September 16, 2005

The Honorable William E. Peelle
Clinton County Prosecuting Attorney
103 East Main Street
Wilmington, Ohio 45177

SYLLABUS: 2005-036

A board of township trustees is required to provide fire and rescue services and emergency medical services to a facility that is owned and operated by the county board of mental retardation and developmental disabilities if the facility is located within the township fire district. The township may not charge the board of mental retardation and developmental disabilities for the facility's use of such services. (1988 Op. Att'y Gen. No. 88-042, overruled in part and expanded in part, based on statutory change.)

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013

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OPINION NO. 2005-036

The Honorable William E. Peelle
Clinton County Prosecuting Attorney
103 East Main Street
Wilmington, Ohio 45177

Dear Prosecutor Peelle:

You have asked whether a board of township trustees is required to provide fire protection and emergency medical services to a facility located within the township fire district if the facility is owned and operated by the county board of mental retardation and developmental disabilities (MRDD Board). You have also asked whether the township has the authority to charge the MRDD Board for these services if it is required to do so. We conclude, for the reasons set forth below, that the township is required to provide fire protection and emergency medical services to an MRDD facility located within the township fire district, and that the township may not charge the MRDD Board whenever fire protection or emergency medical services are used by the facility.

Scope of Township's Obligation to Provide Fire Protection and Emergency Medical Services

A township is statutorily authorized, but not required, to provide fire protection and emergency medical services to safeguard the lives and property of township residents. R.C. 505.37; 2004 Op. Att'y Gen. No. 2004-036; 1994 Op. Att'y Gen. No. 94-067; 1988 Op. Att'y Gen. No 88-042. A township may provide these services directly, R.C. 505.37(A), or contract with a public firefighting agency, private fire company, or emergency medical service organization to provide fire protection, and emergency medical, ambulance, and rescue services. R.C. 9.60, R.C. 505.37(C); R.C. 505.44. *See* 2004 Op. Att'y Gen. No. 2004-036, at 2-322, n.1.

Regardless of whether a township provides fire protection and emergency medical and ambulance services directly or through contract, it may choose to extend these services throughout the entire township, or only to a part of the township through the creation of one or more fire districts.[1] If the township does not establish a fire district, it may not deny services to

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[1] R.C. 505.37(C) authorizes a board of township trustees to create a fire district, encompassing any portions of the township "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

any property located within the township. 1989 Op. Att'y Gen. No. 89-028; 1988 Op. Att'y Gen. No. 88-042; 1987 Op. Att'y Gen. No. 87-040 (syllabus) ("[a] township that chooses to provide fire protection without the creation of one or more fire districts cannot exclude portions of the township from the area to which fire protection is provided"). *Cf.* 1944 Op. Att'y Gen. No. 6682, p. 53 (a township may not contract with a municipality to secure fire protection exclusively for the public school buildings located within the township). If a township chooses to create one or more fire districts, it has no obligation to serve any part of the township not located within the fire district, but it may not deny service to any property located within the fire district. *See* 1966 Op. Att'y Gen. No. 66-114 at 2-206 ("[w]hen fire protection is available in a township or a fire district pursuant to Section 505.37 … it must be furnished to all on an equal basis").

Furthermore, the township's obligation to serve all property within a fire district (or within the township if there is no fire district) extends to property owned and operated by a governmental body or public agency. *See* 1989 Op. Att'y Gen. No. 89-028 at 2-119 ("an institution of the Department of Rehabilitation and Correction, a state facility, is entitled by virtue of its location within the township territory to such rescue services as are generally provided within the township territory"); 1987 Op. Att'y Gen. No. 87-040 (syllabus) (a township "must provide fire protection to persons traveling on portions of the Ohio Turnpike that are included within the township"); 1966 Op. Att'y Gen. No. 66-114 at 2-206 (if a fire occurs in connection with a vehicle traveling on a portion of an interstate highway within a township fire district, "then such fire deserves the same action by the township fire department as would be accorded any other fire within said … fire district"); 1944 Op. Att'y Gen. No 6682, p. 53 at 56 ("school buildings are, of course, entitled to whatever protection from fire is provided for the subdivision in which they are located"). The fact that public agencies do not pay property taxes[2]

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resulting from their occurrence." R.C. 505.37(C) has been interpreted as granting a township fire district the authority to provide emergency medical and rescue services, as well as fire protection services. 2004 Op. Att'y Gen. No. 2004-036; 1997 Op. Att'y Gen. No. 97-060. A township may also participate with other political subdivisions in the creation of a joint fire district, R.C. 505.371, fire and ambulance district, R.C. 505.375, and joint ambulance district, R.C. 505.71.

[2] To finance the provision of fire and emergency medical services, a board of township trustees may levy a tax on property within the township or fire district, R.C. 505.39, issue bonds and other securities, R.C. 505.37(D), R.C. 505.40 (with voter approval), R.C. 505.401, and, with the approval of the voters in the township or fire district, levy one or more taxes in excess of the ten-mill limitation, R.C. 5705.19(I), (U), (W), (JJ), and R.C. 5705.191. *See generally* 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"); 1979 Op. Att'y Gen. No. 79-072 (syllabus) ("[f]unds raised by a levy passed pursuant to R.C. 5705.19(I) may be used to purchase a rescue vehicle which provides ambulance or emergency medical services, whether or not such services are

does not excuse the township's obligation to provide them with the same level of services provided to other property within the fire district. 1987 Op. Att'y Gen. No. 87-040 at 2-269 through 2-270 ("[w]hether the territory is private or public, tax-paying or tax-exempt, is irrelevant…. state facilities[] come within the general rule that they are entitled to such fire protection services as are provided generally within the area in which they are located"). *See also* 1966 Op. Att'y Gen. No. 66-114 at 2-206 ("[w]hen fire protection is available in a township or a fire district pursuant to Section 505.37 … it must be furnished to all on an equal basis," and "[t]his should be true notwithstanding that the one benefiting from the fire protection may not be a taxpayer in the township or fire district").

In this instance, the board of township trustees has created a fire district, as authorized by R.C. 505.37(C), and has contracted with a city to provide fire protection and emergency medical services to the township fire district. *See* R.C. 9.60(B),(C); R.C. 505.37(C). The MRDD facility is located within the fire district's boundaries. In accordance with the discussion above, therefore, we conclude that the township has a clear obligation to provide the same fire protection and emergency medical services to the facility owned and operated by the county MRDD Board as the township provides to all other property located within the fire district, as specified in its contract with the city. This conclusion is not altered by the fact that the facility is not subject to property taxes.

Authority of Township to Collect Fees for Providing Fire Protection and Emergency Medical Services

The question remains, however, whether the township may require the MRDD Board to pay a fee for the services it provides to a Board facility located within the fire district. A board of township trustees is authorized by R.C. 505.84 to "establish reasonable charges for the use of fire and rescue services, ambulance services, or emergency medical services."[3] However, R.C. 505.84 has been found inadequate authority for a township to impose charges against another public entity.

A question similar to yours involving interpretation of R.C. 505.84 was answered in 1988 Op. Att'y Gen. No. 88-042, which addressed whether a township could charge an institution

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provided in connection with fire-related matters"). *See also* 1962 Op. Att'y Gen. No. 3332, p. 793.

[3] *See* 1981 Op. Att'y Gen. No. 81-023 (under R.C. 505.84, a township may establish reasonable charges for ambulance and emergency medical services it provides directly or though contract with another entity pursuant to R.C. 505.44.) *Accord* 2003 Op. Att'y Gen. No. 2003-017. *See also* 1990 Op. Att'y Gen. No. 90-065 (syllabus, paragraph 1) ("[a] township that has an emergency service levy under R.C. 5705.19 [*see* note 2, *supra*] may also impose charges under R.C. 505.84 to cover the costs of providing ambulance services within the township").

operated by the state Department of Youth Services (DYS) for the use of township ambulance services. Citing the "general rule that a charge may not be made against a state agency except pursuant to clear statutory authority," the opinion noted that R.C. 505.84 did not specify who could be charged by the township, and that "when the General Assembly has intended that public entities be subject to charges for services, it has expressly so stated." *Id.* at 2-203. The opinion concluded that, "general authority granted by R.C. 505.84 to establish charges for the use of ambulance or emergency medical services does not constitute the express statutory authority required for a township to impose a fee against a state institution." *Id.* at 2-205.[4] *See also* 1986 Op. Att'y Gen. No. 86-026 (syllabus, paragraph 2) ("[a]bsent express statutory authorization, local governmental entities may not assess the Adjutant General fees for permits required by the terms of local zoning, building, and fire codes"); 1982 Op. Att'y Gen. No. 82-011 (syllabus, paragraph 1) ("[i]f a service is performed for a public office by an office of county government, whether on a mandatory or discretionary basis, a board of county commissioners may not charge the office receiving such service" unless there is statutory authority for such charge).

As explained in note 4, *supra*, R.C. 505.84 was recently amended to authorize townships to establish charges for the use of fire and rescue services as well as for ambulance and emergency medical services. Sub. H.B. 255, 125th Gen. A. (2004) (eff. March 31, 2005). R.C. 505.84 has not been amended since the issuance of 1988 Op. Att'y Gen. No. 88-042, however, to explicitly authorize townships to charge public entities that use fire and rescue services, ambulance services, or emergency medical services. We conclude, therefore, that the board of township trustees has no authority to charge the county MRDD Board for fire and rescue services, ambulance services, or emergency medical services used by a facility that is owned and operated by the MRDD Board and located within the township fire district.[5]

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[4] At the time 1988 Op. Att'y Gen. No. 88-042 was issued, boards of township trustees had the authority under R.C. 505.84 to collect charges for the use of ambulance and emergency medical services, but had no statutory authority to charge users of fire and rescue services. 1979-1980 Ohio Laws, Part I, 301 (Am. S.B. 82, eff. Oct. 31, 1979). Accordingly, the opinion concluded that a board of township trustees had no authority to charge *any* recipient for fire and rescue services. *Id.* at 2-202 through 2-203. The General Assembly recently granted boards of township trustees authority to establish charges for the use of fire and rescue services as well as for ambulance and emergency medical services. Sub. H.B. 255, 125th Gen. A. (2004) (eff. March 31, 2005). Based on this statutory change, we overrule in part 1988 Op. Att'y Gen. No. 88-042 to the extent that the opinion concludes that a board of township trustees has no general statutory authority to collect a charge for the use of fire and rescue services. In accordance with the analysis of 1988 Op. Att'y Gen. No. 88-042 regarding charges for ambulance and emergency medical services, however, we expand that opinion to conclude that R.C. 505.84, as amended, is insufficient authority for townships to charge other governmental entities for fire and rescue services, or for emergency medical and ambulance services.

[5] Although 1988 Op. Att'y Gen. No. 88-042 dealt with a political subdivision charging a state agency, the same analysis applies to a political subdivision charging another local entity.

We note that the board of township trustees has the authority to redraw the boundaries of the fire district to exclude the MRDD facility if the board determines that exclusion of the facility is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of township citizens therefrom. R.C. 505.37(C) (*see* note 1, *supra*); *Richfield Township v. Toledo Area Metropolitan Park Board*, No. L-81-034 (App. Lucas County June 19, 1981) (tax-exempt property may be excluded from a township fire district where it is expedient and necessary to do so). *See* 1997 Op. Att'y Gen. No. 97-060. The township then would have the option of contracting with the MRDD Board to provide services to the facility and charge a fee therefor.[6] We draw your attention to 1997 Op. Att'y Gen. No. 97-060, which addressed whether a township could charge Central State University, an instrumentality of the state, for providing emergency medical and rescue services. In that instance, the township had created a fire district, and although Central State was located within the township, it was not part of the fire district. The opinion recognized that, because Central State was not located within the territory of the fire district, the fire district was not required to provide the university with emergency medical and rescue services. The opinion concluded that the township fire district and university could, however, enter into a contract, under which the university would pay a fee for the fire district's emergency medical and rescue services, so long as the university was not part of the fire district. *See also* 1988 Op. Att'y Gen. No. 88-042; 1987 Op. Att'y Gen. No. 87-040. A similar agreement could be negotiated between the township and MRDD Board if the MRDD facility were not part of the township fire district. We emphasize, however, that so long as the MRDD facility is located within the fire district, it is entitled to the same services provided

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See, e.g., *Niehaus v. State ex rel. Board of Education*, 111 Ohio St. 47, 144 N.E. 433 (1924) (municipality had no authority, despite its home rule power, to charge a fee to a board of education for approving plans for the construction of public school buildings); *Cuyahoga Metropolitan Housing Authority v. City of Cleveland*, 63 Ohio App. 3d 353, 354, 578 N.E.2d 871 (Cuyahoga County 1989) ("[a]s a political subdivision of the state of Ohio, [a metropolitan housing authority] is not subject to the imposition of fees, which would, in essence, subject it to regulation by a municipality, absent express authorization by the General Assembly," even though R.C. 3781.102(C) authorized generally a municipality to prescribe fees for the approval of building and construction plans and specifications); 1985 Op. Att'y Gen. No. 85-098 at 2-416 (a municipality may not require a board of education or other governmental entity "to pay a fee as a condition precedent to the governmental entity's compliance with a state statute"); 1982 Op. Att'y Gen. No. 82-011. *Cf.* 2002 Op. Att'y Gen. No. 2002-007 (the statutory authority of the state Cosmetology Board to collect fees from schools of cosmetology seeking licensure does not empower the Board to charge public school districts that operate schools of cosmetology).

[6] Of course, the MRDD Board would not be bound to contract with the township but could secure fire protection and emergency medical services from another public firefighting agency or private fire company, or public or private emergency medical service organization. R.C. 9.60(C); R.C. 307.05. *See Richfield Township v. Toledo Area Metropolitan Park Board*, No. L-81-034 (App. Lucas County June 19, 1981).

other property within the district, and the township may not charge the MRDD Board for the facility's use of such services.

Collection of Fees from Users of Services

You have stated that the city that provides emergency medical services to the fire district pursuant to contract with the township has employed an organization to bill the insurance companies of township residents who use these services. Such an arrangement is permissible *so long as*: (1) the money collected is not the basis of the city's compensation under the contract;[7] and, (2) any money collected may not be retained by the city or collection agency, but must be paid to the township clerk for deposit in the fire and rescue services, ambulance services, and emergency medical services fund as required by R.C. 505.84. 2003 Op. Att'y Gen. No. 2003-017. *See also* 1984 Op. Att'y Gen. No. 84-048; 1981 Op. Att'y Gen. No. 81-023. Furthermore, the township may not delegate to the city or the collection agency its authority under R.C. 505.84 to waive all or part of the billed charges for any resident. 2003 Op. Att'y Gen. No. 2003-017.[8]

In conclusion, it is my opinion, and you are advised that, a board of township trustees is required to provide fire and rescue services and emergency medical services to a facility that is owned and operated by the county board of mental retardation and developmental disabilities if the facility is located within the township fire district. The township may not charge the board of mental retardation and developmental disabilities for the facility's use of such services. (1988 Op. Att'y Gen. No. 88-042, overruled in part and expanded in part, based on statutory change.)

Respectfully,

JIM PETRO
Attorney General

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[7] A contract between a township and entity providing EMS services "may provide for a fixed annual charge to be paid at the times agreed upon and stipulated in the contract, or for compensation based upon a stipulated price for each run, call, or emergency, or the elapsed time of service required in such run, call, or emergency, or any combination thereof." R.C. 505.44. 2003 Op. Att'y Gen. No. 2003-017 concluded that this language does not authorize a township to agree to have a contractor's compensation based on the amount of charges collected.

[8] You have stated that the contract between the city and township is silent as to the collection of insurance money. Obviously, the parties, the insureds, and the insurance companies would benefit from having such obligation specified in the contract. *See* 2003 Op. Att'y Gen. No. 2003-017.