OPINION NO. 2010-007

Syllabus:

2010-007

A lot or parcel is ''improved'' or ''in the process of being improved'' for purposes of R.C. 4931.51(A)(1) if the lot or parcel has or is in the process of having a relatively permanent structure attached to, or located on, it.

To: James J. Mayer, Jr., Richland County Prosecuting Attorney, Mansfield, Ohio

By: Richard Cordray, Ohio Attorney General, February 23, 2010

You have submitted a request for an opinion of the Attorney General concerning the meaning of the word ''improved,'' as used in R.C. 4931.51(A)(1).[1] Your request letter explains that R.C. 4931.51(A)(1) authorizes a board of county

[1] R.C. 4931.51 states, in pertinent part:

commissioners to impose charges on certain property to provide funding for one or more public safety answering points[2] as part of a countywide 9-1-1 system authorized in accordance with R.C. 4931.44(B). The property on which a board of county commissioners may impose such charges is described as "each lot or parcel of real property in the county that is owned by a person, municipal corporation, township, or other political subdivision and is *improved*, or is *in the process of being improved*." R.C. 4931.51(A)(1) (emphasis added).

(A)(1) For the purpose of paying the costs of establishing, equipping, and furnishing one or more public safety answering points as part of a countywide 9-1-1 system effective under [R.C. 4931.44(B)] and paying the expense of administering and enforcing this section, the board of county commissioners of a county, in accordance with this section, may fix and impose, on each *lot or parcel of real property* in the county that is owned by a person, municipal corporation, township, or other political subdivision and is *improved, or is in the process of being improved*, reasonable charges to be paid by each such owner. The charges shall be sufficient to pay only the estimated allowed costs and shall be equal in amount for all such lots or parcels.

(2) For the purpose of paying the costs of operating and maintaining the answering points and paying the expense of administering and enforcing this section, the board, in accordance with this section, may fix and impose reasonable charges to be paid by each owner, as provided in division (A)(1) of this section, that shall be sufficient to pay only the estimated allowed costs and shall be equal in amount for all such lots or parcels. The board may fix and impose charges under this division pursuant to a resolution adopted for the purposes of both divisions (A)(1) and (2) of this section or pursuant to a resolution adopted solely for the purpose of division (A)(2) of this section, and charges imposed under division (A)(2) of this section may be separately imposed or combined with charges imposed under division (A)(1) of this section.

. . . .

(E) To collect charges imposed under division (A) of this section, the board of county commissioners shall certify them to the county auditor of the county who then shall place them upon the real property duplicate against the properties to be assessed, as provided in division (A) of this section. Each assessment shall bear interest at the same rate that securities issued in anticipation of the collection of the assessments bear, is a lien on the property assessed from the date placed upon the real property duplicate by the auditor, and shall be collected in the same manner as other taxes. (Emphasis added.)

[2] As used in R.C. 4931.51(A), the term "public safety answering point" means "a facility to which 9-1-1 system calls for a specific territory are initially routed for response and where personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider." R.C. 4931.40(P).

Although the General Assembly has defined many of the terms used in the statutory scheme governing countywide 9-1-1 systems, *see* R.C. 4931.40, it has not defined the word "improved," as used in R.C. 4931.51 to describe the types of lots and parcels that are subject to the charges authorized by that statute. Absent a statutory definition or an established technical or particular meaning, the word "improved" must "be read in context and construed according to the rules of grammar and common usage." R.C. 1.42.

The common meaning of the word "improvement" was discussed in *Developers Diversified Ltd. v. Cuyahoga County Bd. Of Revision*, 84 Ohio St. 3d 32, 701 N.E.2d 975 (1998). In that case, the court considered the meaning of the word "improvement," as used in R.C. 5715.19, which establishes a method by which property owners may, in limited situations, file a complaint concerning, among other things, "[t]he determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to [R.C. 5727.06]." R.C. 5715.19(A)(1)(d). One part of this method prescribed by R.C. 5715.19(A)(2) prohibits the filing of a second complaint concerning the valuation or assessment of a parcel within the prescribed "interim period,"[3] except in certain circumstances. One circumstance in which a second complaint may be filed is if a previously unconsidered "[s]ubstantial *improvement* was added to the property." R.C. 5715.19(A)(2)(c) (emphasis added).

Finding that the word "improvement," as used in R.C. 5715.19, had acquired no particular or technical meaning, the *Developers Diversified* court adopted the following analysis:

> Other statutes relating to taxes cast "improvement" with buildings, fixtures, and structures located on land. R.C. 5713.01(B), 5713.03, 5713.041, and 5701.02. R.C. 5701.02(D) defines "improvement" as:
>
> > "[W]ith respect to a building or structure, a permanent addition, enlargement, or alteration that, had it been constructed at the same time as the building or structure, would have been considered a part of the building or structure."
>
> Accordingly, tax statutes include the term "improvement" together with permanent additions to realty. Moreover, The Dictionary of Real Estate Appraisal, American Institute of Real Estate Appraisers (1984) 158, defines "improvements" as:
>
> > "Buildings or other relatively permanent structures or developments located on, or attached to, land."
>
> Consequently, in context with other statutes and under statutory

[3] *See generally* R.C. 5715.19(A)(2) (defining "interim period," as used in R.C. 5715.19(A)(2), as meaning "for each county, the tax year to which [R.C. 5715.24] applies and each subsequent tax year until the tax year in which that section applies again").

> and dictionary definitions, an ''improvement'' is a *relatively permanent structure attached to, or located on, land.*

84 Ohio St. 3d at 36 (emphasis added).

The use of the word ''improvement'' in R.C. 5715.19 for purposes of valuing and assessing real property is similar to the use of the word ''improved'' in R.C. 4931.51(A)(1) to describe the type of real property upon which another type of charge may be imposed. We find, therefore, that the *Developers Diversified* court's description of the common meaning of the term ''improvement'' applies equally to the word ''improved,'' as used in R.C. 4931.51(A)(1)—a lot or parcel is ''improved'' or ''in the process of being improved'' for purposes of R.C. 4931.51(A)(1) if the lot or parcel has or is in the process of having a ''relatively permanent structure attached to, or located on, [it].'' 84 Ohio St. 3d at 36.

As a final matter, we note that had the General Assembly intended the word ''improved,'' as used in R.C. 4931.51(A)(1), to have a more specific meaning, it could easily have used language that more particularly described the word ''improvement'' as it has in other instances. *See, e.g.*, R.C. 343.08(A) (authorizing solid waste management district charges ''only against lots or parcels that are improved, or in the process of being improved, *with at least one permanent, portable, or temporary building*'' (emphasis added)); R.C. 5302.30(A)(4) (defining ''residential real property,'' as used in that statute, as meaning ''real property that is improved *by a building or other structure that has one to four dwelling units*'' (emphasis added)); R.C. 5705.01(E) (defining a ''permanent improvement'' or ''improvement'' for purposes of R.C. Chapter 5705 (tax levy law) as meaning ''any property, asset, or improvement with an *estimated life or usefulness of five years or more*, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more'' (emphasis added)). *See generally Lake Shore Electric Railway Co. v. Public Utilities Comm'n*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a term to have a particular meaning, ''it would not have been difficult [for it] to find language which would express that purpose,'' having used that language in other connections).

It is, therefore, my opinion, and you are hereby advised that a lot or parcel is ''improved'' or ''in the process of being improved'' for purposes of R.C. 4931.51(A)(1) if the lot or parcel has or is in the process of having a relatively permanent structure attached to, or located on, it.