June 13, 2006

The Honorable J.B. Collier, Jr.
Lawrence County Prosecuting Attorney
Lawrence County Court House
#1 Veterans Square
Ironton, Ohio 45638

SYLLABUS: 2006-029

A board of township trustees that proposes to transfer unincorporated territory from one township fire district to another must submit the proposal to the electors of the territory, if voters in the district to be expanded have approved a tax levy on property in that district. Voter approval of the transfer and tax is required even if the unincorporated territory is currently located in a fire district where voters have approved a tax levy that is identical in millage and duration to the tax levied in the district to which the territory would be added.

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OPINION NO. 2006-029

The Honorable J.B. Collier, Jr.
Lawrence County Prosecuting Attorney
Lawrence County Court House
#1 Veterans Square
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Dear Prosecutor Collier:

You have asked whether a board of township trustees, which is proposing the transfer of territory in one fire district to the township's other fire district, must submit the proposal to the electors residing in the territory that would be transferred. You have stated that the township has two fire districts—both districts consist only of unincorporated territory, and all unincorporated territory of the township is in one district or the other. Each fire district has a voter-approved tax levy, and the levies are identical in millage and duration. For the following reasons, we conclude that voters in the territory that would be transferred must approve the transfer of their property to the other fire district and the tax levied on property therein.

A board of township trustees may, by resolution, establish a fire district "of any portions of the township that it considers necessary" whenever "it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence." R.C. 505.37(C). *See also* 1957 Op. Att'y Gen. No. 515, p. 137 (syllabus, paragraph 1) (under R.C. 505.37, "it is proper for the township trustees to create two separate fire districts in a single township"). To finance the operations of a fire district, a board of township trustees may "levy a sufficient tax upon all taxable property" in the district. R.C. 505.39. The trustees, with the approval of fire district voters, also may levy a tax outside the ten mill limitation on the property within a fire district. R.C. 5705.19(I).[1] *See* 1990 Op. Att'y Gen. No. 90-048 at 2-204 ("a township is authorized to create a fire district of any portions of the township and to provide services for that district with moneys derived from a tax levied only on property within that district…. Only residents of such a district would be entitled to vote on, and

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[1] *See* R.C. 5705.01(A) (a township fire district is a subdivision for purposes of the tax levy law); R.C. 5705.01(C) (the board of trustees of the township in which a fire district is located is the taxing authority for the fire district). *See also* 1952 Op. Att'y Gen. No. 1101, p. 50 (a township fire district is a "subdivision" for purposes of what is now R.C. Chapter 5705, and the question of levying taxes in excess of the ten-mill limitation upon property in a fire district is submitted by the township trustees to the electors of the fire district).

benefit from, a district tax for fire protection"); 1943 Op. Att'y Gen. No. 5798, p. 44, 50 (if two fire districts are set up in the unincorporated territory of the township, "each should be financed by the levy of taxes upon the property in that district").

A board of township trustees may authorize the addition of unincorporated territory to an existing fire district. R.C. 505.37(C). If the fire district to be expanded has levied a tax, however, the territory may become part of the fire district only if the board of township trustees approves the expansion of the territorial limits of the district and recommends the extension of the tax to the additional territory, and only if the electors of the territory to be added vote to approve the tax.[2] *Id*. If a majority of the territory's voters approves the addition and tax, the joinder becomes effective as of July 1st of the year following approval, at which time the fire district tax is extended to the taxable property within the territory that has been added. *Id*.

In this instance, the board of township trustees is considering the addition of unincorporated territory that currently is in fire district "A," which has a tax levy, to fire district "B," which also has a tax levy.[3] Because district "B" has a tax levy, R.C. 505.37(C) would require the board of trustees to submit to the electors in the territory to be transferred, the question of whether to add the territory to fire district "B" and approve its tax levy. You have stated, however, that in 1992, the township voters in each fire district approved a tax levy, and that the two levies are identical.[4] Arguably, therefore, voters in the territory to be transferred from district "A" to district "B" have already signified their approval of the tax levied in district "B" because an identical tax was approved by voters in district "A." You ask whether this

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[2] The ballot must read:

> Shall the territory within ……. (description of the proposed territory to be added) be added to ……. (name) fire district, and a property tax at a rate of taxation not exceeding ……. (here insert tax rate) be in effect for ……. (here insert the number of years the tax is to be in effect or "a continuing period of time," as applicable)?

R.C. 505.37(C).

[3] A board of township trustees may remove unincorporated territory from a fire district, as well as add territory thereto. R.C. 505.37(C). On July 1st of the year following the trustees' resolution to remove unincorporated territory, the territory "ceases to be a part of the district, and the power of the fire district to levy a tax upon taxable property in that territory terminates, except that the fire district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the fire district as it was composed at the time the indebtedness was incurred." *Id*.

[4] You have stated that each of the two fire levies passed in 1992 consisted of a replacement of one mill and an increase of one mill. Both were for a continuing period of time beginning with tax year 1993. *See generally* R.C. 5705.19.

indication of voter approval relieves the township trustees of the obligation to submit the question of transfer to the territory's electors.

The fact that the two 1992 tax measures levied the same millage for the same duration of time does not mean that they are the same levy, nor can approval of a tax levy by a majority of electors voting in district "A" be construed as approval of a different tax levied in district "B" by a subset of district "A" voters. Perhaps the residents in that part of district "A" to be transferred voted against the levy in district "A," or did not vote at all. Regardless of any particular electoral breakdown, however, the two districts are distinct legal entities and the respective taxes levied in each are different levies. *See generally* 1957 Op. Att'y Gen. No. 515, p. 137 (syllabus, paragraph 3) ("[i]t is proper for the township trustees to levy a tax under Section 505.39, Revised Code, at one rate upon the taxable property in one [fire] district and at a different rate upon the taxable property in the other [fire] district"); 1952 Op. Att'y Gen. No. 1101, p. 50 (each township fire district is a separate "subdivision" under the tax levy law [now R.C. Chapter 5705], and, obligations incurred by a board of township trustees on behalf of a fire district are those of the fire district and not the township as a whole); 1943 Op. Att'y Gen. No. 5798, p. 44, 49-50 (moneys in the general fund of a township may not be allocated to a fire district established within the township, and, "if two [fire] districts are set up in the outlying territory of the township, each should be financed by the levy of taxes upon the property in that district, and if necessary a separate bond issue for each district"). The approval of a tax levy by a majority of all district "A" voters cannot substitute for the approval of a subset of district "A" voters for a tax levied in district "B," even though the millage and duration of the taxes in districts "A" and "B" are identical.

In conclusion, it is my opinion, and you are advised that, a board of township trustees that proposes to transfer unincorporated territory from one township fire district to another must submit the proposal to the electors of the territory, if voters in the district to be expanded have approved a tax levy on property in that district. Voter approval of the transfer and tax is required even if the unincorporated territory is currently located in a fire district where voters have approved a tax levy that is identical in millage and duration to the tax levied in the district to which the territory would be added.

Respectfully,

JIM PETRO
Attorney General