May 13, 2009

The Honorable Stephen K. Haller
Greene County Prosecuting Attorney
61 Greene Street
Second Floor
Xenia, Ohio 45385

SYLLABUS: 2009-013

1. Pursuant to R.C. 505.37(B), if it seems advisable to a board of township trustees to provide the township with a mobile communication center for fire-fighting purposes, the board and the legislative authority of a municipal corporation may, through joint action, unite to establish the mobile communication center. R.C. 505.37(B) does not, however, authorize a township fire chief and the legislative authority of a municipal corporation to take such joint action.

2. R.C. 9.60 authorizes a board of township trustees, but not a township fire chief, to enter into a contract with the governing board or administrative head of a municipal corporation whereby the township and municipal corporation each provide equipment to establish a mobile communication center for providing fire protection services.

3. A township fire chief may not enter into a memorandum of understanding with officials from a municipal corporation whereby township fire equipment is installed in a motor vehicle of the municipal corporation. A township fire chief may, however, participate in the preparation of such a memorandum of understanding.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

May 13, 2009

OPINION NO. 2009-013

The Honorable Stephen K. Haller
Greene County Prosecuting Attorney
61 Greene Street
Second Floor
Xenia, Ohio 45385

Dear Prosecutor Haller:

You have requested an opinion concerning the authority of a township to install township fire protection equipment in a municipal corporation's motor vehicle. By way of background, you explain that a

> township fire chief has recognized a need for his department to enter into agreements with other municipal and township fire departments which will provide for the interchange of fire equipment owned by the various departments. Specifically, the fire chief proposes to enter into a memorandum of understanding with the fire chief of an adjacent municipality which would result in a township owned generator and radio equipment being installed in a vehicle provided by the other jurisdiction. This memo of understanding, which would be signed by the township fire chief without the specific approval of the board of township trustees, provides that the township would retain all ownership interest in all of the township's equipment which could be removed by the township upon termination of the agreement. The city-owned vehicle would be housed by the township and made available to the municipality owing the vehicle and to other local jurisdictions upon request as a mobile communication center. Both the municipality contributing the vehicle and the township would share in the cost of the maintenance of the radio equipment, generator and vehicle.

In order to advise the boards of township trustees in Greene County as to the propriety of installing township fire protection equipment in a municipal corporation's motor vehicle, you have asked the following questions:

1. Does R.C. 505.37(B) authorize a board of township trustees or a township fire chief to unite with a municipal corporation to jointly establish a mobile communication center for fire-fighting purposes?

2. Does R.C. 9.60 authorize a board of township trustees or a township fire chief to enter into a contract with the governing board or administrative head of a municipal corporation whereby the township and municipal corporation each provide equipment to establish a mobile communication center for providing fire protection services?

3. Does a township fire chief have the authority to enter into a memorandum of understanding with officials from a municipal corporation whereby township fire equipment is installed in a motor vehicle of the municipal corporation?

We begin by noting that a township possesses those powers that are granted by law, either expressly or by necessary implication. *See* Ohio Const. art. X, § 2; *State ex rel. Schramm v. Ayres*, 158 Ohio St. 30, 33, 106 N.E.2d 630 (1952). A township is granted statutory authority to adopt a limited home rule government under R.C. Chapter 504. Your questions are not addressed specifically to the authority of a board of township trustees or fire chief of a limited home rule township. This opinion thus does not consider the authority of a board of township trustees or fire chief of a township that has adopted a limited home rule government.

Let us now consider your first question, which asks whether R.C. 505.37(B) authorizes a board of township trustees or a township fire chief to unite with a municipal corporation to jointly establish a mobile communication center for fire-fighting purposes. R.C. 505.37(B) provides:

> The boards of township trustees of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination of these, may, through joint action, unite in the joint purchase, lease, lease with an option to purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in [R.C. 505.37-.42], and may prorate the expense of the joint action on any terms that are mutually agreed upon.

The language of R.C. 505.37(B) thus sets forth two separate instances in which a board of township trustees may, through joint action, unite with the legislative authority of a political subdivision. First, a board and legislative authority may take joint action to unite in the "joint purchase, lease, lease with an option to purchase, maintenance, use, and operation of fire-fighting equipment." Second, in addition to the authority concerning joint purchases of fire-fighting equipment, a board and legislative authority may take joint action to unite "for any other purpose designated in [R.C. 505.37-.42]."

1982 Op. Att'y Gen. No. 82-024 at 2-72 reviewed R.C. 505.37(B) and explained that this statute "sets forth the circumstances under which political subdivisions may cooperate in the

purchase of firefighting equipment. The clear terms require 'joint action' and 'joint purchase.' Action which does not meet such requirements falls outside the scope of the authority granted by [R.C. 505.37(B)]."

As explained in your letter, the township and municipal corporation are not uniting to jointly purchase fire-fighting equipment. Instead, the township and municipal corporation are uniting to combine their fire-fighting equipment to establish a mobile communication center. Because the township and municipal corporation are not uniting to jointly purchase fire-fighting equipment, you question whether, under 1982 Op. Att'y Gen. No. 82-024's interpretation of R.C. 505.37(B), the proposed combination of the township's and municipal corporation's fire-fighting equipment to establish a mobile communication center for fire-fighting purposes is authorized by R.C. 505.37(B).

1982 Op. Att'y Gen. No. 82-024 concerned a situation in which a county proposed to unilaterally purchase and maintain fire-fighting equipment for use by village, city, and township fire departments. Insofar as a purchase of fire-fighting equipment was involved, the opinion focused on the language of R.C. 505.37(B) authorizing political subdivisions to unite in the "joint purchase" of fire-fighting equipment and determined that this language only authorizes joint action by political subdivisions to jointly purchase fire-fighting equipment, not unilateral action by one political subdivision. Also, since the action contemplated by the political subdivisions in the situation described in the 1982 opinion did not involve any action by more than one political subdivision, it was unnecessary to consider in that opinion R.C. 505.37(B)'s grant of authority to take joint action to unite "for any other purpose designated in [R.C. 505.37-.42]."

Unlike the situation described in the 1982 opinion, your situation involves joint action by a township and municipal corporation in establishing a mobile communication center for fire-fighting purposes. Consequently, we must determine whether the joint action of a board of township trustees and the legislative authority of a political subdivision to establish a mobile communication center for fire-fighting purposes falls within the scope of the language of R.C. 505.37(B) authorizing a board of township trustees and the legislative authority of a political subdivision to take joint action to unite "for any purpose designated in [R.C. 505.37-.42]."

In order for R.C. 505.37(B) to apply, a township must unite with another township or a political subdivision. The term "political subdivision" is not statutorily defined for purposes of R.C. 505.37, and thus should be accorded its common, ordinary meaning. *See* R.C. 1.42; 1997 Op. Att'y Gen. No. 97-036 at 2-211. The term "political subdivision" has been defined as "a limited geographical area of the State, within which a public agency is authorized to exercise some governmental function." 1972 Op. Att'y Gen. No. 72-035 at 2-135; *see Black's Law Dictionary* 1197 (8th ed. 2004). Moreover, courts and prior Attorney General opinions have determined that this general definition of "political subdivision" includes municipal corporations. *See, e.g., Wolf v. City of Columbus,* 98 Ohio App. 333, 129 N.E.2d 309 (Franklin County 1954); 2002 Op. Att'y Gen. No. 2002-038 at 2-245. R.C. 505.37(B) thus authorizes a board of

township trustees and the legislative authority of a municipal corporation to unite for any purpose designated in R.C. 505.37-.42.

Under R.C. 505.37-.42, a board of township trustees may, in order to provide fire protection services to the township, 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." R.C. 505.37(A); *see* 1940 Op. Att'y Gen. No. 2556, vol. I, p. 709; *see also* R.C. 505.39. Reading the language of divisions (A) and (B) of R.C. 505.37 together, it reasonably follows that a board of township trustees and the legislative authority of a municipal corporation may unite to provide the township with any equipment for fire-fighting purposes that seems advisable to the board. *See* 1928 Op. Att'y Gen. No. 2955, vol. IV, p. 2736. Accordingly, pursuant to R.C. 505.37(B), if it seems advisable to a board of township trustees to provide the township with a mobile communication center for fire-fighting purposes, the board and the legislative authority of a municipal corporation may, through joint action, unite to establish the mobile communication center.

The language of R.C. 505.37(B) does not, however, authorize a township fire chief and the legislative authority of a municipal corporation to take joint action to establish a mobile communication center for fire-fighting purposes. *See* 1988 Op. Att'y Gen. No. 88-074 at 2-363 (overruled, in part, on other grounds by 2004 Op. Att'y Gen. No. 2004-032). Nor may such authority be delegated by a board of township trustees to the township fire chief, since the power conferred upon the board by R.C. 505.37(B) requires the board to exercise its discretion, and no provision of law authorizes the board to delegate its power under R.C. 505.37(B) to the township fire chief. *See CB Transp., Inc. v. Butler County Bd. of Mental Retardation,* 60 Ohio Misc. 71, 82, 397 N.E.2d 781 (C.P. Butler County 1979); *Burkholder v. Lauber,* 6 Ohio Misc. 152, 154, 216 N.E.2d 909 (C.P. Fulton County 1965); 2000 Op. Att'y Gen. No. 2000-024 at 2-164 and 2-165. Therefore, R.C. 505.37(B) does not authorize a township fire chief and the legislative authority of a municipal corporation to take joint action to establish a mobile communication center for fire-fighting purposes.

Your second question asks whether R.C. 9.60 authorizes a board of township trustees or a township fire chief to enter into a contract with the governing board or administrative head of a municipal corporation whereby the township and municipal corporation each provide equipment to establish a mobile communication center for providing fire protection services. R.C. 9.60 states:

> (B) Any firefighting agency … may contract with any governmental entity in this state or another jurisdiction to provide fire protection or emergency medical services, as appropriate, whether on a regular basis or only in times of emergency, upon the approval of the governing boards or administrative heads of the entities that are parties to the contract.
>
> (C) Any governmental entity in this state may contract with any firefighting agency … of this state or another jurisdiction to obtain fire protection or emergency medical services, as appropriate, whether on a regular basis or only

> in times of emergency, upon the approval of the governing boards or administrative heads of the entities that are parties to the contract.

For purposes of R.C. 9.60, townships and municipal corporations are firefighting agencies. R.C. 9.60(A)(3). Also, townships, like municipal corporations, are political subdivisions of this state under the common definition of "political subdivision," and, as such, townships and municipal corporations are governmental entities for purposes of R.C. 9.60. *See Tuber v. Perkins,* 6 Ohio St. 2d 155, 157, 216 N.E.2d 877 (1966); 2002 Op. Att'y Gen. No. 2002-038 at 2-244. Thus, R.C. 9.60 authorizes the governing board or administrative head of a township to enter into a contract with the governing board or administrative head of a municipal corporation to provide to, and obtain from, the municipal corporation fire protection services. *See* 1988 Op. Att'y Gen. No. 88-076 at 2-371.

Pursuant to R.C. 9.60(A)(2), the term "fire protection," as used in R.C. 9.60, means, *inter alia,* "the use of firefighting equipment by the fire department of a firefighting agency." Applying this definition to the various provisions of R.C. 9.60, it is apparent that the governing board or administrative head of a township may enter into a contract with the governing board or administrative head of a municipal corporation to provide to, and obtain from, the municipal corporation the use of firefighting equipment. *See* 1988 Op. Att'y Gen. No. 88-074 at 2-364 (overruled, in part, on other grounds by 2004 Op. Att'y Gen. No. 2004-032); 1940 Op. Att'y Gen. No. 2556, vol. I, p. 709. R.C. 9.60 therefore authorizes the governing board or administrative head of a township to enter into a contract with the governing board or administrative head of a municipal corporation whereby the township and municipal corporation each provide equipment to establish a mobile communication center for providing fire protection services.

Neither the term "governing board" nor "administrative head" is defined for purposes R.C. 9.60. The common meaning of these terms thus applies when interpreting R.C. 9.60. R.C. 1.42. In common parlance, a "governing board" is the group of officers or persons having ultimate control of an entity, while an "administrative head" is the executive in charge of a unit. *See Merriam-Webster's Collegiate Dictionary* 16, 573 (11th ed. 2005) (defining "administrative" as "of or relating to administration … : EXECUTIVE" and defining "head" as "one in charge of a division or department in an office or institution"); *Black's Law Dictionary* 715 (8th ed. 2004) (defining a "governing body" as "[a] group of … officers or persons having ultimate control").

A review of the common meaning of the term "governing board" and the powers and duties conferred upon a board of township trustees, *see* R.C. 503.01; R.C. Chapter 505, discloses that a board of township trustees, rather than the township fire chief, is the "governing board" of the township for purposes of R.C. 9.60. *See* 1988 Op. Att'y Gen. No. 88-074 at 2-364 (overruled, in part, on other grounds by 2004 Op. Att'y Gen. No. 2004-032). This means that R.C. 9.60 authorizes a board of township trustees to enter into a contract with the governing board or administrative head of a municipal corporation whereby the township and municipal corporation each provide equipment to establish a mobile communication center for providing fire protection services.

Moreover, a township fire chief is not the "administrative head" of the township for purposes of R.C. 9.60. As indicated above, the administrative head *of an entity* that is a party to a fire protection services contract may approve the contract on behalf of the entity. R.C. 9.60(B)-(C). In the context of a contract entered into between a township and municipal corporation under R.C. 9.60, the township, rather than the township fire department, is a party to the contract. Thus, while a township fire chief may be the administrative head of a township's fire department, the chief does not head the entire township as required by R.C. 9.60. *See generally* R.C. 505.38 (a township fire chief is appointed by a board of township trustees and subject to removal by the board). Because a township fire chief is not the administrative head of a township, R.C. 9.60 does not authorize a township fire chief to enter into a contract with the governing board or administrative head of a municipal corporation whereby the township and municipal corporation each provide equipment to establish a mobile communication center for providing fire protection services.

Your final question asks whether a township fire chief has the authority to enter into a memorandum of understanding with officials from a municipal corporation whereby township fire equipment is installed in a motor vehicle of the municipal corporation. A memorandum of understanding is a letter of intent that constitutes

> [a] written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement; a noncommittal writing preliminary to a contract. ● A letter of intent is not meant to be binding and does not hinder the parties from bargaining with a third party. Businesspeople typically mean not to be bound by a letter of intent, and courts ordinarily do not enforce one; but courts occasionally find that a commitment has been made.

Black's Law Dictionary 924 (8th ed. 2004). A memorandum of understanding thus is entered into between *parties* that plan to enter into a contract or some other agreement.

A review of the provisions of Ohio law authorizing townships to provide or obtain fire protection services pursuant to a contract discloses no instances in which a township fire chief is a party to the contract. *See, e.g.,* R.C. 9.60; R.C. 505.375; R.C. 505.44. Moreover, no statute authorizes a township fire chief to enter into a memorandum of understanding with another political subdivision to obtain or provide fire protection services or empowers a board of township trustees to delegate such authority to its fire chief. Absent such statutory authority, a township fire chief may not enter into a memorandum of understanding with officials from a municipal corporation whereby township fire equipment is installed in a motor vehicle of the municipal corporation since a township fire chief would not be a party, or a representative of a party, to the contract described in the memorandum of understanding.

Nevertheless, a township fire chief may participate in the preparation of such a memorandum of understanding. As the person charged with the day-to-day operation of a township fire department, *see* R.C. 505.38, a township fire chief is in the unique position of having first-hand knowledge of the needs and capabilities of the township's fire department.

Such expertise may be invaluable to a board of township trustees when contracting to obtain or provide fire protection services. Accordingly, a board of township trustees may request its fire chief to participate in the preparation of such a memorandum of understanding.

Therefore, in response to your final question, a township fire chief may not enter into a memorandum of understanding with officials from a municipal corporation whereby township fire equipment is installed in a motor vehicle of the municipal corporation. A township fire chief may, however, participate in the preparation of such a memorandum of understanding.

In closing, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 505.37(B), if it seems advisable to a board of township trustees to provide the township with a mobile communication center for fire-fighting purposes, the board and the legislative authority of a municipal corporation may, through joint action, unite to establish the mobile communication center. R.C. 505.37(B) does not, however, authorize a township fire chief and the legislative authority of a municipal corporation to take such joint action.

2. R.C. 9.60 authorizes a board of township trustees, but not a township fire chief, to enter into a contract with the governing board or administrative head of a municipal corporation whereby the township and municipal corporation each provide equipment to establish a mobile communication center for providing fire protection services.

3. A township fire chief may not enter into a memorandum of understanding with officials from a municipal corporation whereby township fire equipment is installed in a motor vehicle of the municipal corporation. A township fire chief may, however, participate in the preparation of such a memorandum of understanding.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General