December 5, 1994

OPINION NO. 04-085

The Honorable Tim Oliver
Warren County Prosecuting Attorney
500 Justice Drive
Lebanon, Ohio 45036

Dear Prosecutor Oliver:

You have requested an opinion of the Attorney General regarding the authority of the board of trustees of a limited self-government township to enter into a legal services contract with a county prosecuting attorney. According to your letter, a majority of the electors of a township within the county voted in favor of adopting the limited self-government form of township government that is authorized by R.C. Chapter 504. *See* R.C. 504.01; R.C. 504.02. You further note that R.C. 504.04(C) and R.C. 504.15 provide that the board of township trustees of a limited self-government township "shall appoint a full-time or part-time" township law director. You have informed a member of my staff that the board of township trustees has appointed a township law director in accordance with the provisions of R.C. 504.04(C) and R.C. 504.15. The board of township trustees, however, also wishes to enter into a contract with you in your capacity as prosecuting attorney in which it would be agreed that you or other attorneys within your office would provide legal representation and other legal services to the township when so requested. Accordingly, you have asked whether the board of township trustees may enter into such a contract.

Appointment of a Full-time or Part-time Law Director by the Board of Township Trustees

R.C. 504.04 sets forth the general powers of local self-government that may be exercised by a township that adopts the limited self-government form of government pursuant to R.C. 504.01 and R.C. 504.02. *See* R.C. 504.04(A), (B). Division (C) of R.C. 504.04 further addresses the qualifications required of all the officers of a limited self-government township, and requires the board of trustees of such township to "appoint a full-time or part-time law director pursuant to [R.C. 504.15]."

R.C. 504.15, to which R.C. 504.04(C) refers, further provides, in pertinent part, as follows:

> In each township that adopts the limited self-government form of township government, the board of township trustees shall appoint a full-time or part-time township law director, who shall be an attorney licensed to practice law in this state. The board of township trustees shall set the salary of the township law director. The township law director shall be the legal advisor to the board of township trustees, the township administrator, and all other township officers, and any of them may require written opinions or instructions from him in matters connected with their official duties. He shall prosecute and defend all suits and actions that any such officer or board directs or to which an officer or board is a party, and he shall prosecute any violation of a township resolution, as provided in [R.C. Chapter 504]. The township law director shall review all resolutions as to form prior to their introduction by a township trustee. Additional legal counsel may be employed as provided in division (B) of section 309.09 of the Revised Code.

R.C. 504.15 thus requires the board of township trustees of a township that adopts the limited self-government form of township government to appoint a full-time or part-time township law director, who shall be the legal advisor to the board of township trustees, the township administrator, and all other township officers. You have indicated that the township in question has appointed a township law director in accordance with the terms of R.C. 504.15.

Employment of Additional Legal Counsel Other than the Township Law Director

Pursuant to R.C. 504.15, the board of township trustees of a township that adopts the limited self-government form of township government also may employ additional legal counsel in accordance with R.C. 309.09(B), which reads, in pertinent part, as follows:

> Such prosecuting attorney shall be the legal adviser for all township officers, unless the township has adopted the limited self-government form of township government pursuant to Chapter 504. of the Revised Code, in which case the township law director, whether serving full-time or part-time, shall be the legal adviser for all township officers. When the board of township trustees finds it advisable or necessary to have additional legal counsel it may employ an attorney *other than* the township law director or *the prosecuting attorney* of the county, either for a particular matter or on an annual basis, to represent the township and its officers in their official capacities and to advise them on legal matters. No such counsel or attorney may be employed, except on the order of the board of township trustees, duly entered upon its journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund. (Emphasis added.)

R.C. 504.15 and R.C. 309.09(B) thus authorize the employment of additional legal counsel by the board of township trustees of a township that has adopted the limited self-government form of township government whenever the board finds it advisable or necessary to have additional legal counsel. Such additional legal counsel may be employed "to represent the township and its officers in their official capacities and to advise them on legal matters." R.C. 309.09(B).

The Board of Township Trustees of a Township that Has Adopted the Limited Self-Government Form of Township Government May Not Contract with the Prosecuting Attorney for Legal Representation or Other Legal Services

In this instance you have asked whether the board of township trustees of a limited self-government township may contract with you in your capacity as prosecuting attorney for legal representation and other legal services. The answer to this question is provided by the plain language of R.C. 309.09(B). In that regard, R.C. 309.09(B) states unequivocally that a board of township trustees may employ as additional legal counsel "an attorney *other than* the township law director or the prosecuting attorney of the county." (Emphasis added.) The foregoing language thus means that the board of township trustees of a limited self-government township may employ additional legal counsel, except that neither the township law director nor the county prosecuting attorney may be so employed. It follows, therefore, that the board of township trustees of the township in question may not enter into a contract with you in your capacity as prosecuting attorney in which it would be agreed that you or other attorneys in your office would provide legal representation and other legal services to the board of township trustees and other township officers.

Conclusion

It is, therefore, my opinion, and you are advised that the board of township trustees of a township that has adopted the limited self-government form of township government under R.C. Chapter 504 may not enter into a contract with the prosecuting attorney of the county for the purpose of employing the prosecuting attorney as additional legal counsel to represent the township and its officers in their official capacities and to advise them on legal matters.

Respectfully,

LEE FISHER
Attorney General

December 5, 1994

The Honorable Tim Oliver
Warren County Prosecuting Attorney
500 Justice Drive
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SYLLABUS: 94-085

The board of township trustees of a township that has adopted the limited self-government form of township government under R.C. Chapter 504 may not enter into a contract with the prosecuting attorney of the county for the purpose of employing the prosecuting attorney as additional legal counsel to represent the township and its officers in their official capacities and to advise them on legal matters.