

OPINION NO. 94-067**Syllabus:**

1. Pursuant to R.C. 9.60 and R.C. 505.37, a township may, but is not required to, provide fire protection for the residents of the township.
2. R.C. 505.38(B) requires the board of trustees of a township that does not have a fire department to appoint a fire prevention officer to carry out the duties of a fire chief except those duties pertaining to the maintenance and operation of fire apparatus.

To: David P. Joyce, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Lee Fisher, Attorney General, October 13, 1994

You have requested an opinion concerning the duty of a board of township trustees to provide fire protection for the township and its residents. You specifically ask:

1. Does a township have a mandatory duty to provide fire protection for its residents?
2. If so, to what extent, degree, and manner must a township so provide?

Your opinion request also mentions R.C. 505.38(B), concerning the duty to appoint a township fire prevention officer.

Township Fire Protection

As a creature of statute, a board of township trustees "can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted, in order to enable them to perform the duties imposed upon them." *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875). The responsibilities of a township with respect to the provision of fire protection are set forth primarily in R.C. 505.37, which states in pertinent part:

(A) The board of township trustees *may* establish all necessary rules to guard against the occurrence of fires and to protect the property and lives of the

citizens against damage and accidents, and *may*, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide any fire apparatus, mechanical resuscitators, or other equipment ... that seems advisable to the board....

....
(C) The board of township trustees of any township *may*, by resolution, 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, create a fire district of any portions of the township that it considers necessary. The board may purchase or otherwise provide any fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes, or may contract for the fire protection for the fire district as provided in [R.C. 9.60].... (Emphasis added.)

R.C. 9.60 provides additional authority for townships to provide and obtain fire protection either by contract or upon approval and authorization.

The extent of a township's duty to provide fire protection was summarized in 1988 Op. Att'y Gen. No. 88-042 at 2-201, as follows:

A township is not required to provide fire or rescue services, see 1987 Op. Att'y Gen. No. 87-040; 1979 Op. Att'y Gen. No. 79-042, but may, if it chooses, provide fire and rescue services throughout the township, see R.C. 505.37(A), or, by the creation of a fire district consisting of "any portions of the township that it considers necessary," provide fire and rescue services to the portions of the township that are within the district, see R.C. 505.37(C). If a fire district is created, expenses of the district are borne by the district and services are provided to the territory within the district. Services of such a district may be extended beyond the district pursuant to contract. Fire and rescue services may be provided either directly by the township or the fire district or by contract with a firefighting agency or fire company. (Emphasis added; various citations omitted.)

The General Assembly has amended R.C. 505.37 several times since Op. No. 88-042 was issued, but has left the fire protection responsibilities imposed upon townships essentially unchanged. In answer to your first question, therefore, R.C. 9.60 and R.C. 505.37 permit, but do not require, a township to provide fire protection for the township.

Fire Prevention Officer in Township Without Fire Department

Although a township does not have a mandatory duty to provide fire protection for the residents of the township, in any township that does not have a fire department, the board of township trustees "shall" appoint a fire prevention officer. R.C. 505.38(B). *See generally* 1986 Op. Att'y Gen. No. 86-014 (appointment of township fire prevention officer). The fire prevention officer "shall exercise all of the duties of a fire chief except those involving the maintenance and operation of fire apparatus." *Id.* *See, e.g.,* R.C. 3737.24 (duty to investigate cause, origin, and circumstances of major fires); R.C. 3737.80 (responsibility for primary coordination in certain emergency situations). The board of township trustees may also appoint one or more deputy fire prevention officers, "who shall exercise the duties assigned by the fire prevention officer." R.C. 505.38(B). Thus, the board of trustees of a township that has no fire

department must appoint a fire prevention officer, whether or not the township otherwise provides fire protection for the township.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 9.60 and R.C. 505.37, a township may, but is not required to, provide fire protection for the residents of the township.
2. R.C. 505.38(B) requires the board of trustees of a township that does not have a fire department to appoint a fire prevention officer to carry out the duties of a fire chief except those duties pertaining to the maintenance and operation of fire apparatus.