January 22, 1996

OPINION NO. 96-006

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
323 East Main Street
Lancaster, Ohio 43130

Dear Prosecutor Landefeld:

You have requested an opinion concerning whether a township that has not adopted the limited self-government form of township government[1] may place on the ballot the issue of designation of an exclusive provider of waste disposal services for the township. Additionally, you wish to know, absent such authority, whether there is any legal remedy for township residents who are unhappy with the designation of an independent contractor as the exclusive provider of waste disposal services for the township.

Pursuant to R.C. 505.27(A)(1), a board of township trustees may enter into a contract with an independent contractor for waste disposal services. The contract may provide that the independent contractor is the exclusive provider of waste disposal services for the township. R.C. 505.27(A)(2)(a). In addition, the board of township trustees may levy a tax within or in excess of the ten-mill limitation to provide and maintain waste disposal services. R.C. 505.29; R.C. 5705.19(V).

The General Assembly thus has vested the board of township trustees with the authority to determine whether the township should enter into a contract that makes an independent contractor the exclusive provider of waste disposal services in the township. There is no statutory authority for anyone to submit to the township electorate the issue whether the township should enter into such a contract.[2] Absent such authority, the issue may not be placed on the ballot. *See* 1963 Op. Att'y Gen.

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[1] Pursuant to R.C. Chapter 504, a township may "adopt the limited self-government form of township government under which it exercises limited powers of local self-government and limited police powers, as authorized by [R.C. Chapter 504]." R.C. 504.01.

[2] In *State ex rel. Flood v. Board of Elections of Stark County*, CA-9403 (Stark County Aug. 13, 1993) (LEXIS, Ohio library, Ohmega file), an Ohio court of appeals determined that a township that

No. 107, p. 181; *see also* 1966 Op. Att'y Gen. No. 66-163; 1934 Op. Att'y Gen. No. 2475, vol. I, p. 424. Accordingly, no one can place on the ballot of the voters of a township that has not adopted the limited self-government form of township government the issue of designation of an exclusive provider of waste disposal services for the township.

You have also asked whether, if there is no authority to place this issue on the ballot, there is any legal remedy for township residents who are unhappy with the designation of an independent contractor as the exclusive provider of waste disposal services for the township. I have been unable to locate any statutory provisions which would provide relief to township citizens who are unhappy with the board of township trustees' designation of an independent contractor as the exclusive provider of waste disposal services for the township. As stated above, the General Assembly has vested the board of township trustees with the sole discretion to determine whether the township should enter into a contract that provides that an independent contractor is the exclusive provider of waste disposal services in the township. In the absence of an abuse of discretion, or an unlawful interest in the contract on the part of the board of township trustees,[3] the contract is presumed valid if it complies with relevant statutory requirements. *See generally Smith v. Ray*, 83 Ohio App. 61, 73, 72 N.E.2d 921, 926 (Shelby County 1947), *aff'd*, 149 Ohio St. 394, 79 N.E.2d 116 (1948). Accordingly, absent an abuse of discretion or an unlawful interest in the contract, a contract between a township that has not adopted the limited self-government form of township government and an independent contractor that complies with relevant statutory requirements and provides that an

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has not adopted the limited self-government form of township government may use the referendum provisions of R.C. 504.14 to submit to the electors of the township for their approval or rejection by referendum a resolution adopted by the board of township trustees. *Contra State ex rel. Quirke v. Patriarca*, 100 Ohio App. 3d 367, 372, 654 N.E.2d 136, 139 (Lake County 1995) ("R.C. 504.14 is applicable only to townships which are organized and operating under a _limited form of self-government_"). However, R.C. 504.14, as amended by Sub. H.B. 580, 120th Gen. A. (1994) (eff. Dec. 9, 1994), currently provides:

> *In a township that adopts the limited self-government form of government*, resolutions may be proposed by initiative petition by the electors in the unincorporated area of the township and adopted by election by these electors, and resolutions adopted by the board of township trustees may be submitted to these electors for their approval or rejection by referendum. (Emphasis added.)

Accordingly, only a township that has adopted the limited self-government form of township government may use the initiative and referendum provisions of R.C. 504.14 to submit to the township electorate the issue of designation of an exclusive provider of waste disposal services for the township. *See State ex rel. Quirke v. Patriarca*; 1963 Op. Att'y Gen. No. 107, p. 181.

[3] Township trustees are required to exercise an intelligent discretion in the performance of their official duties, *see State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39, 40 (1918), and refrain from having prohibited personal interests in public contracts, *see* R.C. 511.13; R.C. 2921.42.

independent contractor is the exclusive provider of waste disposal services in the township is valid, and there is no legal remedy for township residents who are unhappy with the designation of the independent contractor as the exclusive provider of waste disposal services.

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

1. There is no authority to submit to the voters of a township that has not adopted the limited self-government form of township government the issue of designation of an exclusive provider of waste disposal services for the township.

2. Absent an abuse of discretion or an unlawful interest in the contract, a contract between a township that has not adopted the limited self-government form of township government and an independent contractor that complies with relevant statutory requirements and provides that an independent contractor is the exclusive provider of waste disposal services in the township is valid, and there is no legal remedy for township residents who are unhappy with the designation of the independent contractor as the exclusive provider of waste disposal services.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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Fairfield County Prosecuting Attorney
323 East Main Street
Lancaster, Ohio 43130

SYLLABUS: 96-006

1. There is no authority to submit to the voters of a township that has not adopted the limited self-government form of township government the issue of designation of an exclusive provider of waste disposal services for the township.

2. Absent an abuse of discretion or an unlawful interest in the contract, a contract between a township that has not adopted the limited self-government form of township government and an independent contractor that complies with relevant statutory requirements and provides that an independent contractor is the exclusive provider of waste disposal services in the township is valid, and there is no legal remedy for township residents who are unhappy with the designation of the independent contractor as the exclusive provider of waste disposal services.