June 10, 1994

OPINION NO. 94-038

The Honorable David P. Joyce
Geauga County Prosecuting Attorney
Courthouse Annex
231 Main Street
Chardon, Ohio 44024

Dear Prosecutor Joyce:

You have requested an opinion concerning payment for a township road improvement. Your request relates to a situation in which a road is within the jurisdiction of one township, but residents of an adjoining township use the road as the only means of ingress and egress to the road on which they live. Your questions are these:

1. Does a board of township trustees have authority to assess residents in an adjoining township for improvements to a road solely within the jurisdiction of the board of township trustees when the adjoining township residents clearly benefit from the use of the improved road pursuant to O.R.C. 5573.07[?]
2. Does a board of township trustees have authority to assess an adjoining township the pro rata share of the cost for improvements on a road solely within the jurisdiction of the board of township trustees for homeowners on a road connected to the road that is to be improved as its only way of egress[?]

It is assumed that your questions do not involve roads or assessment zones that are located within municipal corporations and that no township road districts have been created. *See* R.C. 5573.21-.22.

Payment for Township Road Improvements

A board of township trustees may undertake a road improvement either: (1) upon a majority vote of the board and the presentation of a petition signed by at least fifty-one percent of the landowners or lot owners, residents of the county, who are to be specifically taxed or assessed for the improvement; or (2) upon the unanimous vote of the board, without the presentation of a petition. *See* R.C. 5571.06-.07, .15; R.C. 5573.01. The compensation, damages, and costs of a township road improvement may be apportioned and paid in any of the following ways:

> (A) Any part thereof shall be assessed against:
> (1) The real estate abutting upon said improvement;
> (2) The real estate situated within one-half mile of either side thereof;
> (3) The real estate situated within one mile of either side thereof, according to the benefits accruing to such real estate;
> (B) Any balance shall be paid:
> (1) From the proceeds of any levy for road purposes upon the grand duplicate of all the taxable property in the township;
> (2) From any funds in the township treasury available therefor.

R.C. 5573.07.

Instead of levying assessments against real estate, the board of township trustees, upon a unanimous vote, may order that all the compensation, damages, and costs of a road improvement be paid from road levy or road improvement funds of the township. R.C. 5573.09. *See generally* R.C. 5573.13. A board of township trustees is authorized to sell bonds in anticipation of the collection of taxes and assessments for road improvements. R.C. 5573.14.

Estimated assessments upon real estate are made by the county engineer, and opportunity is provided for filing objections. After appropriate modifications, the board of township trustees approves and confirms the assessments and they become a lien on the land. R.C. 5573.10. The assessments are certified to the county auditor and collected as other taxes. R.C. 5573.11.

Assessment Authority of a Board of Township Trustees

R.C. 5573.10 and R.C. 5573.11 establish the procedure for assessing road improvement costs upon real estate that will benefit from the improvement. R.C. 5573.07 permits assessments to be made against: (1) real estate abutting upon the improvement; (2) real estate situated within one-half mile of either side of the improvement; or (3) real estate situated within one mile of either side of the improvement, according to the benefits accruing to such real estate. It is evident that there will be circumstances in which some of the real estate described in these provisions will be located in a township other than the township that is undertaking the improvement. It is clear, however, that the authority of a board of township trustees to levy a assessment against real estate does not extend beyond the borders of the township. In considering the authority of a township to levy special assessments for highway improvements, one of my predecessors stated: "It is elementary that the township trustees ... have no jurisdiction as a taxing authority over property lying outside the limits of their township." 1931 Op. Att'y Gen. No. 2917, vol. I, p. 187 at 189. A board of township trustees may not select an assessment zone that extends the assessment area beyond the boundaries of the township. *Cf.* 1920 Op. Att'y Gen. No. 925, vol. I, p. 27 at 28 (finding that a county could not provide an assessment zone that extended the assessment area into an adjoining county and stating: "As applied to the case you state, the only course open to the commissioners is to confine the assessment area either to the one-half mile zone or to the abutting lands"). *See generally Oberhelman v. Allen*, 7 Ohio App. 251 (Hamilton County 1915) (township trustees have no

authority to establish a township road through land lying in another township); *Scully v. City of Cincinnati*, 13 Ohio Dec. Rep. 489 (Super. Ct. Cincinnati 1871).

Joint Township Road Improvements

The General Assembly has provided a procedure under which the boards of trustees of two or more townships may make a joint improvement of a township road. R.C. 5573.15 states, in part:

> *The boards of township trustees of two or more townships may construct, reconstruct, resurface, or improve a township road or part thereof*, along the line between such townships, extending into or through all such townships, or *wholly within the township but within less than the legal assessment distance of the township line*. In such case the several boards, when acting as a joint board and when acting separately, in the making of assessments and issuing bonds, shall be governed by sections 5555.21 to 5555.34, inclusive, of the Revised Code, in so far as the same are applicable. (Emphasis added.)

R.C. 5573.15 expressly authorizes joint action when a township road improvement is wholly within one township but within less than the legal assessment distance of the township line. It has been concluded that the provisions of R.C. 5573.15 are permissive only and there is no requirement that improvements referenced in that statute be undertaken only in accordance with its provisions. *See* 1956 Op. Att'y Gen. No. 6547, p. 358 at 360. If action is taken pursuant to R.C. 5573.15, however, then the boards of township trustees are governed by R.C. 5555.21-.34 insofar as those provisions are applicable.

Joint County Road Improvements

The provisions of R.C. 5555.21-.34 establish a procedure for counties to take joint action on road improvements that affect more than one county. Those provisions, by their terms, are not directly applicable to townships. The language of R.C. 5573.15, however, makes the procedures of R.C. 5555.21-.34 that are applicable to counties applicable also to townships that encounter analogous situations.

R.C. 5555.31 provides that when a proposed road improvement is wholly within one county but within less than the legal assessment distance of the county line and a petition for such improvement is signed by fifty-one percent of the persons to be specially assessed, the improvement "shall be regarded as a joint county improvement" and shall be made in accordance with R.C. 5555.21-.30. R.C. 5555.21 states that when a petition for a joint county improvement is filed with the board of county commissioners of any one of the interested counties, that board "shall cause a certified copy thereof to be filed with the board of each of the other counties in which some part of the proposed improvement is situated." A county whose land may be subject to assessment is, in accordance with R.C. 5555.31, a county that must be notified.

After a petition for a joint county improvement is filed, the boards of county commissioners

meet as a joint board, which acts upon the petition as if the proceedings were held before a single board. R.C. 5555.22. "A majority of such joint board may order the construction of such road, but such majority shall be composed of at least one commissioner from each county in which the improvement is located." *Id.* If no petition is filed, the joint board may order a joint road improvement by a resolution passed by unanimous vote of the board. R.C. 5555.23. In determining whether to undertake a road improvement, the joint board must follow appropriate notice and hearing procedures. *See* R.C. 5555.27, .34.

When a road improvement is undertaken by a joint board of county commissioners, the compensation, damages, and expenses may be apportioned and paid by any of the methods provided by R.C. 5555.41, which governs payment for road improvements undertaken by a single county. R.C. 5555.25. The joint board determines "the proportion of the compensation, damages, and expenses of such improvement to be paid by each of the several counties interested in the improvement." *Id.* If the joint board cannot agree on the apportionment of the costs of the improvement among the interested counties, it certifies that fact to the Director of Transportation, who makes the apportionment. *Id.*

The board of commissioners of each interested county makes the assessments against the real estate within that county, giving notice and following procedures as in the case of an improvement within a single county. R.C. 5555.25. Different methods of paying the costs may be used by the different counties, as long as each county uses a method provided by R.C. 5555.41. R.C. 5555.26. If bonds are issued in anticipation of the collection of taxes and assessments on account of a particular improvement, the bonds are issued separately by each county to cover its share of costs and expenses. R.C. 5555.33.

Application of R.C. 5555.21-.34 to Joint Township Road Improvements

As discussed above, R.C. 5573.15 makes the provisions of R.C. 5555.21-.34, which govern joint county road improvements, applicable to boards of township trustees that undertake joint township road improvements, "in so far as the same are applicable." R.C. 5573.15. In general, the provisions of R.C. 5555.21-.34, summarized briefly above, can readily be applied to a joint township road improvement. It does not appear, however, that the funding methods established by R.C. 5555.25 are applicable to townships. R.C. 5555.25 provides for apportionment and payment of the compensation, damages, and expenses of a road improvement by any of the methods provided by R.C. 5555.41, which governs payment for single county road improvements. The methods set forth in R.C. 5555.41 are somewhat different from those provided in R.C. 5573.07 for apportioning and paying the costs of township road improvements. There is no indication that the General Assembly intended, by authorizing townships to undertake joint road improvements in accordance with R.C. 5555.21-.34, to change the methods by which township road costs are apportioned and paid. Therefore, it is not appropriate to apply the county road funding provisions of R.C. 5555.25 and 5555.41 to townships undertaking joint road improvements pursuant to R.C. 5573.15; instead, townships should use the methods set forth in R.C. 5573.07 for apportioning and paying the costs of township road improvements. With this exception, the procedures contained in R.C. 5555.21-.34 appear to be applicable to joint township road improvements made pursuant to R.C. 5573.15.

Analysis

In light of this statutory scheme, it is possible to provide direct answers to your questions. First, a board of township trustees clearly does not have authority pursuant to R.C. 5573.07 to assess residents in an adjoining township for improvements to a road solely within the jurisdiction of the board of township trustees, regardless of the extent to which residents of the adjoining township benefit from the use of the improved road. A board of township trustees has authority to levy assessments only against land within its township. R.C. 5573.07 defines the real estate against which a road assessment may be levied, but a board of township trustees may not select an assessment zone that extends the assessment area beyond the boundaries of the township, which is the only territory over which it is granted direct statutory authority.

Similarly, a board of township trustees has no authority to assess an adjoining township the pro rata share of the cost for improvements on a road solely within the jurisdiction of the board of township trustees, even if the road provides a benefit to homeowners of the adjoining township for whom it is the only way of egress. R.C. 5573.07 prescribes the methods by which compensation, damages, and costs of a township road improvement may be paid, but again, those methods do not include assessment of an adjoining township.

In situations that come within the provisions of R.C. 5573.15, a township road improvement may be undertaken as a joint improvement by two or more townships, with each township responsible for paying its respective share. In undertaking a joint township road improvement, the boards of township trustees are governed by R.C. 5555.21-.34 insofar as those provisions are applicable. If a particular road improvement does not come within the provisions of R.C. 5573.15, R.C. Chapter 5573 provides no method for townships to share the cost of the improvement.

Conclusion

It is, therefore, my opinion, and you are advised, as follows:

1. A board of township trustees has no authority pursuant to R.C. 5573.07 to assess residents in an adjoining township for improvements to a road solely within the jurisdiction of the board of township trustees, even if residents of the adjoining township clearly benefit from the use of the improved road.

2. A board of township trustees has no authority pursuant to R.C. Chapter 5573 to assess an adjoining township the pro rata share of the cost for improvements on a road solely within the jurisdiction of the board of township trustees, even if the road provides a benefit to homeowners of the adjoining township for whom it is the only way of egress.

3.Pursuant to R.C. 5573.15, the boards of township trustees of two or more townships may jointly undertake the improvement of a township road or part of a township road along the line between the townships, extending into or through all the townships, or wholly within one township but within less than the legal assessment distance of the township line. In taking such action, the boards are governed by R.C. 5555.21-.34 insofar as those provisions are applicable.

Respectfully,

LEE FISHER
Attorney General

June 10, 1994

The Honorable David P. Joyce
Geauga County Prosecuting Attorney
Courthouse Annex
231 Main Street
Chardon, Ohio 44024

SYLLABUS: 94-038

1.A board of township trustees has no authority pursuant to R.C. 5573.07 to assess residents in an adjoining township for improvements to a road solely within the jurisdiction of the board of township trustees, even if residents of the adjoining township clearly benefit from the use of the improved road.

2.A board of township trustees has no authority pursuant to R.C. Chapter 5573 to assess an adjoining township the pro rata share of the cost for improvements on a road solely within the jurisdiction of the board of township trustees, even if the road provides a benefit to homeowners of the adjoining township for whom it is the only way of egress.

3.Pursuant to R.C. 5573.15, the boards of township trustees of two or more townships may jointly undertake the improvement of a township road or part of a township road along the line between the townships, extending into or through all the townships, or wholly within one township but within less than the legal assessment distance of the township line. In taking such action, the boards are governed by R.C. 5555.21-.34 insofar as those provisions are applicable.