).

When it has completed its work with respect to a tax budget or other information provided under R.C. 5705.281, the county budget commission certifies its action to the taxing authority. R.C. 5705.34. The certification shows the various funds of the subdivision or taxing

---

[8] Specific provisions apply to the taxing authority of a taxing unit that does not levy a tax. R.C. 5705.28(B)(2). This opinion does not address those provisions.

unit, other than funds to be created by transfer, and sets forth the estimated balances and receipts for each fund and the total appropriations that may be made from the fund. R.C. 5705.35(A).

Attached to the certification of the county budget commission is a summary, known as the "official certificate of estimated resources," which states the total estimated resources of each fund that are available for appropriation in the fiscal year. R.C. 5705.35(A). If the township has adopted a tax budget, it must revise its tax budget so that the total contemplated expenditures from each fund do not exceed the total amounts available for appropriation as certified by the budget commission. The township prepares its annual appropriation measure on the basis of the revised budget or the official certificate of estimated resources. R.C. 5705.35(A); R.C. 5705.38.

Provision is made for the issuance of an amended official certificate, and for the corresponding adoption of supplemental appropriation measures, if amounts actually collected are different from amounts included in the official certificate. R.C. 5705.36; R.C. 5705.38; R.C. 5705.40. Total appropriations made during the fiscal year from any fund cannot exceed the amount set forth as available for expenditure in the official certificate of estimated resources, or any amendment to that certificate. R.C. 5705.36(A)(5); R.C. 5705.39. *See generally* 1999 Op. Att'y Gen. No. 99-015; 1987 Op. Att'y Gen. No. 87-032.

Townships, like other subdivisions and taxing units, are expressly prohibited by statute from making "any expenditure of money unless it has been appropriated" as provided in R.C. Chapter 5705. R.C. 5705.41(B). This language is plain and comprehensive. Except as otherwise provided by statute, all expenditures of money must be appropriated as provided in R.C. Chapter 5705.

The statutes governing the township budget certification and appropriations process thus apply to all funds of the township, including funds derived from non-tax sources. *See* R.C. 5705.29; R.C. 5705.32(A); R.C. 5705.35-.36; note 7, *supra*; *see also, e.g.,* 1999 Op. Att'y Gen. No. 99-015, at 2-117 ("[t]he certificate of estimated resources is a statement of all the moneys that are available for appropriation by the township"); 1980 Op. Att'y Gen. No. 80-060, at 2-236 ("[t]he plain language of R.C. 5705.01 to 5705.412 indicates that the legislature intended for these provisions to govern the administration of all public funds in the possession of taxing units and political subdivisions"). Accordingly, the statutes governing the township budget certification and appropriations process apply to all township funds, including the ambulance and emergency medical services fund, which is created pursuant to R.C. 505.84 to hold charges collected for the use of ambulance or emergency medical services. *See* R.C. 505.84 (charges collected under R.C. 505.84 "shall be kept" in the ambulance and emergency medical services fund and "shall be appropriated and administered" by the board of township trustees); *see also* 1998 Op. Att'y Gen. No. 98-004, at 2-24 ("[t]he budgetary requirements of R.C. Chapter 5705 … govern the appropriations from each fund of a subdivision"). *See generally* 2002 Op. Att'y Gen. No. 2002-031, at 2-207 (a township "may spend public money only … in the manner provided by statute").

With respect to funds available for ambulance or emergency medical services, the certification and appropriations statutes thus apply to funds derived from tax levies and also to funds obtained from other sources, including charges collected under R.C. 505.84. There is nothing in the statutes to indicate that amounts received from billing insurance companies for ambulance or emergency medical services should be excluded from this process. Rather, for the township to have a full and accurate picture of the amounts of revenue that are available to it, it is necessary for the certification and appropriations process to include amounts of revenue available from all sources, including amounts received from insurance billings under R.C. 505.84. *See generally* 1999 Op. Att'y Gen. No. 99-015, at 2-117 (certificates of estimated resources or amendments thereto "provide a clear and definite statement of the financial resources available to the township").

The fact that the amounts that will be collected from insurance billings cannot be determined with precision in advance of collection does not affect this conclusion. As discussed above, the budget certification and appropriations process specifically provides for the tax budget and the official certificate of estimate resources to be based upon estimates of amounts of revenue to be received, and for appropriate modifications to be made if the amounts actually received are different from the amounts estimated. *See* R.C. 5705.28-.29; R.C. 5705.32; R.C. 5705.34; R.C. 5705.35-.36; R.C. 5705.38; R.C. 5705.40; 1987 Op. Att'y Gen. No. 87-032.

This analysis is consistent with the analysis applied to your fifth question, concluding that R.C. 5705.41(D) requires the certification of the entire amount necessary to meet the current year's obligation under a contract funded in part with proceeds of tax levies and in part with amounts received from insurance billings. In each case, we find that charges received from insurance billings under R.C. 505.84 are included as township moneys for purposes of appropriation and expenditure under R.C. 5705.41 and related provisions of R.C. Chapter 5705.

The township budget certification and appropriations process thus addresses the financial resources and expenditures of the township in a comprehensive manner. We conclude, accordingly, that funds that a township receives or anticipates receiving from insurance billings for the use of ambulance or emergency medical services pursuant to R.C. 505.84 must be included in the township budget certification and appropriations process pursuant to R.C. Chapter 5705.

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. Pursuant to R.C. 505.44, a board of township trustees may procure ambulance or emergency medical services from a village by means of a contract that provides for the payment of a fixed annual charge, plus moneys received from billings of township users of the ambulance or emergency medical services, only if the payment of moneys received from billings is included in the fixed annual charge or is structured in terms of a stipulated price for each run, call, or emergency, or the elapsed time of service required in such run, call, or emergency, or a combination

of these types of payments. Any other arrangement for paying the village moneys received from billings of township users falls outside the authority granted by R.C. 505.44 and is not permitted.

2. A board of township trustees may procure ambulance or emergency medical services from a village government by means of a contract under which the township authorizes the village to act on behalf of the township to bill township users of ambulance or emergency medical services for the charges established by the township pursuant to R.C. 505.84; however, the discretion to determine whether to waive all or part of the charge for any resident has been vested in the board of township trustees and cannot be delegated to the village.

3. A village that contracts with a board of township trustees to provide ambulance or emergency medical services to township users and bill those users on behalf of the township may, if the contract allows it, arrange for the billing services to be provided by a third party-billing company.

4. When a board of township trustees procures ambulance or emergency medical services from a village and authorizes the village to bill township users and collect fees for the use of the services, the village is required by R.C. 9.38 and R.C. 505.84 to turn those fees over to the township for deposit in the ambulance and emergency medical services fund. (1984 Op. Att'y Gen. No. 84-048, modified.)

5. If a township enters into a contract to procure ambulance or emergency medical services from a village in exchange for compensation that is to come in part from proceeds of tax levies and in part from insurance billings, the township clerk is required by R.C. 5705.41(D) to certify the total value of the contract or, if the contract is a continuing contract to be performed in whole or in part in an ensuing fiscal year, to certify the amount required to meet the obligation under the contract in the fiscal year in which the contract is made. If the contract is entered into, in whole or in part, on a per unit basis, the township clerk may base the certification on an estimate of the amount to become due on a per unit basis during the current year.

6. Funds that a township receives or anticipates receiving from insurance billings for the use of ambulance or emergency medical services pursuant

to R.C. 505.84 must be included in the township budget certification and appropriations process pursuant to R.C. Chapter 5705.

Respectfully,

JIM PETRO
Attorney General