March 17, 1994

OPINION NO. 94-003

The Honorable Michael Miller
Franklin County Prosecuting Attorney
Hall of Justice
369 South High Street
Columbus, Ohio 43215

Dear Prosecutor Miller:

You have requested an opinion on the following question: "May a board of trustees of a township, which is the object of a potential statutory township-village merger, donate funds to a merger commission, established pursuant to Sections 709.45 and 709.46, Revised Code of Ohio, in order to draw up a statement of conditions for that merger?"

Boards of Township Trustees as Creatures of Statute

It is well settled that, as a creature of statute, a board of township trustees "can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted, in order to enable them to perform the duties imposed upon them." *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875). Further, township funds, as public funds, may be disbursed only by clear authority of law. *See State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph one). Thus, in order for a board of township to contribute township funds to a merger commission established in accordance with R.C. 709.45-.46, there must exist a clear grant of statutory authority to make such a contribution.

Merger of Township and Village

The expenditure of funds about which you ask involves the potential merger of a township and a village in accordance with R.C. 709.43-.48. *See generally* R.C. 709.43 (defining "merger," as used in R.C. 709.43-.48). R.C. 709.45 provides for the filing of a petition with the board of elections proposing, among other things, the merger of the unincorporated area of a township with a municipal corporation. R.C. 709.45 further provides for the election "from each of the component political subdivisions, of five electors who shall constitute the commission to draw up the statement of conditions for merger of the political subdivisions."

R.C. 709.46 describes the composition and functions of the merger commission, in part, as

follows:

> [T]he five candidates from each such political subdivision shall be elected to the commission to formulate the conditions of merging the political subdivisions. The first meeting of such commission shall be held ... in the case of a merger of the unincorporated area of a township and a municipal corporation located adjacent to or wholly or partly within the township in the office of the board of township trustees .... The commission shall elect its own permanent officers and shall proceed to meet as often as necessary to formulate conditions for merger that are satisfactory to a majority of the members of such commission from each political subdivision .... As soon as the conditions have been agreed upon by a majority of the members of the commission from each political subdivision, this fact shall be reported to the board of elections of each of the counties in which the political subdivisions proposed for merger are located and the question shall be submitted to the voters at the next general election occurring after the commission is elected.

No provision is made within R.C. 709.43-.48, however, for any of the political subdivisions proposed for merger to contribute funds to the operation of the commission.

Statutory Powers of Township to Expend Township Funds

The powers and duties of boards of township trustees are set forth primarily in R.C. Title 5. No provision within R.C. Title 5 or elsewhere in the Revised Code, however, expressly authorizes a township to donate its funds to a merger commission created in accordance with R.C. 709.45-.46. Further, no such authority may be implied. Rather, where the General Assembly intends to authorize a board of township trustees to make contributions of township funds to other entities, it has expressly done so. *See, e.g.*, R.C. 505.70(A) (authority to give financial assistance to private or governmental agencies or organizations "in establishing and operating any federal program enacted by the congress of the United States"); R.C. 505.703 (authority to "appropriate township general revenue fund moneys not appropriated for any other purpose to a county office of economic development"); R.C. 505.80 (allowing use of township general fund moneys "by the township or by joint agreement with one or more other political subdivisions or by private, nonprofit organizations for the public purpose of encouraging economic development of the township or area through promotion of tourism"). *See also* R.C. 5535.08 (permitting a board of township trustees to contribute to the repair and maintenance of roads under the control of the board of county commissioners, or to expend any funds available for road construction, improvement, or repair upon roads within a village). In the absence of a statute expressly authorizing a board of township trustees to contribute township funds to a merger commission created in accordance with R.C. 709.45-.46, the board may not make such contribution. *See* 1988 Op. Att'y Gen. No. 88-088 (syllabus, paragraph five) ("[a]bsent authority based on statute, a board of township trustees is not empowered to contribute township funds to private groups opposing actions which may affect the township or its residents").

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a board of township trustees may not donate township funds to a merger commission established under R.C. 709.45-.46.

Respectfully,

LEE FISHER
Attorney General

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SYLLABUS: 94-003

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