January 17, 2002

OPINION NO. 2002-001

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street
Fourth Floor
Lancaster, Ohio 43130

Dear Prosecutor Landefeld:

You have asked whether a board of township trustees may include on the township's web site a link to another site on the world wide web that supports a political campaign or ballot issue, or is that of a political action committee.[1] You have explained that Violet Township operates a web site with links to the sites of organizations, including civic associations and the chamber of commerce, that may occasionally engage in political activities.

In addressing your question, we are guided by the well-established principle that boards of township trustees and other township offices are creatures of statute and have only those powers expressly provided by statute or as may be implied therefrom. *See Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875); 1988 Op. Att'y Gen. No. 88-088. We are also mindful that any doubt as to the expenditure of public funds must be resolved against the expenditure. *See State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916). Therefore, a board of township trustees may not include a particular link or other information on its web site unless it has the statutory authority to do so.

Your question is addressed in large part by R.C. 9.03. Division (B) of R.C. 9.03 authorizes the governing body of a political subdivision, including a board of township trustees, to expend public funds and use any means "to communicate information about the plans,

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[1] The world wide web is a "system of Internet servers that support specially formatted documents. The documents are formatted in a script called HTML (*HyperText Markup Language*) that supports links to other documents, as well as graphics, audio, and video files." *Webopedia*, *at* http://webopedia.internet.com. *See also, e.g.,* R.C. 3517.106(A)(1) (describing the world wide web as a "graphical subnetwork" on the Internet). An individual or organization may establish a site or location on the world wide web, typically consisting of a home page and other pages or documents. A web page will often include hyperlinks (or links), displayed as graphics or highlighted text, that will connect the viewer to another place on that site or to a different web site altogether. *See Webopedia;* Ann Arbor District Library, *Beginner's Guide to the World Wide Web*, *at* http://www.aadl.org/training/beginners/beginners.html#Glossary.

policies, and operations of the political subdivision to members of the public within the political subdivision and to other persons who may be affected by the political subdivision." R.C. 9.03(B) thus provides clear authority for a township to create and maintain an official web site that provides information about the plans, policies, and operations of the township. *See also State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470-71, 423 N.E.2d 105, 113 (1981) ("it is within the implied power of a public agency to disseminate information both to those who are directly affected by its operation and the general public," and "the means to be utilized therefor … lies in the first instance within the sound discretion of the public agency involved");[2] 1999 Op. Att'y Gen. No. 99-030 at 2-202 n.5 ("[i]t is generally accepted that the dissemination of information is a proper function of a public body and that public money may be expended for that purpose").

However, division (C)(1)(e) of R.C. 9.03 expressly prohibits a political subdivision from using public funds to communicate information that "[s]upports or opposes the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue."[3] Division (C)(2) similarly prohibits a political

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[2] As the court further explained in *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 469, 423 N.E.2d 105, 112 n.8 (1981):

> In numerous instances, public funds are expended for dissemination of information to the general public. Many agencies prepare reports or brochures concerning the functions of the agency to distribute to those who are concerned with obtaining that information. Many agencies employ persons to respond to inquiries from the public as to the functioning of the agency or as to other information available from the agency. In most instances, there is no express statutory authority for such expenditures of public funds, but it is extremely doubtful that anyone would contend that the dissemination of information to the general public is not a proper expenditure of public monies. The wisdom of the nature of the publication and the means utilized for dissemination may be brought into question, but the public purpose involved cannot properly be questioned.

[3] Division (C) of R.C. 9.03 exempts from the prohibitions therein the activities described in R.C. 340.03(A)(7) and R.C. 340.033(A)(12), which authorize a board of alcohol, drug addiction, and mental health services (ADAMH board) to "[r]ecruit and promote local financial support" for mental health programs and alcohol and drug addiction programs, respectively, "from private and public sources." This language has been interpreted as authorizing an ADAMH board to "expend public funds to promote the approval by the electorate of a tax levy for mental health programs or alcohol and drug addiction programs, provided that the board has public funds available that may lawfully be expended for that purpose." 1999 Op. Att'y Gen. No. 99-030 (syllabus). 1999 Op. Att'y Gen. No. 99-030 explains that the recognition in R.C. 9.03(C) for expenditures authorized pursuant to R.C. 340.03 and R.C. 340.033 acknowledges that "those

subdivision from using public funds to compensate an employee "for time spent on any activity to influence the outcome of an election for any of the purposes" specified in division (C)(1)(e).[4] Therefore, a township is prohibited from including on its web site statements or other items that support or oppose a candidate for office, the investigation, prosecution, or recall of a public official, or passage of a tax levy or bond issue. Furthermore, R.C. 9.03(C)(1)(e) and (2) would prohibit a township from including on its web site a link to the web site of another organization if the other web site includes such a message.[5] In considering the application of this prohibition, we will examine three situations raised by your question.

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statutes authorize expenditures that would otherwise be prohibited —namely, expenditures to support the passage of a tax levy." *Id.* at 2-202.

[4] R.C. 9.03(C)(2) goes on to clarify, however, that it does *not* prohibit:

> the use of public funds to compensate an employee of a political subdivision for attending a public meeting to present information about the political subdivision's finances, activities, and governmental actions in a manner that is not designed to influence the outcome of an election or the passage of a levy or bond issue, even though the election, levy, or bond issue is discussed or debated at the meeting.

Indeed, it has been found as a general matter, that a public agency is authorized to expend funds to provide factual information about the consequences for the agency if a tax or bond measure should pass or fail, since such authority may be implied from the agency's responsibility to perform the duties imposed upon it by statute. As explained in 1999 Op. Att'y Gen. No. 99-030 at 2-202 n.5, because the dissemination of information is a proper function of a public body, "even without express statutory authority, public officials and public offices may be permitted to inform the public of the consequences that are expected to follow from the passage or defeat of a particular tax levy." *See also* note 2, *supra*. Division (C) of R.C. 9.03 makes clear, however, that township resources may not be used to urge people to vote for or against the tax or bond measure. *See generally* 1994 Op. Att'y Gen. No. 94-041; 1992 Op. Att'y Gen. No. 92-029. *See also* 1999 Op. Att'y Gen. No. 99-030 at 2-202 n.4 ("[t]here may be some question as to the distinction between merely disseminating information and conducting a campaign to promote a particular ballot issue" and "[t]hus, it may be necessary to consider questions involving specific facts on a case-by-case basis") and at 2-203 to 2-205 (setting forth a comprehensive discussion of the constitutional issues associated with the use of public funds to urge the support or defeat of a ballot measure).

[5] We realize it is likely that the cost to the township of including a link on the township's web site would be minimal. There is, however, no monetary threshold in R.C. 9.03, below which the prohibitions of division (C) do not apply, and we are without authority to construct one in interpreting R.C. 9.03. *See* 1996 Op. Att'y Gen. No. 96-033 (declining to adopt a de minimis standard in interpreting R.C. 3599.01 and R.C. 3599.02, which prohibit anyone from giving or receiving a thing of value for agreeing to vote). *Cf.* R.C. 102.03(D) and (E)

First, a township's web site may not include a link to the web site of a candidate's campaign committee or that of a committee formed to support or oppose a candidate, recall effort, tax levy, or bond issue. Moreover, it would not be uncommon for the sites of political parties and political action committees to include these types of campaign messages, and the sites would be prohibited links on a township web site if they do so. *See, e.g.,* R.C. 3517.01(B)(8) (defining a "political action committee").

Second, organizations such as corporations, labor organizations, membership associations such as the chamber of commerce, and other interest groups, whose essential purpose or mission is one other than supporting or opposing candidates or ballot issues, may on occasion do so. *See, e.g.,* R.C. 3517.01(B)(4); R.C. 3517.01(B)(21). R.C. 9.03(C) would prohibit the township from including on its web site a link to the site of such an organization if, at that time, the organization's site includes a message advocating the support or defeat of a candidate, recall

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(prohibiting a public official or employee from soliciting, accepting, or using his position to secure anything of value that is of such a character as to manifest a *substantial* and improper influence upon him with respect to his duties) and Ohio Ethics Commission Advisory Opinion No. 2001-04 (interpreting the prohibitions of R.C. 102.03(D) and (E) as inapplicable to the solicitation or receipt of items that are of nominal or de minimis value).

This determination that there is no implied exception for nominal expenditures is supported by the purpose served by R.C. 9.03(C)(1)(e) and (2). R.C. 9.03(C) is but one statute among many enacted to insulate the governing process from electoral politics. *See, e.g.,* R.C. 124.57; R.C. 124.60; R.C. 124.61; R.C. 2921.43(C); R.C. 3517.092; R.C. 3517.13(J). *See also Gray v. City of Toledo*, 323 F. Supp. 1281, 1285 (N.D. Ohio 1971) ("[a] government's interest in avoiding the danger of having promotions and discharges of civil servants motivated by political ramifications rather than merit is highly significant"); *City of Cincinnati v. Ohio Council 8,* 61 Ohio St. 3d 658, 669-70, 576 N.E.2d 745, 755 (1991) (in limiting its employees' participation in local partisan politics, a city has "a sufficient governmental interest to justify an encroachment on First Amendment rights"); *Heidtman v. City of Shaker Heights*, 163 Ohio St. 109, 119, 126 N.E.2d 138, 143 (1955) ("civil service legislation was passed … to prevent those in classified civil service employment from being in any way obligated to political parties or civic officers for civil service positions, or from having the power to ingratiate themselves with the parties or elected officials by political activity"); *United Auto Workers v. Philomena*, 121 Ohio App. 3d 760, 778, 700 N.E.2d 936, 948 (Franklin County 1998) (the State has an "important interest in disassociating government operations from partisan politics"); 1999 Op. Att'y Gen. No. 99-030 and 1991 Op. Att'y Gen. No. 91-064 (discussing constitutional issues associated with the use of public funds to promote voter approval of a tax levy and with governmental agencies favoring one levy committee over another based on the committees' respective viewpoints).

The fact that a township may be able, with the aid of recent technology, to spend very little money in order to widely communicate a message, does not detract from the impression conveyed that the township supports or endorses such message.

effort, bond measure, or tax levy. If there is no such message on the web site, R.C. 9.03(C) would not prohibit the township from including a link to it even though the organization may have included such a message on its web site in the past, or may be currently advocating for or against a candidate, tax levy, or bond issue through means other than its web site. If a township were to include on its web site links to the sites of such organizations, it would thus incur an ongoing, and perhaps burdensome, obligation to monitor these sites in order to ensure that it is not in violation of R.C. 9.03(C).

Third, these types of organizations, including the civic associations whose links are on the web site of Violet Township, may engage in lobbying legislative bodies, executive officeholders, and administrative agencies, and urge the public to do the same. These matters do not fall within the prohibitions of division (C), because division (C) applies only to communications relating to the support or defeat of a candidate, the investigation, prosecution, or recall of a public official, or levy or bond issue. Therefore, a township would not be prohibited by division (C) from including on its web site a link to an organization's web site that has a lobbying message on it. It is the message to which the township web site links that is determinative in applying the prohibition of R.C. 9.03(C), rather than the nature of the organization sponsoring the web site.[6]

We must reiterate, however, that a board of township trustees and township officers have only those powers that are expressly granted by statute or that may be implied therefrom. *See State ex rel. Schramm v. Ayres*, 158 Ohio St. 30, 33, 106 N.E.2d 630, 632 (1952) ("the question is not whether townships are prohibited from exercising such authority ... [but] whether townships have such authority conferred on them by law"). Thus, even if a township is not prohibited by division (C) of R.C. 9.03 from including a particular link on its web site, its authority to communicate information is still limited to that set forth in division (B) of R.C. 9.03 or provided, expressly or by necessary implication, by another statute. A township is not permitted to include on its web site a link or other information concerning matters that do not relate to the statutory duties or operations of the township.

For example, a township may wish to include on its web site a link to information supporting or opposing a proposed constitutional amendment. R.C. 9.03(C) would not prohibit the link because it prohibits only communications supporting or opposing a candidate, the investigation, prosecution, or recall of a public official, or levy or bond issue. However, this does not end our analysis. Even though a township would not be prohibited by division (C) from including the link on its web site, it would, nonetheless, be precluded from doing so in the absence of a statute that, expressly or by necessary implication, grants townships the authority to

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[6] R.C. 9.03(C)(1)(d) does, however, prohibit a political subdivision from using public funds to communicate information that "[s]upports or opposes any labor organization or any action by, on behalf of, or against any labor organization."

advocate for or against the passage of the proposed amendment.[7] The same analysis would pertain to a link to information related to the efforts of those seeking to lobby legislative bodies, elected officials, or administrative agencies.

It is, therefore, my opinion, and you are hereby advised that:

1. A board of township trustees is authorized pursuant to R.C. 9.03(B) to operate a township web site that communicates information about the plans, policies, and operations of the township to members of the public and other persons who may be affected by township matters.

2. A board of township trustees is prohibited by R.C. 9.03(C)(1)(e) and (2) from using public funds to support or oppose a candidate for public office, the investigation, prosecution, or recall of a public official, or a

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[7] We do not mean to imply that it would be impermissible for the Secretary of State or county boards of elections to include on their web sites links to the sites of candidates, ballot issue committees, or other groups providing electoral information, since such activities fall within the scope of these offices' duties to inform voters, encourage voter participation, and conduct elections. *See generally* R.C. 3501.04 (the Secretary of State is "the chief election officer of the state"); R.C. 3501.11(G) (a county board of elections shall provide for the issuance of all publications concerning elections). Of course, these agencies must act impartially and provide equal access to candidates without regard to party affiliation and to organizations without regard to the particular positions or viewpoints the organizations may advocate. *See generally* 1991 Op. Att'y Gen. No. 91-064.

levy or bond issue, and from compensating a township employee for time spent on any activity to influence the outcome of an election for any of these purposes. Therefore, a township is prohibited by R.C. 9.03(C)(1)(e) and (2) from compensating township employees or otherwise using public funds to include on its web site a link to the web site of another organization if that organization's web site advocates the support or defeat of a candidate, recall effort, or levy or bond issue.

3. A board of township trustees is not permitted to expend public funds in order to include on the township web site a link or other information concerning matters that do not fall within the statutory authority of the township.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

January 17, 2002

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street
Fourth Floor
Lancaster, Ohio 43130

SYLLABUS: 2002-001

1. A board of township trustees is authorized pursuant to R.C. 9.03(B) to operate a township web site that communicates information about the plans, policies, and operations of the township to members of the public and other persons who may be affected by township matters.

2. A board of township trustees is prohibited by R.C. 9.03(C)(1)(e) and (2) from using public funds to support or oppose a candidate for public office, a recall effort, or a levy or bond issue, and from compensating a township employee for time spent on any activity to influence the outcome of an election for any of these purposes. Therefore, a township is prohibited by R.C. 9.03(C)(1)(e) and (2) from compensating township employees or otherwise using public funds to include on its web site a link to the web site of another organization if that organization's web site advocates the support or defeat of a candidate, recall effort, or levy or bond issue.

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