March 12, 1996

OPINION NO. 96-018

The Honorable R. Alan Corbin
Brown County Prosecuting Attorney
200 E. Cherry Street
Georgetown, Ohio 45121

Dear Prosecutor Corbin:

You have requested an opinion whether a township trustee is an elected officer of the county for purposes of R.C. 5901.02 and thus prohibited by that section from serving as a member of the county veterans service commission. R.C. 5901.02 creates in each county a veterans service commission and provides for the appointment of five persons to serve as members of the commission. R.C. 5901.02 further states, in pertinent part, that, at the time of appointment or reappointment to a veterans service commission, "no commission member shall be an employee of the commission or hold an elective or other appointive *office of the county* served by the commission." (Emphasis added.)

Article X of the Ohio Constitution addresses the organization of county and township governments. Section 1 of article X states, in pertinent part, that the General Assembly "shall provide by general law for the organization and government of counties, and may provide by general law alternative forms of county government." The General Assembly has so provided in R.C. Chapters 301 (county organization) and 302 (alternative form of county government). *See also* Ohio Const. art. X, § 3 (authorizing any county to frame and adopt a charter for its government); R.C. 301.22 ("[e]very county adopting a charter or an alternative form of government is a body politic and corporate for the purpose of enjoying and exercising the rights and privileges conveyed under it by the constitution and the laws of this state").

With respect to township government, section 2 of article X reads as follows:

> The general assembly shall provide by general law for the election of such township officers as may be necessary. The trustees of townships shall have such powers of local taxation as may be prescribed by law. No money shall be drawn from any township treasury except by authority of law.

Pursuant to the grant of authority bestowed upon it by Ohio Const. art. X, § 2, the General Assembly has addressed the form and organization of township government in extensive detail within the twelve chapters that comprise Title 5 of the Revised Code. *See* R.C. Chapters 501-21. R.C. 503.01 thus 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."

R.C. 505.01 further states that "there shall be a board of township trustees consisting of three members," two of whom "shall be elected at the general election in nineteen forty-nine and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after their election," and one of whom "shall be elected at the general election in nineteen fifty-one and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after his election." A board of township trustees is an administrative body charged with the responsibility of either carrying out or supervising the performance of the various governmental duties and functions enjoined by law upon a township. *See generally* R.C. Chapter 505 (township trustees); *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); *Hopple v. Trustees of Brown Township*, 13 Ohio St. 311, 324 (1862).

It is apparent, therefore, that a township is a distinct political subdivision that exists and functions separately from 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"). This means that the several individuals elected as trustees in accordance with R.C. 505.01 hold an office of the township rather than an office of the county. *See, e.g., State ex rel. Nichols v. Vinton County Bd. of Elections*, 20 Ohio St. 3d 1, 2, 484 N.E.2d 690, 690 (1985) ("[a] candidate for township trustee must be a resident of the township where he seeks office," and citing in support thereof R.C. 503.24 (vacancy in township office), 503.241 (when township offices deemed vacant), and R.C. 3503.01 (qualifications of an elector)); 1965 Op. Att'y Gen. No. 65-70 (syllabus, paragraph two) (construing R.C. 503.241 and concluding that the "failure of a member of a board of township trustees to regularly attend the meetings of such board and to properly discharge his duties does not result in a vacancy in such office, but it may be ground for removal of such township officer under [R.C. 3.07 (forfeiture of office for misconduct)]"). The same holds true in the case of an individual who is appointed to fill a vacancy that occurs upon a board of township trustees. *See, e.g., State ex rel. Purola v. Cable*, 48 Ohio St. 2d 239, 358 N.E.2d 537 (1976); 1983 Op. Att'y Gen. No. 83-015.

In summary, therefore, each county is established as a political subdivision of the state. Similarly, each township within a county is created as a distinct political subdivision that exists separately from the county in which the township is located. Thus, an individual elected or appointed to serve a township as a trustee holds an office of the township, and does not thereby hold

an office of the county. Accordingly, R.C. 5901.02 does not prohibit the appointment or reappointment to a county veterans service commission of an individual who also is a member of a board of township trustees.

It is, therefore, my opinion, and you are advised that a person elected or appointed to serve as a member of a board of township trustees does not thereby hold an elective or appointive office of the county for purposes of R.C. 5901.02.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS: 96-018

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