February 8, 1999

OPINION NO. 99-015

The Honorable Gregory A. White
Lorain County Prosecuting Attorney
226 Middle Avenue, 4th Floor
Elyria, Ohio 44035

Dear Prosecutor White:

We have received your letter requesting an opinion concerning the calculation of the compensation of township trustees and clerks. You have raised the following questions:

1. Pursuant to R.C. 505.24 and R.C. 507.09, the compensation of township trustees and clerks is calculated on the basis of the township's "budget." Is this term synonymous with the certificate of estimated resources issued by the county budget commission pursuant to R.C. 5705.32?

2. Are special levies included in the "budget" for purposes of calculation of compensation?

You have informed us that your questions relate to 1986 Op. Att'y Gen. No. 86-022, in which a prior Attorney General concluded that proceeds derived from a special levy for a general health district adopted under R.C. 3709.29 are not included as part of the budget or total expenditures of a township for purposes of calculating the compensation to be paid to a township trustee under R.C. 505.24 or to a township clerk under R.C. 507.09. Your questions arose when it was proposed that 1986 Op. Att'y Gen. No. 86-022 should be interpreted as excluding other special levies from the township budget for purposes of calculating township trustee and clerk compensation. You disagree both with the 1986 opinion and with the proposed interpretation extending its conclusions to other special levies.

In order to answer your questions, it is helpful to understand the nature of a special levy. By statute, each township receives income from various sources and places that income into

various funds. *See* R.C. 5705.04; R.C. 5705.09.[1] The general levy for current expenses within the ten-mill limitation[2] provides an operating fund for current expenses of any kind and, in particular, includes the amounts necessary for boards and commissions of health, and other special or district authorities deriving their revenue in whole or in part from the township. R.C. 5705.05(D); *see also* R.C. 5705.04(B); R.C. 5705.09(A). Proceeds of the general levy for current expenses are paid into the general fund. *See* R.C. 5705.10.

A special levy is a tax that is levied for a special purpose. *See* R.C. 5705.04; R.C. 5705.06. Proceeds of a special levy are placed into a special fund for the purpose for which the tax is levied. *See* R.C. 5705.09; R.C. 5705.10. Certain special levies are within the ten-mill limitation, *see* R.C. 5705.04(C); R.C. 5705.06, but most are outside the ten-mill limitation, *see* R.C. 5705.04(E); R.C. 5705.07; R.C. 5705.19. A special levy for a general health district, discussed in 1986 Op. Att'y Gen. No. 86-022, is adopted with the consent of the voters pursuant to R.C. 3709.29.

Let us turn now to your first question, which asks about the calculation of compensation for township trustees and clerks. The authorized compensation for township trustees and clerks is calculated on the basis of the budget of the township, with greater compensation prescribed for trustees and clerks who serve townships with larger budgets. R.C. 505.24; R.C. 507.09; *see also* 1979 Op. Att'y Gen. No. 79-006. Therefore, in order to determine the compensation to which a trustee or clerk is entitled, it is necessary to determine the budget of the township.[3]

The term "budget" is not defined by statute for purposes of R.C. 505.24 or R.C. 507.09. That term, however, has been described as being "based upon the official certificate of estimated resources, and any amended official certificates, received from the county budget commission." 1992 Op. Att'y Gen. No. 92-003 (syllabus, paragraph 1); *accord* 1979 Op. Att'y Gen. No. 79-

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[1] Proceeds of a tax may be expended only for the purpose for which the tax is levied, and money paid into any fund may be expended only for the purpose for which the fund is established. Ohio Const. art. XII, § 5; R.C. 5705.10.

[2] Pursuant to constitutional and statutory provisions, no property may be taxed in excess of one percent of its value for all state and local purposes, except when approved by the voters or provided for by the charter of a municipal corporation. *See* Ohio Const. art. XII, § 2; R.C. 5705.02; R.C. 5705.07; R.C. 5705.18.

[3] An earlier version of R.C. 507.09 used the "total expenditures" of the township to calculate the compensation of the township clerk. *See, e.g.*, 1986 Op. Att'y Gen. No. 86-022; 1954 Op. Att'y Gen. No. 3525, p. 59. That language has been deleted. *See* 1987-1988 Ohio Laws, Part I, 1639, 1655 (Am. S.B. 452, eff. Dec. 15, 1988). The current statute bases compensation on the township's "budget." R.C. 507.09.

006 (syllabus) ("[t]he term 'budget' as used in R.C. 505.24 refers to appropriations and supplemental appropriations, adopted by a board of township trustees pursuant to R.C. 5705.38 and based upon the certificate of estimated resources, and any amended certificates, received from the county budget commission").

To determine the meaning of the word "budget," it is helpful to review the statutes governing township tax budgets and expenditures. Pursuant to statute, the board of trustees of each township must prepare a tax budget for each fiscal year and submit it to the county auditor. *See* R.C. 5705.01(A), (C); R.C. 5705.28-.30. The tax budget must include statements of various types of expenditures for the ensuing fiscal year and the funds from which they are to be made, including expenditures from special levies. R.C. 5705.29(A); *see also* R.C. 5705.09. It must also include estimates of receipts from various sources, including taxes in excess of the ten-mill limitation, together with the funds to which they will be credited. R.C. 5705.29(B), (C), (D); *see also* R.C. 5705.09.[4]

The county auditor submits the township tax budget, along with tax budgets of other taxing units, to the county budget commission. R.C. 5705.31. The county budget commission is required to approve certain levies without modification if they have been properly authorized. *Id*. Among such levies is a special levy for a general health district, prescribed by R.C. 3709.29. R.C. 5705.31(E). The county budget commission has authority to adjust other levies to bring them within statutory limitations. R.C. 5705.32.

After making appropriate adjustments, the county budget commission determines the total appropriations that may be made from each fund. R.C. 5705.32(A). The budget commission certifies its action to the township, together with an estimate by the county auditor of the rate of tax that the township must levy and the part that is within the ten-mill limitation. R.C. 5705.34. The certification provided by the budget commission sets forth on the credit side of each fund the estimated unencumbered balances and receipts, and, if a tax is levied for the fund, the estimated revenue to be derived from the levy, the rate, and the portion within the ten-mill limitation. The certification sets forth on the debit side the total appropriations that may be made from the fund. R.C. 5705.35(A).

A summary known as the "official certificate of estimated resources" must be attached to the certification. R.C. 5705.35(A). The official certificate of estimated resources sets forth the total estimated resources of each fund that are available for appropriation in the fiscal year. The township must revise its tax budget "so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification." *Id*. The revised tax budget is the basis of the annual appropriation measure. *Id*.

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[4] Waiver or partial waiver of the requirement of adoption of a tax budget is allowed in certain circumstances, pursuant to R.C. 5705.281. This opinion does not discuss such a waiver.

An amended official certificate is issued in certain circumstances if it is determined that the revenue collected will be greater or less than the amount included in the official certificate. R.C. 5705.36(A). The total appropriations made from a fund during a fiscal year cannot exceed the amount set forth as available in the official certificate of estimated resources or any amendment to that certificate. R.C. 5705.36(A)(5). *See generally* 1987 Op. Att'y Gen. No. 87-032.

Thus, the township's revised tax budget is based on the official certificate of estimated resources provided to the township by the county budget commission. R.C. 5705.35(A). The township is authorized to pass appropriation measures "based on the revised tax budget and the official certificate of estimated resources or amendments of the certificate." R.C. 5705.38(A).

In considering the meaning of the word "budget" as used in connection with the compensation of township trustees and clerks, prior Attorneys General have adopted a broad definition that includes "all amounts over which a township has control, or which are expended by or on behalf of a township to satisfy its obligations." 1986 Op. Att'y Gen. No. 86-022, at 2-117. The term "budget" has been said to refer "to the amount of money which the township is authorized to appropriate, under R.C. 5705.36, pursuant to the county budget commission's certificate of estimated resources and amendments thereto." 1979 Op. Att'y Gen. No. 79-006, at 2-16. It has also been stated that "[a]s a matter of common knowledge and by general definition 'budget' is an advance estimate of the expected income and total expenses … of a public subdivision, for a stated period … and in order to be complete, and in order to be informative as to the precise tax levy that must be made, must include an estimate of the entire gross income and the entire expense of the subdivision, whether paid by it or for it." 1958 Op. Att'y Gen. No. 2470, p. 456, at 460; *see also* 1992 Op. Att'y Gen. No. 92-003 (syllabus, paragraph 1); 1979 Op. Att'y Gen. No. 79-006 (syllabus).

The certificate of estimated resources is a statement of all the moneys that are available for appropriation by the township. The certificate or amendments thereto provide a clear and definite statement of the financial resources available to the township. The amount contained in the certificate or amendments is the figure that prior Attorneys General have adopted as the township budget for purposes of calculating compensation for township trustees and clerks, and it is an appropriate figure to use for those purposes because it defines the maximum amount of money that the township may spend. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-003 (syllabus, paragraph 1). Therefore, for purposes of calculating the authorized compensation of the township trustees and the township clerk pursuant to R.C. 505.24 and R.C. 507.09, the term "budget" refers to the total amount of resources available to the township pursuant to the official certificate of estimated resources or amendments to the certificate.

Let us turn now to your second question, which asks whether special levies are included in the "budget" of a township for purposes of calculating compensation. As discussed above, a special levy is a tax that is levied for a special purpose. The budget of a township, for purposes

of calculating the compensation of the township trustees and clerk, consists of the amounts set forth in the certificate of estimated resources or amendments to the certificate. Thus, all amounts that are included in the certificate or amendment are included in the budget.

The official certificate of estimated resources sets forth the total estimated resources of each fund of the township that are available for appropriation in the fiscal year. R.C. 5705.35(A). The certificate is a summary of the budget commission's certification, which is required to contain, for each fund of the township, "the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, the rate of the levy, and what portion thereof is within, and what in excess of, the ten-mill tax limitation." *Id*. The official certificate of estimated resources thus encompasses all funds of the township and all taxes levied for those funds, including special levies. Therefore, special levies of a township are included in the official certificate of estimated resources or amendments to the certificate, and thus in the township budget, for purposes of calculating the authorized compensation of the township trustees and the township clerk pursuant to R.C. 505.24 and R.C. 507.09.[5]

Let us consider, next, whether 1986 Op. Att'y Gen. No. 86-022 is consistent with the analysis set forth in this opinion. To make that determination, we need first to understand the manner in which general health districts are organized and funded.

A general health district is composed of the territory of various townships and municipal corporations. *See* R.C. 3709.01. The board of health of the general health district adopts an annual itemized appropriation measure setting forth its expenses and an estimate of its revenue. R.C. 3709.28. The board certifies the appropriation measure to the county auditor, who submits it to the county budget commission. After the county budget commission fixes the aggregate appropriation, the county auditor determines the amount of revenue that is necessary and apportions that amount among the townships and municipal corporations composing the health district on the basis of taxable valuations in the townships and municipal corporations. When the auditor makes the semiannual apportionment of funds, the auditor retains the amounts apportioned to the various townships and municipal corporations and places them in the district health fund. *Id*.; *see also* R.C. 135.351; R.C. 319.43; R.C. 321.24; R.C. 321.31-.34.

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[5] It is important to note that there may be a number of taxes levied on property within a township that are not township levies and are not included in the official certificate of estimated resources or the township budget. Various subdivisions or other taxing entities – such as counties and school districts – have authority to levy taxes on property located in townships. *See* R.C. 5705.01; R.C. 5705.05; R.C. 5705.07. The mere fact that a tax is levied on property within a township does not make the tax a township tax.

Apportionment of the health district expenses among the subdivisions within the district is consistent with R.C. 5705.05(C), which requires the taxing authority of each subdivision to include in its general levy for current expenses "[t]he amounts necessary for boards and commissioners of health, and other special or district appropriating authorities deriving their revenue in whole or in part from the subdivision." To assist in this process, the health district is directed to notify the townships and municipalities of its estimated revenues and expenditures so that amounts needed by the health district can be included in the tax budgets of the townships and municipal corporations. R.C. 5705.28(C)(1); *see also* R.C. 5705.01(I); 1984 Op. Att'y Gen. No. 84-013.

If the amount of money needed by the health district is not available within the ten-mill limitation of the various subdivisions, the board of health certifies that fact to the board of county commissioners. R.C. 3709.29. The board of county commissioners is empowered to act as a special taxing authority for purposes of R.C. 3709.29, and it is authorized to submit to the voters the question of levying a tax in excess of the ten-mill limitation to provide the board of health with sufficient funds to carry out its health program. The levy question is presented to the voters of the health district and, if it is approved, a special tax is levied. *Id.*; *see also Village of South Russell v. Budget Comm'n*, 12 Ohio St. 3d 126, 465 N.E.2d 876 (1984); 1958 Op. Att'y Gen. No. 2294, p. 397; 1953 Op. Att'y Gen. No. 2569, p. 163.

Township moneys paid to the board of health of a general health district pursuant to R.C. 3709.28 are clearly included within the official certificate of estimated resources on which compensation for the township trustees and clerk is based. Those moneys come from the township's general levy for current operating expenses. R.C. 5705.05(C). They are apportioned to the township and withheld by the county auditor from money that would otherwise be paid to the township. R.C. 3709.28. Moneys paid pursuant to R.C. 3709.28 fulfill the township's legal obligation to support the health district and thus are included both within the official certificate of estimated resources and any amendments to the certificate and within the township budget for purposes of calculating compensation. *See, e.g.*, 1954 Op. Att'y Gen. No. 3525, p. 59; *see also* 1992 Op. Att'y Gen. No. 92-003.

Proceeds derived from a special levy under R.C. 3709.29, however, are not directly connected with the township. The board of county commissioners, rather than the board of township trustees, serves as taxing authority. *See* R.C. 3709.29; R.C. 5705.01(C). The tax is initiated because existing tax proceeds "will be insufficient to provide an adequate amount for the necessary requirements of [the] district" and has as its purpose "to provide the board of health with sufficient funds to carry out [its] health program." R.C. 3709.29. The tax is adopted by the voters of the entire health district, and there is no statutory direction that the moneys should be paid or credited to a fund of the township. *See generally* R.C. 321.31. Therefore, there does not appear to be a statutory basis for including those proceeds in the official

certificate of estimated resources or amendments directed to the township or for using them to calculate compensation for the township trustees or clerk under R.C. 505.24 or R.C. 507.09.[6]

In light of these general principles, let us turn now to the specific matters addressed in 1986 Op. Att'y Gen. No. 86-022. That opinion concluded that, "[f]or purposes of calculating the compensation to be paid to a township trustee under R.C. 505.24 or to a township clerk under R.C. 507.09, proceeds derived from a special levy for a general health district adopted under R.C. 3709.29 are not included as part of the budget or total expenditures of the township." 1986 Op. Att'y Gen. No. 86-022 (syllabus). The opinion, however, did not exclude these proceeds from the township budget because they were derived from a special levy. Instead, the opinion excluded these proceeds from the township budget because the levy was not a township levy. On this point, the 1986 opinion states:

> [A] special levy under R.C. 3709.29 will not come into effect unless the board of health of a general health district certifies to the board of county commissioners that the estimated amount of money necessary to meet the expenses of the general health district will not be forthcoming from the district health fund because the taxes within the ten-mill limitation will be insufficient. Any such special levy will be adopted, pursuant to a resolution of the board of county commissioners, throughout the general health district. R.C. 3709.29. *Thus, such a special levy is not adopted on a township basis or pursuant to any action by the township. Further, it does not fulfill any obligation of the township to support the general health district* but is, instead, enacted because of the inability of townships and municipalities within the district to adequately fund the district with taxes within the ten-mill limitation. See generally Village of South Russell v. Budget Commission. *The township has no control over such a levy, and it has no direct connection with such a levy.* See generally 1932 Op. Att'y Gen. No. 4881, vol. III, p. 1504 at 1506 (where the legislature has placed a duty upon township park commissioners to levy a tax, "it would appear that no responsibility was intended to be placed upon the township trustees either as to the levy or expenditure of the tax in question"). *Township residents are taxed under such a levy as residents of*

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[6] The use of a special levy to raise funds for a general health district under R.C. 3709.29 may be contrasted with the statutory provisions authorizing the procurement of additional money in the case of an epidemic. Under R.C. 3709.30, if a general health district needs additional money to defray the expenses of an epidemic, the board of health estimates the amount required and apportions it "among the townships and municipal corporations in which the condition exists." R.C. 3709.30. The county auditor orders the appropriate officer of each township or municipal corporation to pay the amount apportioned, and the money is taken from any general treasury balances. If required, the township or municipal corporation may borrow money to pay the amounts so due. *Id*. This is a method of charging individual townships and municipal corporations, rather than providing funding on a district-wide basis.

> *the general health district, and not by virtue of their connection with the township*. See generally Op. No. 85-033.

1986 Op. Att'y Gen. No. 86-022, at 2-118 to 2-119 (emphasis added).

The position taken by the 1986 opinion was not that proceeds of a special levy under R.C. 3709.29 should be subtracted from a township's budget before compensation for the trustees and clerk is calculated, but that proceeds of such a special levy should never be included in a township's budget because a special levy for a health district under R.C. 3709.29 is not a township tax. 1986 Op. Att'y Gen. No. 86-022 states:

> I have checked with the Office of the Auditor of State and have been unable to identify any statutory or administrative requirement or authorization for the inclusion of such special levy proceeds in the budget or accounting records of a township.[1] Cf. R.C. 5705.28 (adoption of tax budget); R.C. 5705.29 (information which must be included in the tax budget); R.C. 5705.30 ("the budget of each subdivision…shall include such other information as is prescribed by the bureau of supervision and inspection of public offices"). It appears, therefore, that, even though one or more townships may, as a matter of practice, include proceeds and expenditures from a health district special levy within their budgets and financial records, the existence of such practice does not, in itself, establish that such proceeds are to be considered part of a township's budget for purposes of R.C. 505.24 or R.C. 507.09.
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> [1] R.C. 5705.29(A)(4) states that a tax budget must include "[a] statement of expenditures for the ensuing fiscal year for any purpose for which a special levy is authorized, and the fund from which such expenditures are to be made." It appears, however, that, with respect to the budget of a township, this requirement extends only to expenditures made by, or on behalf of, a township pursuant to a special levy authorized by that township. See R.C. 5705.04 (division of taxes levied); R.C. 5705.34 ("[w]hen the budget commission has completed its work with respect to a tax budget it shall certify its action to the taxing authority, together with an estimate by the county auditor of the rate of each tax necessary to be levied by the taxing authority within its subdivision or taxing unit…"). See generally 1977 Op. Att'y Gen. No. 77-068 (modified on another point by 1978 Op. Att'y Gen. No. 78-025); 1954 Op. Att'y Gen. No. 3793, p. 230.

1986 Op. Att'y Gen. No. 86-022, at 2-116 to 2-117.

In working on this opinion, we checked again with the Office of the Auditor of State and again we were informed that a tax levied under R.C. 3709.29 is viewed as a tax of the general

health district, rather than as a tax of the township. This conclusion is consistent with the statutory provisions discussed above.

The relevant provisions of law thus indicate that a special levy for a general health district adopted under R.C. 3709.29 is not a levy of the township and should not be included in the official certificate of estimated resources, or amendments to the certificate, provided to the township by the county budget commission. Therefore, such a levy should not be included in the township budget for purposes of calculating the authorized compensation of the township trustees and the township clerk pursuant to R.C. 505.24 and R.C. 507.09. Accordingly, the conclusions reached in 1986 Op. Att'y Gen. No. 86-022 are affirmed.

For the reasons discussed above, it is my opinion, and you are advised:

1. For purposes of calculating the authorized compensation of the township trustees and the township clerk pursuant to R.C. 505.24 and R.C. 507.09, the term “budget” refers to the total amount of resources available to the township pursuant to the official certificate of estimated resources or amendments to the certificate. (1992 Op. Att’y Gen. No. 92-003, syllabus, paragraph 1, approved and followed.)

2. Special levies of a township are included in the official certificate of estimated resources or amendments to the certificate, and thus in the township budget, for purposes of calculating the authorized compensation of the township trustees and the township clerk pursuant to R.C. 505.24 and R.C. 507.09.

3. A special levy for a general health district adopted under R.C. 3709.29 is not a levy of the township and should not be included in the official certificate of estimated resources, or amendments to the certificate,

provided to the township by the county budget commission. Therefore, such a levy should not be included in the township budget for purposes of calculating the authorized compensation of the township trustees and the township clerk pursuant to R.C. 505.24 and R.C. 507.09. (1986 Op. Att'y Gen. No. 86-022, approved and followed.)

Respectfully,

BETTY D. MONTGOMERY
Attorney General

February 8, 1999

The Honorable Gregory A. White
Lorain County Prosecuting Attorney
226 Middle Avenue, 4th Floor
Elyria, Ohio 44035

SYLLABUS: 99-015

1. For purposes of calculating the authorized compensation of the township trustees and the township clerk pursuant to R.C. 505.24 and R.C. 507.09, the term "budget" refers to the total amount of resources available to the township pursuant to the official certificate of estimated resources or amendments to the certificate. (1992 Op. Att'y Gen. No. 92-003, syllabus, paragraph 1, approved and followed.)

2. Special levies of a township are included in the official certificate of estimated resources or amendments to the certificate, and thus in the township budget, for purposes of calculating the authorized compensation of the township trustees and the township clerk pursuant to R.C. 505.24 and R.C. 507.09.

3. A special levy for a general health district adopted under R.C. 3709.29 is not a levy of the township and should not be included in the official certificate of estimated resources, or amendments to the certificate, provided to the township by the county budget commission. Therefore, such a levy should not be included in the township budget for purposes of calculating the authorized compensation of the township trustees and the township clerk pursuant to R.C. 505.24 and R.C. 507.09. (1986 Op. Att'y Gen. No. 86-022, approved and followed.)