March 18, 1994

OPINION NO. 94-004

The Honorable David A. Sams
Madison County Prosecuting Attorney
23 West High Street
London, Ohio 43140

Dear Prosecutor Sams:

You have requested an opinion concerning the authority of a township to transfer certain of its funds to a joint fire district. You state that the township about which you ask formerly contracted with a municipality for fire protection, such contract being funded by a levy passed under R.C. 5705.19(I). Recently, however, with funds remaining from that levy, the township merged with another township in a joint fire district that has passed a separate levy for fire protection. Based upon these circumstances, you specifically ask: "in the event that a township created a special levy fund for the purpose of contracting for fire protection and then subsequently merged with another township in a joint fire district with a separate levy, is it proper to transfer the money left over from the old fire levy to the general fund or to the fund established for the new joint township fire district?"

**Special Levy for Township Fire Protection**

Because a township is a creature of statute, it may exercise only those powers that it has been granted, either expressly or impliedly, by the General Assembly. *See State ex rel. Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875). Thus, it is necessary to examine the statutory scheme governing the authority of a township to levy and use the proceeds of a special levy.

R.C. 5705.19, which permits subdivisions, including townships, *see* R.C. 5705.01(A) (defining "subdivision" for purposes of R.C. Chapter 5705), to propose tax levies, states, in pertinent part:

> The taxing authority of any subdivision at any time and in any year... may declare by resolution and certify the resolution to the board of elections not less than seventy-five days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in

> excess of that limitation for any of the following purposes:
>
> ....
>
> (I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of permanent, part-time, or volunteer fire fighters or fire-fighting companies to operate the same, including the payment of the firemen employer's contribution required under [R.C. 742.34], or to purchase ambulance equipment, or to provide ambulance or emergency medical services operated by a fire department or fire-fighting company.
>
> ....
>
> A levy for the purposes set forth in division (I), (J), or (U) of this section, and a levy imposed by a township for the purposes set forth in division (G) of this section, may be reduced pursuant to [R.C. 5705.261 or R.C. 5705.31]. A levy for the purposes set forth in division (I), (J), or (U) of this section, and a levy imposed by a township for the purposes set forth in division (G) of this section, may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

Once a special levy has been approved, R.C. 5705.10 requires that: "All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.... Money paid into any fund shall be used only for the purposes for which such fund is established." Thus, the proceeds of a special levy must be placed in a special fund and may be used only for the purpose for which the fund is established. *See generally* R.C. 5705.09(D) (requiring each subdivision to establish a special fund for each special levy). In the situation you describe, since the levy was proposed under R.C. 5705.19(I), the proceeds of that levy may be used only for the purposes set forth in that division of the statute.[1]

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[1] The permissible uses of the proceeds of a special levy may, however, be further restricted. As explained in 1990 Op. Att'y Gen. No. 90-069 at 2-292:

> Special levies may... be restricted by resolution and ballot language to particular uses.... The [county] commissioners may, accordingly, indicate in their resolution and on the ballot that levy moneys are needed for particular uses within the purpose set forth by statute.... It should be noted that no levy moneys may be expended for purposes that are not within the ballot language. Thus, if the ballot language is more narrow than the statutory language, that narrow language restricts the permissible expenditures of levy moneys. (Citations omitted.)

Thus, whether the township may expend the proceeds of the special levy about which you ask for a particular use depends, in part, upon whether the purposes specified in the ballot language for that levy were more restrictive than those stated in R.C. 5705.19(I). For purposes of this opinion, it is assumed that this levy was not passed subject to any such more restrictive ballot language.

**Joint Fire Districts**

In the circumstances you describe, the township no longer contracts with a municipal corporation for fire protection services for the township, *see* R.C. 9.60, but has, instead, joined with another township in a joint fire district. Thus, fire protection for the township is no longer provided by the township, but is provided instead by the joint fire district.

R.C. 505.371, providing for the creation and operation of a joint fire district, states in part:

> The boards of township trustees of one or more townships and the legislative authorities of any one or more municipal corporations..., or the boards of township trustees of two or more townships, may, by adoption of a joint resolution by a majority of the members of each board of township trustees and by a majority of the members of the legislative authority of each municipal corporation, create a joint fire district....
> The governing body of the joint fire district shall be a board of fire district trustees, which shall include one representative from each board of township trustees and one representative from the legislative authority of each municipal corporation in the district. The board of fire district trustees may exercise the same powers as are granted to a board of township trustees in [R.C. 505.37 -.45], including, but not limited to, the power to levy a tax upon all taxable property in the fire district as provided in [R.C. 505.39]....
> Any municipal corporation or township, or parts thereof, may join an existing joint fire district by the adoption of a resolution requesting such membership and upon approval of the board of fire district trustees.

R.C. 505.371, therefore, establishes a joint fire district as "a legal entity, separate and distinct both from the bodies which join in its creation and from the county or counties within which it is located." 1985 Op. Att'y Gen. No. 85-071 at 2-276.

**Funding for Joint Fire Districts**

Pursuant to R.C. 505.371, a board of fire district trustees may levy a tax upon all taxable property in the fire district as provided in R.C. 505.39. Further, because a joint fire district is a subdivision for purposes of R.C. Chapter 5705, R.C. 5705.01(A), it may exercise the taxing powers conferred upon subdivisions by that chapter. *See, e.g.*, R.C. 5705.03 (authorizing the taxing authority of a subdivision to levy taxes); R.C. 5705.19 (levy of taxes outside ten-mill limitation by taxing authority of subdivision). There is no statutory authority, however, to fund the operations of a joint fire district through contributions from those governmental entities that are members of the district.

Your opinion request states that the joint fire district you describe has levied its own tax. As concluded in 1982 Op. Att'y Gen. No. 82-063 (syllabus): "When a township and a village join a

joint fire district pursuant to R.C. 505.371, the taxable property in such township and village becomes subject to any taxes which may lawfully be levied by the board of fire district trustees and no additional voter approval is required for the levy of taxes in excess of the ten-mill limitation." Thus, upon joining the joint fire district, the township became subject to the taxes levied by the joint fire district.

**Transfer of Funds Under R.C. 5705.14**

You question whether the township has authority to "transfer" to a joint fire district of which the township is a member the balance remaining in the special fund containing the proceeds of the township's special levy under R.C. 5705.19(I). R.C. 5705.14, providing for the transfer of funds, states in pertinent part:

> *No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows*:
> ....
> (D) The unexpended balance in any special fund, other than an improvement fund, existing in accordance with division (D), (F), or (G) of [R.C. 5705.09 or R.C. 5705.12], may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund. (Emphasis added.)

R.C. 5705.14(D) thus authorizes the transfer of the unexpended balance in various special funds, including those created in accordance with R.C. 5705.09(D), to certain other funds after all obligations incurred and payable from that fund have been paid. R.C. 5705.14(D), however, authorizes transfers only between funds within the same subdivision.[2] *See* 1945 Op. Att'y Gen. No. 271, p. 274. *See generally* R.C. 5705.09 (requiring each subdivision to establish certain funds, including a general fund, a bond retirement fund, a special fund for each special levy, and, whenever the subdivision has outstanding bonds other than serial bonds, a sinking fund).

For purposes of R.C. 5705.14, joint fire districts and townships are separate subdivisions.

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[2] Your opinion request refers to *In re Transfer of Funds*, 52 Ohio App. 3d 1, 556 N.E.2d 191 (Montgomery County 1988), which concerned the transfer of township moneys from a special fund for fire protection to the general fund of the same township. The court concluded that because the township planned to continue providing fire protection in subsequent years, the activity for which the funds were levied had not terminated for purposes of R.C. 5705.14(D), even though the expenses for the current year had already been paid; thus, the township could not transfer the unexpended balance from the special fund for fire protection to the general fund of the township. In the situation you describe, however, the township proposes to transfer funds to a separate subdivision and to discontinue the activity for which the funds were levied. Thus, the decision in *In re Transfer of Funds* is not germane to the issues presented by your question.

R.C. 5705.01(A). Because R.C. 5705.14(D) authorizes a transfer of the unexpended balance remaining in a township special fund, created in accordance with R.C. 5705.09(D), only to certain other funds of the township, that statute does not authorize a township to transfer to a joint fire district of which it is a member the unexpended balance in a special fund containing the proceeds of a tax levied by the township under R.C. 5705.19(I).

Part of your question is whether the township may transfer the balance remaining in the special fund containing the proceeds of the township's levy under R.C. 5705.19(I) to the general fund of the township. Assuming that the special fund you describe was created in accordance with R.C. 5705.09(D), R.C. 5705.14(D) permits the township to transfer the balance remaining in the special fund you describe to the township general fund, as long as the "activity, service, or other undertaking for which such special fund existed" has terminated, and "only after the payment of all obligations incurred and payable from such special fund."

**Conclusion**

Based on the foregoing, it is my opinion, and you are hereby advised that R.C. 5705.14(D) does not authorize a township to transfer to a joint fire district of which it is a member the balance remaining in a special fund, created in accordance with R.C. 5705.09(D), that contains the proceeds of a tax levied by the township under R.C. 5705.19(I). The township may, however, transfer the unexpended balance remaining in such fund to another fund of the township, including the township's general fund, in accordance with the terms and conditions of R.C. 5705.14(D).

Respectfully,

LEE FISHER
Attorney General

March 18, 1994

The Honorable David A. Sams
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23 West High Street
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SYLLABUS: 94-004

R.C. 5705.14(D) does not authorize a township to transfer to a joint fire district of which it is a member the balance remaining in a special fund, created in accordance with R.C. 5705.09(D), that contains the proceeds of a tax levied by the township under R.C. 5705.19(I). The township may, however, transfer the unexpended balance remaining in such fund to another fund of the township, including the township's general fund, in accordance with the terms and conditions of R.C. 5705.14(D).