November 16, 1993

OPINION NO. 93-039

The Honorable Stephen M. Stern
Jefferson County Prosecuting Attorney
Suite 1200
Bank One Building
Steubenville, Ohio 43952

Dear Prosecutor Stern:

You have asked whether a board of township trustees may purchase a building and land for use as a township hall and police district facility[1] when there are not sufficient funds in the general fund to cover the purchase price, without first submitting the question of such purchase to the electorate. The trustees have been leasing the property in question for these purposes for eleven years. The owner now plans to sell the property, and the trustees have an opportunity to purchase it for what they consider a reasonable price. Because the general fund does not have sufficient funds to purchase the property outright, the trustees wish to borrow money from local financial institutions and to repay this loan from township revenues in coming years. The anticipated revenues are such that the trustees do not contemplate issuing bonds or levying additional taxes for the purpose of paying for the land and building. The trustees wish to know whether it is necessary first to conduct a popular vote in order to purchase the property in this manner.

Authority of a Board of Township Trustees is Limited to that Conferred by 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). The power to borrow money or to incur debt is not necessarily to be implied from the authority conferred upon a board of township trustees to expend funds for particular purposes. *See*

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[1] The building is described in your request as a "township hall." Phone conversations between our staff members indicate the additional use of the building by the township police district. A town hall, as traditionally understood in Ohio, is the hall where the people of a township hold their elections and township meetings. 1969 Op. Att'y Gen. No. 69-132 at 2-290; *see also Trustees of New London Township v. Miner,* 26 Ohio St. 452, 460 (1875).

generally 1973 Op. Att'y Gen. No. 73-100 (distinguishing between vote required on question of constructing a town hall and vote required for issuance of bonds for construction); *accord* 1990 Op. Att'y Gen. No. 90-010. In order to answer your question, therefore, it is first necessary to determine whether a board of township trustees has statutory authority to purchase, without a vote of the electorate, a building and land for use as a township hall and police department facility. If so, it is then necessary to determine whether the board has the power to incur debt for that purpose without a vote of the electorate.

Pursuant to R.C. 505.26 and R.C. 505.50, a Board of Township Trustees May Purchase a Building and Site for Use as a Township Hall and Police District Facility Without Submitting the Question of the Purchase to the Electorate

R.C. 505.26 and R.C. 505.50 respectively address the authority of a board of township trustees to purchase or otherwise acquire a township hall or other properties for particular township purposes, and to purchase or otherwise acquire a building and its site for the operations of the township police district. R.C. 505.26 reads, in pertinent part, as follows:

> The board of township trustees may *purchase*, appropriate, construct, enlarge, improve, rebuild, repair, furnish, and equip a *township hall*, a township park, public library buildings, and bridges and viaducts over streets, streams, railroads, or other places where an overhead roadway or footway is necessary, and such board may acquire sites by lease or otherwise for any of such improvements, including lands and buildings for recreational purposes. (Emphasis added.)

In the case of facilities and equipment for a township police district, R.C. 505.50 states, in pertinent part, as follows:

> The township trustees may purchase or otherwise acquire any police apparatus, equipment, including a public communications system, or materials that the township police district requires and may build, *purchase*, or lease *any building or buildings* and *site* of the building or buildings that are necessary for the operations of the district. (Emphasis added.)

R.C. 505.26 thus empowers a board of township trustees to purchase a township hall and acquire a site for a township hall. R.C. 505.50 similarly empowers a board of township trustees to purchase any building or buildings and the site thereof that are necessary for the operations of a township police district. Nothing in the language of either R.C. 505.26 or R.C. 505.50 expressly requires or necessarily implies that voter approval be obtained before those purchases may be made by a board of township trustees.[2] Accordingly, it follows that a board of township trustees, acting pursuant

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[2] In comparison, R.C. 511.01 expressly provides that "[i]f...a town hall is to be built, improved, enlarged, or removed at a cost greater than ten thousand dollars, the board of township trustees shall submit the question to the electors...." The provisions of R.C. 511.01, however, do not apply to the purchase of an existing town hall or other building that is to be used as a town hall. 1940 Op. Att'y

to R.C. 505.26 and R.C. 505.50, may purchase a building and site for use as a township hall and police district facility without submitting to a vote of the township's electors the question of whether that purchase should be undertaken. As noted previously, however, this does not end the inquiry. The next question is whether the trustees also have authority to incur unvoted debt for purposes of making such a purchase.

As a General Rule, a Board of Township Trustees Has No Authority to Incur Debt Without a Vote of the Electorate

The purposes for and means by which the state and its political subdivisions may incur debt are governed generally by R.C. Chapter 133 (uniform public securities law). *See also* Ohio Const. art. VIII (public debt and works); XII (finance and taxation). R.C. 133.09 expressly states that "[a] township shall not incur net indebtedness that exceeds an amount equal to five per cent of its tax valuation, and, *except as specifically authorized by section 505.262 of the Revised Code or other laws, shall not incur any net indebtedness unless authorized by vote of the electors*." (Emphasis added). Opinions of the Attorneys General have consistently interpreted this provision as requiring a vote of the township electors on the question of issuing bonds for the purchase of a township hall, whether or not the applicable statutes in R.C. Title 5 (townships) require a vote on the initial question of whether the purchase should be made. *See, e.g.*, Op. No. 73-100; 1940 Op. No. 2914. The trustees in the situation you have described do not intend to issue bonds. Nonetheless, their proposed method of financing the purchase will incur net indebtedness.[3] Accordingly, R.C. 133.09 requires such net

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Gen. No. 2914, vol. II, p. 944, at 947-48 (G.C. 3395 (now R.C. 511.01) does not apply to the purchase of a town hall); 1929 Op. Att'y Gen. No. 909, vol. II, p. 1406, at 1407 ("[t]here is nothing, however, in [G.C. 3395 and G.C. 3396 (now R.C. 511.02)] which provides for the purchase of a building already constructed"). *See also* 1990 Op. Att'y Gen. No. 90-010 at 2-43 n.2.

R.C. 505.26 also grants to a board of township trustees the power to purchase, lease, or construct office space if sufficient space for township offices is not available. R.C. 505.26 further provides that "[t]he cost of providing such office space shall be paid out of funds in the township treasury. If sufficient funds are not available the board shall proceed as provided in sections 511.01 to 511.04 of the Revised Code." Thus, if sufficient funds are not available to acquire office space, the trustees must submit the issue to a vote under R.C. 511.01. The provisions of R.C. 505.26 that require voter approval when sufficient funds are not available pertain only to the purchase, lease, or construction of office space, however, and do not apply to the purchase of a town hall. Op. No. 69-132.

[3] Net indebtedness is calculated from the outstanding securities of a subdivision in the manner described in R.C. 133.04(A). As defined at R.C. 133.01(KK),

> "[s]ecurities" means bonds, notes, certificates of indebtedness, commercial paper, and other instruments in writing, including, unless the context does not admit, anticipatory securities, issued by an issuer to evidence its obligation to repay money borrowed, or to pay interest, by, or to pay at any future time other money obligations of, the issuer of the securities....

indebtedness to be authorized by a vote of the electors unless specific authority to the contrary exists in R.C. 505.262 or some other section of the Revised Code.

There are no provisions of the Revised Code that authorize the board of township trustees to incur unvoted debt for the purchase of a township hall and police department facility in precisely the manner you have described. R.C. 505.262 and R.C. 505.53, however, specifically authorize the board to incur unvoted debt for the purpose of purchasing a town hall or a police district facility, if certain conditions are met.

Notes for Purchase of Township Buildings and Sites Under R.C. 505.262

The provisions of R.C. 505.262 appear to be the most suitable means of financing the purchase you have described. R.C. 505.262 states:

> (A) Notwithstanding division (D) of section 505.37[4] of the Revised Code or any other statute of this state, the board of township trustees of any township may, by *unanimous vote*, adopt a resolution allowing the township to *contract for the purchase of* equipment, *buildings, and sites,* or for the construction of buildings, *for any lawful*

See R.C. 133.01(T) ("[i]ssuer" means, *inter alia*, "any public issuer"); R.C. 133.01(FF)(2) ("[p]ublic issuer" means, *inter alia*, a "taxing authority, subdivision, district, or other local public or governmental entity" that is authorized by law to issue securities or enter into public obligations); R.C. 133.01(MM)(10) ("[s]ubdivision" means, *inter alia*, a "township"). Thus, the term securities is not limited to bonds, but includes any note or instrument in writing issued by the board of township trustees to evidence the obligation of the township to repay the money borrowed for the purchase of the building and site, and any interest thereon.

It should be noted that, pursuant to R.C. 133.01(KK) and (GG)(2), obligations to make payments under installment sale, lease, lease purchase, or similar agreements that bear interest are excluded from the definition of securities, and by extension to R.C. 133.04, from the calculation of net indebtedness. Thus, such obligations can also be entered into by a board of township trustees without a popular vote. There is, however, no provision in the Revised Code authorizing the board of township trustees to utilize these types of obligations to purchase a building and site for the purposes you have described.

Additionally, R.C. 133.04(B) lists certain types of securities that are excluded from the calculation of net indebtedness. Based on the facts you have provided, it does not appear that any of these means of financing the purchase would be suitable, either because no authority exists to issue them for the purposes you have described, or because there are additional requirements for their issuance, such as very short repayment periods, special assessments, or voted levies, that are not compatible with the objectives of the board of township trustees for this particular purchase.

[4] R.C. 505.37(D) permits, *inter alia,* the issuance of nine-year interest-bearing notes for the purchase of fire-fighting equipment, buildings and sites therefor, under specified conditions.

> *township purpose.* The board may, by resolution adopted by *unanimous vote, issue the notes* of the township to finance purchases and construction made pursuant to this division. The notes shall be signed by the board and attested by the signature of the township clerk and shall be *payable over a period not exceeding nine years.* The notes shall bear interest not to exceed the rate determined as provided in section 9.95 of the Revised Code, and *shall not be subject to Chapter 133. of the Revised Code.* The resolution authorizing the issuance of the notes shall *provide for levying and collecting annually by taxation, amounts sufficient to pay the interest on and principal of the notes.* Not less than one-tenth of the purchase price or construction cost shall be paid in cash at the time of purchase, as provided in the contract, and the remainder of the purchase price or construction cost shall be paid in annual installments of not less than one-tenth of the total purchase price or construction cost, secured by notes of equal amounts. Notes in amounts greater than one-tenth of the total purchase price or construction cost may be issued. Notes may be issued for a period of nine years or less and, if for a period of less than nine years, the notes may be renewed from time to time, provided that any renewal shall be paid in full no later than nine years from the date when the initial notes were sold. The notes may contain a clause permitting prepayment at the option of the board. Notes shall be offered for sale on the open market or given to the vendor or contractor if no sale is made.
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> (B) *No purchase or construction pursuant to division (A) of this section* shall be undertaken unless the county *auditor certifies* that, if the purchase or construction is undertaken, *the debt service charge* for the purchase or construction *in the first year, together with the debt service charge for that same year for any other purchase or construction already undertaken* pursuant to division (A) of this section, *does not exceed one-tenth of the township's total revenue from all sources.* If the county auditor so certifies, in every year of the debt after the first year, the county budget commission shall include a debt charge in the township's annual tax budget submitted pursuant to sections 5705.01 to 5705.47 of the Revised Code sufficient to meet the annual debt incurred pursuant to division (A) of this section, if such debt charge is omitted from the budget. (Emphasis and footnotes added.)

Because R.C. 505.262 applies to the purchase of buildings and sites "for any lawful township purpose," the notes authorized by that section may be issued for a building and site for both a township hall and a township police district facility.[5] These notes are specifically exempted from the requirements of R.C. Chapter 133. R.C. 505.262(A) and (B), however, impose the following conditions upon the issuance of the notes: (1) a unanimous resolution by the township trustees; (2) payment of the purchase price in a maximum of nine years; (3) a cash down payment of at least

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[5] R.C. 505.50 permits a board of township trustees to incur the expense of a building and site for a township police district on behalf of the township, as distinguished from on behalf of the police district alone. *See* 1964 Op. Att'y Gen. No. 1255, p. 2-271 (syllabus, paragraph one). While it is possible for the police district alone to finance the cost of a police district facility, *see* discussion of R.C. 505.53 *infra*, it is not required.

one-tenth of the purchase price; (4) annual levy of a tax sufficient to pay the interest and principal of the notes; and (5) certification by the county auditor that the debt service charge in the first year of the purchase, together with the debt service charge for that same year for any other purchase or construction already undertaken pursuant to R.C. 505.262(A), does not exceed one-tenth of the township's total revenue from all sources. As explained in Op. No. 90-010 at 2-45, when all the conditions set forth in R.C. 505.262 are satisfied, neither the question of the purchase nor the question of the issuance of the notes need be submitted to the electorate:

> R.C. 505.262 thus provides a mechanism whereby the board of trustees of a township may adopt a resolution, by unanimous vote, authorizing the township to contract for the purchase or construction of buildings for any lawful township purpose, *notwithstanding any other statutory provision*. The statute further provides for the issuance of notes to finance such purchase or construction. Such notes shall not be subject to, among other things, R.C. 133.09.... As is evident from the many requirements which must be met before the township may proceed under R.C. 505.262 and from the limitations imposed upon the issuance of notes under that section, the scheme set forth therein is separate and distinct from other statutory methods available to finance such projects, such as the method described in R.C. 511.02. Only when all the conditions set forth in R.C. 505.262 are met may the board of township trustees proceed under that section.
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> The introductory phrase of the first sentence of R.C. 505.262(A) clearly establishes the power of the board of township trustees to act by resolution, unanimously adopted, to allow the township to contract for the purchase or construction of a building for any lawful township purpose, regardless of the requirements or limitations imposed by R.C. 505.37(D) or any other statute. The purchase or construction of a town hall, as in the situation you contemplate, is undoubtedly a lawful township purpose. *See* R.C. 505.26; R.C. 511.01. Pursuant to R.C. 505.262, therefore, the board of township trustees may, by unanimous adoption of a resolution, authorize the township to acquire or construct a town hall, without approval of the electorate under R.C. 511.01 to so proceed; the board may then, by unanimous vote, adopt a resolution to issue notes as specified in R.C. 505.262(A) without voter approval. (Footnote omitted; emphasis in original.)

Notes for Purchase of Building or Site for Township Police District Under R.C. 505.53

R.C. 505.53 states:

The board of trustees of a township police district[6] may issue notes for a period not to

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[6] A township police district may be comprised of all or a part of the unincorporated territory of a township. R.C. 505.48(A). The board of trustees of a township police district is the board of township trustees. R.C. 505.48; R.C. 505.49. When the township trustees act in their capacity as the governing board of the police district, however, as opposed to in their capacity as the governing board of the township, their actions affect only that part of the township comprising the police district. *See*

> exceed three years for the purpose of buying police equipment or a building or site to house police equipment. One-third of the purchase price of the equipment, building, or site shall be paid at the time of purchase, and the remainder of the purchase price shall be covered by notes maturing in two and three years respectively. Notes may bear interest not to exceed the rate determined as provided in section 9.95 of the Revised Code, and *shall not be subject to Chapter 133. of the Revised Code*. Such notes shall be offered for sale on the open market or given to a vendor if no sale is made. (Emphasis and footnote added.)

Notes issued pursuant to R.C. 505.53, like notes issued pursuant to R.C. 505.262, are expressly exempted from the requirements of R.C. Chapter 133. Unlike R.C. 505.262, R.C. 505.53 does not expressly require the imposition of an annual levy. R.C. 505.53 may be of limited usefulness in the situation you have described, however, because the notes are restricted to financing, on behalf of the police district alone, a building to house police equipment. There is no provision for including a town hall, which would not be a proper expense of a township police district. Additionally, the notes can be issued for a three year period only.

Unvoted Securities under R.C. 505.262 or R.C. 505.53 Must be Serviced by Unvoted Taxes Within the Constitutional Ten Mill Limitation

The issuance of notes pursuant to R.C. 505.262 or R.C. 505.53 remains subject to the provisions of Ohio Const. art. XII, §§2 and 11. Article XII, §2 of the Ohio Constitution limits the imposition of unvoted taxes by providing that no property can be taxed in excess of ten mills except when authorized by municipal charter or authorized by statute and approved by the voters of a tax district. Ohio Const. art. XII, §11 prohibits the state and any of its political subdivisions from incurring bonded indebtedness unless the legislation under which the indebtedness is incurred provides for the annual levy of tax sufficient to pay the interest and provide a sinking fund to redeem the bonds at maturity. A written agreement to make specific future payments of money constitutes a bond, and creates bonded indebtedness for purposes of Ohio Const. art. XII, §11. *State ex rel. Kitchen v. Christman*, 31 Ohio St. 2d 64, 73, 285 N.E.2d 362, 368 (1972).

In *State ex rel. Portsmouth v. Kountz*, 129 Ohio St. 272, 194 N.E. 869 (1935), the court held that Ohio Const. art. XII, §§2 and 11, construed together, require a subdivision to be able to make provision for payment of unvoted securities from taxes within the ten-mill unvoted tax limitation, even if in practice these securities are serviced from non-tax revenues. Accordingly, notes issued pursuant to R.C. 505.262 or R.C. 505.53 can be serviced only from unvoted taxes within the ten mill limitation imposed by Ohio Const. art. XII, §2. If sufficient inside millage is not available, it will not be possible to finance the purchase without a vote. Although these qualifications may make the transaction somewhat more complex than the trustees had hoped, it appears that R.C. 505.262 and R.C. 505.53 set out the only practical means by which the trustees can accomplish their goal in the situation you have described.

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generally 1964 Op. No. 1255.

Conclusion

It is, therefore, my opinion, and you are advised that:

1. Subject to the limitations on unvoted debt imposed by Ohio Const. art. XII, §§ 2 and 11, when there are insufficient funds in the general fund, a board of township trustees may purchase a building and site for a township hall and township police district facility by issuing notes under the terms and conditions set out in R.C. 505.262, without submitting to the electorate either the question of whether to make the purchase or the question of whether to issue such notes. (1990 Op. Att'y Gen. No. 90-010, approved and followed.)

2. Subject to the limitations on unvoted debt imposed by Ohio Const. art. XII, §§ 2 and 11, when there are insufficient funds in the general fund, a board of trustees of a township police district may purchase a building and site for a township police district facility by issuing notes under the terms and conditions set out in R.C. 505.53, without submitting to the electorate either the question of whether to make the purchase or the question of whether to issue such notes.

Respectfully,

LEE FISHER
Attorney General

November 16, 1993

The Honorable Stephen M. Stern
Jefferson County Prosecuting Attorney
Suite 1200
Bank One Building
Steubenville, Ohio 43952

SYLLABUS: 93-039

1. Subject to the limitations on unvoted debt imposed by Ohio Const. art. XII, §§ 2 and 11, when there are insufficient funds in the general fund, a board of township trustees may purchase a building and site for a township hall and township police district facility by issuing notes under the terms and conditions set out in R.C. 505.262, without submitting to the electorate either the question of whether to make the purchase or the question of whether to issue such notes. (1990 Op. Att'y Gen. No. 90-010, approved and followed.)

2. Subject to the limitations on unvoted debt imposed by Ohio Const. art. XII, §§ 2 and 11, when there are insufficient funds in the general fund, a board of trustees of a township police district may purchase a building and site for a township police district facility by issuing notes under the terms and conditions set out in R.C. 505.53, without submitting to the electorate either the question of whether to make the purchase or the question of whether to issue such notes.