November 26, 1993

OPINION NO. 93-047

The Honorable Lowell S. Petersen
Ottawa County Prosecuting Attorney
122 West Second Street
Port Clinton, Ohio 43452

Dear Prosecutor Petersen:

You have requested an opinion regarding the standing of a board of township trustees under R.C. Chapter 5563 to appeal the decision of a board of county commissioners vacating a township road. With respect to such an appeal, you specifically wish to know whether a board of township trustees is a "person," "firm," or "corporation" within the meaning of R.C. 5563.02.

Authority of a Board of County Commissioners to Vacate a Public Road

R.C. 5553.02 states, in pertinent part, that a board of county commissioners "may locate, establish, alter, widen, straighten, *vacate*, or change the direction of roads as provided in [R.C. 5553.03-.16]." (Emphasis added.) The power of a board of county commissioners in that regard "extends to all roads within the county, except that as to roads on the state highway system the approval of the director of transportation shall be had." *Id. See also Sparrow v. City of Columbus*, 40 Ohio App. 2d 453, 320 N.E.2d 297 (Franklin County 1974) (county commissioners have no authority under R.C. 5553.02 to vacate a street or a part thereof that is within the corporate limits of a municipality and is a part of its street system; such authority rests exclusively with the municipal corporation's legislative authority, pursuant to the municipal corporation's powers of local self-government under Ohio Const. art. XVIII, §3).

R.C. 5553.04 describes generally the procedures by which a board of county commissioners may locate, establish, alter, widen, straighten, vacate, or change the direction of a public road, each of which qualifies as a road "improvement." *See* R.C. 5553.01 (as used in R.C. 5553.02-.16 inclusive, "improvement" means "any location, establishment, alteration, widening, straightening, vacation, or change in the direction of a public road, or part thereof, as determined upon by a board of county commissioners or joint board of county commissioners by resolution"). Pursuant to R.C. 5553.04, a board of county commissioners may, *inter alia*, declare by resolution to vacate a public road when the board is of the opinion that the vacation is for the public convenience or welfare. *See also* R.C. 5553.041 (petition by Director of Transportation to board of county commissioners for vacation of a public road); R.C. 5553.042 (vacation of a public road abandoned by a township).

Appeal From a Final Order of a Board of County Commissioners in a Road Improvement Proceeding

R.C. 5553.07 specifies the findings and orders that a board of county commissioners may make with respect to any proposed road improvement otherwise described in the foregoing provisions, following the final hearing thereon. R.C. 5553.07 states that if the board of county commissioners finds that such improvement will serve the public convenience and welfare, "it shall by resolution enter such finding on its journal and determine to proceed with the improvement." If the board finds that the proposed improvement will not serve the public convenience and welfare, "it shall refuse to proceed with the improvement." *Id.* R.C. 5553.30 authorizes an appeal from either of the foregoing orders. R.C. 5553.30 reads as follows:

> Any petitioner may appeal from the order of the board of county commissioners, or joint board of county commissioners, dismissing or refusing to grant the prayer of the petition for an improvement. Any person interested may appeal from an order granting such improvement. Such appeal may be perfected in the manner provided in sections 5563.01 to 5563.17, inclusive, of the Revised Code, and if the order appealed from is that of a joint board, an appeal may be taken to the probate court of any county in which said improvement or any part thereof is situated.

R.C. 5563.01-.17, to which R.C. 5553.30 makes express reference, set forth the specific procedures applicable to the prosecution of appeals undertaken pursuant to R.C. 5553.30. R.C. 5563.02, which is the focus of your inquiry, reiterates the appeal authorization that appears in R.C. 5553.30, and specifies the manner in which an appellant is to give notice of an appeal. R.C. 5563.02 states, in pertinent part, as follows:

> Any *person, firm, or corporation* interested therein, may appeal from the final order or judgment of the board of county commissioners, made in any road improvement proceeding and entered upon their journal, determining any of the following matters:
> (A) The order establishing the proposed improvement;
> (B) The order dismissing or refusing to grant the prayer of the petition for the proposed improvement.
> Any *person, firm, or corporation* desiring to appeal from the final order or judgment of the board upon any such questions, shall, at the final hearing upon matters of compensation or damages, give notice in writing of an intention to appeal, specifying therein the matters to be appealed from. (Emphasis added.)

Pursuant to R.C. 5553.30 and R.C. 5563.02(A), therefore, any "person, firm, or corporation interested therein" may appeal an order of a board of county commissioners under R.C. 5553.07 granting the vacation of a township road. *See generally Board of Commissioners v. Gibson*, 110 Ohio St. 290, 144 N.E. 117 (1924) (as used in G.C. 6885, now 5553.30, and G.C. 6891, now R.C. 5563.02, the term "improvement" includes the "vacation" of a public road); *accord, Ahrens v. Board of County Commissioners*, 44 Ohio Op. 39, 97 N.E.2d 722 (Prob. Ct. Hamilton County 1949), *appeal dismissed*, 154 Ohio St. 73, 93 N.E.2d 286 (1950). Accordingly, if a board of township trustees is a "person," "firm," or "corporation," as understood by R.C. 5563.02(A), such board may appeal from the final order of a board of county commissioners under R.C. 5553.07 granting the vacation of a township road.

A Township or Board of Township Trustees Is Not a "Person" for Purposes of R.C. 5563.02(A)

The General Assembly has not separately defined the term "person" for purposes of R.C. 5563.02(A). R.C. 1.59(C) provides that "[p]erson," as used in any statute, unless another definition is provided in that statute or a related statute, "includes an individual, corporation, business trust, estate, trust, partnership, and association." 1990 Op. Att'y Gen. No. 90-045 notes that the foregoing definition "does not, however, in and of itself, either clearly include or exclude governmental bodies," *id.* at 2-192 n.4. *See also* 1992 Op. Att'y Gen. No. 92-019 at 2-66 (the definition of "[p]erson" in R.C. 1.59(C) does not expressly exclude or include the State of Ohio or its agencies, departments, or instrumentalities).

The general rule applicable in such a situation, and the specific exception thereto, were set forth in 1979 Op. Att'y Gen. No. 79-062 at 2-209 as follows:

> [I]t may be generally said that, unless expressly provided, the term "person," when used in a statute, does not encompass public entities such as the state, counties, or municipal corporations, or officers thereof. *See, e.g., In re McLaughlin*, 16 Ohio Op. 2d 191 (P. Ct. Noble County 1960), *aff'd*, 17 Ohio Op. 2d 498 (Ct. App. Noble County 1961); 1979 Op. Att'y Gen. No. 79-055; 1978 Op. Att'y Gen. No. 78-030; 1962 Op. Att'y Gen. No. 3168, p. 591; 1962 Op. Att'y Gen. No. 2781, p. 70; 1958 Op. Att'y Gen. No. 1647, p. 51.
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> A few cases have indicated that where the purpose, language, or context of a statute demonstrates that a broad interpretation of the word "person" is intended, a public body will come within the purview of the statute. *E.g., Springfield v. Walker*, 42 Ohio St. 543 (1885); *City of Dayton v. McPherson*, 57 Ohio Op. 2d 361 (C.P. Montgomery County 1969).

Accord 1986 Op. Att'y Gen. No. 86-085 at 2-483 (concluding that a county is not a "person" for purposes of R.C. 4933.17 (collection of utility services deposits)); 1981 Op. Att'y Gen. No. 81-055 at 2-219 and 2-220 (neither a county nor a county hospital established pursuant to R.C. Chapter 339 is a "person" for purposes of R.C. 4747.02 (licensure of hearing aid dealers or fitters)); *see also* 1981 Op. Att'y Gen. No. 81-092; 1978 Op. Att'y Gen. No. 78-030. *Cf.* Op. No. 90-045 at 2-193 (finding that the General Assembly did not intend, by using the word "person" in R.C. 955.01 (registration of dogs), to

exclude from the registration and fee requirements of that section governmental entities that own dogs that are used for law enforcement purposes); 1974 Op. Att'y Gen. No. 74-058 (a municipal corporation engaged in a commercial, proprietary activity or function ordinarily performed by private individuals or enterprises can be a "person" for purposes of a statute that licenses or otherwise regulates the performance of the activity or function in question[1]).

Application of the general rule to your inquiry means that a township or board of township trustees is not a "person" for purposes of R.C. 5563.02(A). In addition, nothing appears within the language or context of either R.C. 5563.02(A) or the other provisions of R.C. Chapter 5563 to demonstrate a legislative intent that "person" be read broadly so as to include a township or board of township trustees.

The language of R.C. 5563.02 suggests, in fact, that the General Assembly intended "person" to be read in a more limited sense, that is, as referring only to individuals or natural persons. In that regard R.C. 5563.02 makes separate, express references to "person" and "corporation." In contrast, R.C. 1.59(C) defines "person" as including both individuals and various other entities, including "corporation[s]." Had the General Assembly intended R.C. 5563.02's use of the term "person" to be read in the more inclusive sense (as in R.C. 1.59(C), for example), it would have been unnecessary to include therein a separate reference to "corporation." *Cf., e.g.,* Op. No. 81-055 at 2-220 ("[i]f _person_ as used in R.C. 4747.02 were given the meaning provided in R.C. 1.59(C), the terms _partnership,_ _association_ and _corporation,_ as used in R.C. 4747.02, would be unnecessary, since they are included within the scope of _person_ as defined by R.C. 1.59(C)"). Moreover, when the General Assembly wishes the term "person" to include governmental units at either the state or local level, it generally expresses that intention in language that is clear and unequivocal. *See, e.g.,* R.C. 1518.20(E) (as used in R.C. 1518.20-.27 (ginseng management program), "_[p]erson_ includes any legal entity defined as a person under [R.C. 1.59] and any political subdivision, instrumentality, or agency of this state"); R.C. 3719.01(X) (as used in R.C. Chapter 3719 (controlled substances), "[p]erson" means "any individual, corporation, government or governmental sudivision or agency"); R.C. 4981.01(A) (as used

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[1] In *Thaxton v. Medina City Board of Education*, 21 Ohio St. 3d 56, 57, 488 N.E.2d 136, 137 (1986) the Ohio Supreme Court held that a public board of education "is not a _person,_ as defined in R.C. 1331.01(A), when the board operates within its clear legal authority." In explaining that holding, the court noted the following:

> Where a board of education or other public entity is found to be a "person" for purposes of a statute, the entity is usually engaged in a commercial or business activity rather than acting in its governmental capacity. *United States v. Coumantaros* (D.Md. 1958), 165 F. Supp. 695, 698. In the instant case, when the boards of education entered into contracts for photographic services, they were acting within their authorized governmental capacity by providing for and managing extracurricular activities. In fact, a public board of education is without authority to contract outside its educational sphere and therefore can never legally act in a purely commercial manner. *See State, ex rel. Clarke, v. Cook* (1921), 103 Ohio St. 465, 467.

in R.C. 4981.01-.11 (high speed rail authority), "[p]erson" means, in addition to the meaning in R.C. 1.59(C), "any unit of local government"); R.C. 6111.01(I) (as used in R.C. Chapter 6111 (water pollution control) "[p]erson" means "the state, any municipal corporation, political subdivision of the state, [or] person as defined in [R.C. 1.59]"). *But cf.* 1928 Op. Att'y Gen. No. 2920, vol. IV, p. 2678 (a rural (*i.e.*, township) board of education qualifies as a "person" or "corporation" for purposes of G.C. 6887, now R.C. 5553.41).

Accordingly, the term "person," as used in R.C. 5563.02(A), does not include a township or board of township trustees, for the purpose of appealing thereunder a decision of a board of county commissioners granting the vacation of a township road.[2]

A Township or Board of Township Trustees Is Not a "Firm" or "Corporation" for Purposes of R.C. 5563.02(A)

As with the term "person," the General Assembly has not provided specific definitions of "firm" or "corporation" for purposes of R.C. 5563.02(A). Thus, those terms are to be "read in context and construed according to the rules of grammar and common usage." R.C. 1.42. *See State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983) ("any term left undefined by statute is to be accorded its common, everyday meaning"); *Eastman v. State*, 131 Ohio St. 1, 1 N.E.2d 140 (1936) (syllabus, paragraph five) (same). In that regard, several Attorney General opinions, examining the use of these two terms in other statutory contexts, have stated that "firm" and "corporation" are most commonly understood as designating "particular types of business enterprises or organizations that are engaged in commercial activities, and owned, operated, managed, or controlled by individual persons for the principal purpose of realizing financial gain or profit." 1989 Op. Att'y Gen. No. 89-082 at 2-388 and 2-389 (concluding that a regional planning commission formed pursuant to R.C. 713.21 is not a "firm," "partnership," "association," or "corporation" for purposes of R.C. 4733.16 (rendition of professional engineering or surveying services)). *See, e.g.*, Op. No. 86-085 at 2-483 ("the terms _corporation_ and

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[2] The statutory scheme of R.C. Chapter 5553 (county roads - establishment; alteration; vacation) also suggests that the term "petitioner," as used in the first sentence of R.C. 5553.30, refers to a "person," and thus does not include a township or board of township trustees. *See, e.g.*, R.C. 5553.04 (a board of county commissioners may declare by resolution to proceed with a road improvement following presentation to the board of a "*petition*, signed by at least twelve *freeholders* of the county residing in the vicinity of the proposed improvement" (emphasis added)); R.C. 5553.23 (permitting a "person" through whose land a public road has been established, which is under the jurisdiction of the board of county commissioners, to file a petition with the board requesting to turn or change or relocate such road); R.C. 5553.26 (regarding a change request made pursuant to R.C. 5553.23, "[t]he person petitioning for such change shall in all cases pay all costs and expenses in connection with the proceedings"). *See also* 1977 Op. Att'y Gen. No. 77-028 (syllabus, paragraph one) (R.C. 5553.042, which permits a board of county commisioners, in response to a petition filed by any abutting landowner, to declare vacated a highway, street, or alley it finds to be abandoned, does not provide a method whereby a board of township trustees may initiate action to divest itself of the duties of road maintenance imposed upon it by R.C. Chapter 5571).

firm are typically used to describe types of business relationships rather than governmental entities"); Op. No. 81-055 at 2-219 (examining the common definitions of "firm," "partnership," "association," and "corporation" for purposes of R.C. 4747.02, "it becomes apparent that these words are descriptive of various types of business relationships"). *See also State ex rel. McElroy v. A.M. Kinney, Inc.*, 171 Ohio St. 193, 195, 168 N.E.2d 400, 401 (1960) ("[a]lthough the word, _firm,_ technically and legally does not include corporations, under common usage such term is used to refer to corporations"); *but see McMillen v. Industrial Commission of Ohio*, 13 Ohio App. 310, 312 (Columbiana County 1920) ("[t]he word _firm_ is used in its ordinary sense as designating a partnership, or an association of persons acting together for a particular purpose, and not as a person or corporation"); *Black's Law Dictionary* 634 (6th ed. 1990) (defining the term "[f]irm" as follows: "Business entity or enterprise. Unincorporated business. Partnership of two or more persons"). Accordingly, that is the sense in which "firm" and "corporation," as used in R.C. 5563.02(A), are to be understood.

In view of the foregoing, it follows that neither a township nor board of township trustees is a "firm" or "corporation" for purposes of R.C. 5563.02(A). *See Hopple v. Trustees of Brown Township*, 13 Ohio St. 311, 324 (1862) ("[t]he township, although denominated by the statute a body politic and corporate,[3] is not invested with the general powers of a corporation....The same is true of the trustees, and other officers through whom they act"). (Footnote added.) Rather, a township is a political subdivision of the state that functions as a unit of local government within a geographic area smaller than that of the county in which the township is located. *See, e.g., State ex rel. Godfrey v. O'Brien*, 95 Ohio St. 166, 115 N.E. 25 (1917) (syllabus, paragraph one) ("[c]ounty and township subdivisions are agencies of the state, and constituent parts of the plan of permanent organization of state government"); *Dunn v. Agricultural Society*, 46 Ohio St. 93, 96-97, 18 N.E. 496, 497 (1888) (organizations such as counties, townships, and school districts "are mere territorial and political divisions of the state, established exclusively for public purposes, connected with the administration of local government...and made depositaries of limited political and governmental functions, to be exercised for the public good, in behalf of the state, and not for themselves"). A board of township trustees is, in turn, an elected, administrative body, *see* Ohio Const. art. X, §§1, 2; R.C. 505.01, that is charged with the responsibility to either carry out, or supervise the performance of, the various governmental duties, functions, and responsibilities enjoined by law upon a township. *See generally* R.C. Chapters 505;

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[3] R.C. 503.01 provides, in part, that "[e]ach civil township is a body politic and corporate, for the purpose of enjoying and exercising the rights and privileges conferred upon it by law." Article XIII, §1 of the Ohio Constitution declares that the General Assembly "shall pass no special act conferring corporate powers." In *State v. Powers*, 38 Ohio St. 54 (1882), *overruled on other grounds by State ex rel. Attorney-General v. Shearer*, 46 Ohio St. 275, 20 N.E. 335 (1889), the Ohio Supreme Court held that common school districts and boards of education are not corporations within the meaning of this constitutional provision. In reaching that holding, the court analyzed the nature and character of school districts, and compared them to counties and townships. The court specifically noted that "school districts are constituted so as to partake rather of the character of counties and townships, which are provided for in the 10th article of the constitution, not as corporations, but as mere subdivisions of the state for political purposes, as mere agencies of the state in the administration of public laws." 38 Ohio St. at 62.

509-519; *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); *Hopple v. Trustees of Brown Township*. Thus, neither a township nor board of township trustees is a "firm" or "corporation," as those terms are used in R.C. 5563.02(A), for the purpose of appealing thereunder a decision of a board of county commissioners granting the vacation of a township road.

Conclusion

Based upon the foregoing, it is my opinion, and you are advised that a township or board of township trustees is not a "person," "firm," or "corporation," as those terms are used in R.C. 5563.02(A), for the purpose of appealing thereunder a decision of a board of county commissioners granting the vacation of a township road.

Respectfully,

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Attorney General

November 26, 1993

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SYLLABUS: 93-047

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