February 10, 2003

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
120 Market Street
Youngstown, Ohio 44503

SYLLABUS: 2003-007

1. R.C. 505.49(C) does not prohibit the board of township trustees of a civil service township that has created a township police district from designating the police officers of the district as police constables pursuant to R.C. 509.01.

2. When the board of township trustees of a civil service township that has created a township police district designates a police officer of the district as a police constable, both the board of township trustees and the district's chief of police are required to comply with the annual reporting provisions of R.C. 109.761(B).

3. The board of township trustees of a civil service township that has created a township police district may appoint police constables pursuant to R.C. 509.01 that are not included in the township police district and under the direction and control of the district's chief of police.

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OPINION NO. 2003-007

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
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Dear Prosecutor Gains:

You have requested an opinion concerning the appointment of both police constables and police officers within the same township. By way of background, you state that a civil service township[1] that has created a township police district has appointed the same persons as police officers for the district and as police constables. In light of this practice, you wish to know the following:[2]

1. Does R.C. 505.49(C) prohibit the board of township trustees of a civil service township that has created a township police district from designating the police officers of the district as police constables pursuant to R.C. 509.01?

2. If the board of township trustees of a civil service township that has created a township police district designates the police officers of the

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[1] A civil service township is any township that has all three of the following: a population of ten thousand or more persons residing within the township and outside any municipal corporation, a police or fire department of ten or more full-time paid employees, and a civil service commission established under R.C. 124.40(B). *See* R.C. 124.01(G); R.C. 505.38(C); R.C. 505.49(C). *See generally* R.C. 124.40(B) ("[t]he board of trustees of a township with a population of ten thousand or more persons residing within the township and outside any municipal corporation and which has a police or fire department of ten or more full-time paid employees may appoint three persons who shall constitute the township civil service commission").

[2] In accordance with a conversation with a member of your staff, we have rephrased your questions for ease of discussion.

district as police constables pursuant to R.C. 509.01, is the board of township trustees or the district's chief of police required to comply with the annual reporting provisions of R.C. 109.761(B)?

3. May the board of township trustees of a civil service township that has created a township police district appoint police constables pursuant to R.C. 509.01 who are not included in the township police district and who are not under the direction and control of the district's chief of police?

We will begin with your first question. R.C. 509.01(B) authorizes a board of township trustees to "designate any qualified persons as police constables."[3] Pursuant to R.C. 505.48, a board of township trustees is also authorized to create a township police district and appoint a chief of police for the district. One of the duties of the chief of police is the appointment of police officers for the district. R.C. 505.49. A board of township trustees thus may provide for the employment of both police constables and police officers.

Your particular question, though, is whether the same persons may serve both as police constables and police officers. With regard to this question, we note as an initial matter that R.C. 505.49(B)(2) authorizes the board of township trustees to do the following:

> The township trustees may include in the township police district and under the direction and control of the chief of police, any constable appointed pursuant to [R.C. 509.01], or may designate the chief of police or any patrol officer appointed by the chief of police as a constable, as provided for in [R.C. 509.01], for the township police district.

R.C. 505.49(B)(2) would thus appear to authorize a board of township trustees that has created a township police district to designate the police officers of the township police district as police constables pursuant to R.C. 509.01.[4] 1977 Op. Att'y Gen. No. 77-054 at 2-195; *see also State v. Layman*, 29 Ohio App. 3d at 345, 505 N.E.2d 999.

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[3] The general powers, duties, and responsibilities of a township police constable are set forth in R.C. Chapter 509. A township police constable is required to apprehend and bring to justice felons and disturbers of the peace, suppress riots, keep and preserve the peace within the county, and serve and execute warrants, writs, precepts, executions, and other process that are directed and delivered to the constable. R.C. 509.05; *see* R.C. 509.07; R.C. 509.08; R.C. 509.10; R.C. 509.11; R.C. 2935.03. In addition, a township police constable is a ministerial officer of the county court, R.C. 509.05, and may be appointed as the executive head of the township's parking enforcement unit, R.C. 509.04.

[4] We are aware that prior opinions of the Attorneys General have advised that a person may not hold two law enforcement positions with overlapping jurisdiction. *See, e.g.,* 1996 Op. Att'y Gen. No. 96-017; 1989 Op. Att'y Gen. No. 89-044; 1987 Op. Att'y Gen. No. 87-002; 1985

As you note in your letter, however, R.C. 505.49(C) restricts R.C. 505.49(B) to apply *only* to non-civil service townships. In particular, it states:

> Division (B) of this section does not apply to a township that has a population of ten thousand or more persons residing within the township and outside of any municipal corporation, that has its own police department employing ten or more full-time paid employees, and that has a civil service commission established under [R.C. 124.40(B)]. That type of township shall comply with the procedures for the employment, promotion, and discharge of police personnel provided by [R.C. Chapter 124]….

It thus might be argued that R.C. 505.49(C) prohibits the board of township trustees of a civil service township from exercising the powers granted to a non-civil service township under R.C. 505.49(B), including the power to designate the police officers of the township's police district as police constables pursuant to R.C. 509.01.

In our opinion, though, that reading of R.C. 505.49(C) is incorrect. Notwithstanding R.C. 505.49(C), civil service townships retain those powers granted to them by other statutory provisions other than R.C. 505.49(B). Of particular importance here, R.C. 505.49(C) in no way impacts the authority granted township trustees by R.C. 509.01(B) to "designate any qualified persons as police constables." In fact, R.C. 505.49(C) provides that the appointment and employment provisions set forth therein do not apply to police constables appointed pursuant to R.C. 509.01. This language makes it clear that police constables appointed by the board of township trustees of a civil service township are to be appointed and employed pursuant to R.C. 509.01, rather than R.C. 505.49(C). If the General Assembly did not intend for the board of township trustees of a civil service township to appoint and employ police constables pursuant to

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Op. Att'y Gen. No. 85-021. However, because R.C. 505.49(B)(2) explicitly authorizes a board of township trustees that has created a township police district to designate the police officers of the district as police constables, a person may hold both of these positions at the same time. *State v. Layman*, 29 Ohio App. 3d 343, 345, 505 N.E.2d 999 (Montgomery County 1986). *See generally* 1987 Op. Att'y Gen. No. 87-024 at 2-167 (the reference in R.C. 1724.10(A) to R.C. 731.02 and R.C. 731.12, which prevent members of city and village legislative authorities, respectively, from holding "other public office," is clearly intended to permit officials of municipal corporations to serve both their municipalities and appropriate community improvement corporations); 1979 Op. Att'y Gen. No. 79-061 at 2-206 (stating that the reference in R.C. 1724.10 to R.C. 731.02 and R.C. 731.12, and other sections of the Revised Code, "is rather obviously intended to eliminate problems regarding conflicts of interest and [incompatibility] of office"); 1977 Op. Att'y Gen. No. 77-034 at 2-123 (in light of the language of R.C. 713.21, it is apparent that "it was the manifest intent of the General Assembly that despite any conclusion of incompatibility arising from the common law analysis, a member of a regional planning commission may also hold any other public office or any of the other positions enumerated in the above [statute]").

R.C. 509.01, it would have been unnecessary for the General Assembly to have included the foregoing language in R.C. 505.49(C). *See generally State v. Wilson,* 77 Ohio St. 3d 334, 336, 673 N.E.2d 1347 (1997) (it is to be presumed that the General Assembly inserts language into a statute to accomplish some definite purpose). Accordingly, the board of township trustees of a civil service township is authorized to appoint and employ police constables pursuant to R.C. 509.01.

Moreover, the board of township trustees of a civil service township may designate "any qualified person" as a police constable. R.C. 509.01(B). Except for the limitation set forth in R.C. 509.01(C),[5] there is no other limitation on whom a board of township trustees may designate as a police constable. Thus, except as provided in R.C. 509.01(C), a board of township trustees of a civil service township may designate any qualified person as a police constable, including a police officer employed by the township's police district pursuant to R.C. 505.49(C). *See generally Sears v. Weimer,* 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) (where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, the "statute is to be applied, not interpreted").

In light of the foregoing, it is clear that R.C. 509.01 authorizes the board of township trustees of a civil service township to designate the police officers of the township's police district as police constables, and R.C. 505.49(C) does not limit that grant of authority. Accordingly, R.C. 505.49(C) does not prohibit the board of township trustees of a civil service township that has created a township police district from designating the police officers of the district as police constables pursuant to R.C. 509.01.[6]

Your second question asks whether, if the board of township trustees of a civil service township that has created a township police district designates the police officers of the district as police constables pursuant to R.C. 509.01, the board of township trustees or the district's chief

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[5] R.C. 509.01(C) prohibits a board of township trustees from designating a person as a police constable "if the person previously has been convicted of or has pleaded guilty to a felony."

[6] If a board of township trustees of a civil service township designates the police officers of the township's police district as police constables pursuant to R.C. 509.01, such officers would not be holding incompatible positions. *See* note four, *supra.* As explained previously, the General Assembly has expressly sanctioned a person serving simultaneously in these two positions in non-civil service townships. R.C. 505.49(B)(2). Such legislative action by the General Assembly indicates that the General Assembly deems it appropriate for one person to serve simultaneously in these two positions. *See State v. Layman.* There is nothing inherently different about the conflict between these two positions in a civil service township versus a non-civil service township. Accordingly, we believe that a person may also hold both of these positions at the same time in a civil service township. *See id.*

of police is required to comply with the annual reporting provisions of R.C. 109.761(B). R.C. 109.761(B) provides:

> Each agency or entity that appoints or employs one or more peace officers shall annually provide to the Ohio peace officer training commission a roster of all persons who have been appointed to or employed by the agency or entity as peace officers in any full-time, part-time, reserve, auxiliary, or other capacity and are serving, or during the year covered by the report have served, the agency or entity in any of those peace officer capacities. The agency or entity shall provide the roster in the manner and format, and by the date, prescribed by the executive director of the Ohio peace officer training commission.

For purposes of R.C. 109.761(B), the term "[p]eace officer" includes members of a township police district and township constables who are commissioned and employed as peace officers by a township and who are required to preserve the peace, to protect life and property, and to enforce the laws of this state or township resolutions or regulations. R.C. 109.71(A)(1); *see also* 2 Ohio Admin. Code 109:2-1-02(E). Thus, an agency that appoints or employs a member of a township police district or township constable who qualifies as a "peace officer," as defined in R.C. 109.71(A)(1), is required to comply with the annual reporting provisions of R.C. 109.761(B).

Neither the word "agency" nor "entity" is statutorily defined for purposes of R.C. 109.761. It is, however, a codified rule of statutory construction that an undefined word in a statute is to be accorded its usual, normal, or customary meaning. R.C. 1.42. The word "agency" is commonly understood to mean, *inter alia,* "[a] governmental body with the authority to implement and administer particular legislation." *Black's Law Dictionary* 63 (7th ed. 1999); *accord Webster's New World Dictionary* 25 (2d college ed. 1986). The word "entity" means "[a]n organization (such as a business or a governmental unit) that has a legal identity apart from its members." *Black's Law Dictionary* at 553; *see Webster's New World Dictionary* at 467.

A board of township trustees is a governmental body with the authority to implement and administer particular legislation. *See* R.C. 505.01 (providing for the election of township trustees); R.C. Chapter 513 (a board of township trustees may provide hospital facilities); R.C. Chapter 515 (a board of township trustees may provide artificial lighting); R.C. Chapter 519 (a board of township trustees may regulate building and land use through zoning); R.C. 5535.01(C) (a board of township trustees must maintain and repair township roads). A board of township trustees thus is an "agency" for purposes of R.C. 109.761(B). *See generally Tuber v. Perkins*, 6 Ohio St. 2d 155, 157, 216 N.E.2d 877 (1966) (a township is "an agency of the state, is a part of the organization of the state government, and is a political subdivision of the state"). Accordingly, when a board of township trustees appoints a person as a township constable who qualifies as a "[p]eace officer," as defined in R.C. 109.71(A)(1), the board of township trustees is required to comply with the annual reporting provisions of R.C. 109.761(B). *See generally* 1968 Op. Att'y Gen. No. 68-037 at 2-45 ("[i]t would appear that the legislature used the term 'law enforcement agency' in a broad sense, the same that 'law enforcement officer' is used in a broad

sense, and that depending upon the organization of the governmental activity the term may be interpreted to mean a department (police department), or an elected official (sheriff), or a division, (division of state highway patrol), or *in cases of police constables* [*designated*] *as such and paid by a board of township trustees pursuant to Section 509.01, Revised Code, the board of township trustees would be the law enforcement agency by which the constable is employed*" (emphasis added)).

A township police district is an administrative division of government created by a township to provide police protection to the citizens of the district. R.C. 505.48; R.C. 505.49; 1991 Op. Att'y Gen. No. 91-037 at 2-204; *see also* R.C. 2935.03 (conferring arrest powers upon members of a township police district). Because a township police district is an administrative division of government with specific functions, a township police district also is an "agency" that is required to comply with the annual reporting provisions of R.C. 109.761(B). Accordingly, when the chief of police of a township police district appoints a police officer who qualifies as a "[p]eace officer," as defined in R.C. 109.71(A)(1), the chief of police is required to comply with the annual reporting provisions of R.C. 109.761(B). *See generally* 1968 Op. Att'y Gen. No. 68-037 at 2-45 (the term "law enforcement agency" in a broad sense includes township police departments).

It is a fundamental principle that exceptions to the application or operation of the terms of a statute shall be recognized only when such exceptions are set forth clearly and unambiguously either in the statute itself or in another statute. *See generally Columbus-Suburban Coach Lines, Inc. v. P.U.C.O.,* 20 Ohio St. 2d 125, 127, 254 N.E.2d 8 (1969) ("[i]n determining legislative intent it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used"). In those instances in which the General Assembly has not enacted an exception to the terms of a particular statute, there is a presumption that it has intended that there shall be no exceptions thereto. *Wachendorf v. Shaver,* 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph five); *Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969 (1910). There are no instances in which the General Assembly has excepted a board of township trustees or chief of police of a township police district from compliance with the annual reporting provisions of R.C. 109.761(B).

Accordingly, if the chief of police of a township police district appoints and employs a police officer who qualifies as a "[p]eace officer," as defined in R.C. 109.71(A)(1), the chief of police is required to comply with the annual reporting provisions of R.C. 109.761(B). Further, if the board of township trustees subsequently designates the police officer as a police constable who qualifies as a "[p]eace officer," as defined in R.C. 109.71(A)(1), the board of township trustees has a separate and independent duty to comply with the reporting provisions of R.C. 109.761(B). Therefore, when the board of township trustees of a civil service township that has created a township police district designates a police officer of the district as a police constable, both the board of township trustees and the district's chief of police are required to comply with the annual reporting provisions of R.C. 109.761(B).

Your final question asks whether the board of township trustees of a civil service township that has created a township police district may appoint police constables pursuant to R.C. 509.01 that are not included in the township police district and under the direction and control of the district's chief of police. As determined above, a board of township trustees of a civil service township that has created a township police district is authorized to appoint police constables pursuant to R.C. 509.01.

No statute explicitly requires the board of township trustees of a civil service township to include police constables appointed pursuant to R.C. 509.01 in the township police district and under the direction and control of the district's chief of police. Absent such a requirement, these boards are not required to include police constables in the township police district and under the direction and control of the district's chief of police. *See generally State ex rel. Preston v. Ferguson*, 170 Ohio St. 450, 459, 166 N.E.2d 365 (1960) ("[w]here a statute clearly confers power to do a certain thing without placing any limitation as to the manner or means of doing it, and no statute can be found prescribing the exact mode of performing that duty or thing, the presumption is that it should be performed in a reasonable manner *not in conflict with any law of the state*").

Moreover, the language of R.C. 505.49(B)(2) indicates that the General Assembly did not intend such a requirement. R.C. 505.49(B)(2) states, in part, that, a board of township trustees of a non-civil service township "*may* include in the township police district and under the direction and control of the chief of police, any constable appointed pursuant to [R.C. 509.01]." (Emphasis added.) The use of the word "may" indicates that this provision is optional, permissive, or discretionary, unless there is a clear legislative intent that it be construed as mandatory. *Dorrian v. Scioto Conserv. Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one).

Nothing in the language of R.C. 505.49(B)(2) indicates that the General Assembly intended for this provision to be construed as mandatory. A board of township trustees of a non-civil service township thus may exercise its discretion when determining whether to include a police constable in the township police district and under the direction and control of the district's chief of police.

Such legislative action by the General Assembly, although not controlling in regard to civil service townships, does indicate that the General Assembly did not intend to impose a mandatory duty upon boards of township trustees to include police constables appointed pursuant to R.C. 509.01 in the township police district and under the direction and control of the district's chief of police. Accordingly, the board of township trustees of a civil service township that has created a township police district may appoint police constables pursuant to R.C. 509.01 that are not included in the township police district and under the direction and control of the district's chief of police.

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

1. R.C. 505.49(C) does not prohibit the board of township trustees of a civil service township that has created a township police district from designating the police officers of the district as police constables pursuant to R.C. 509.01.

2. When the board of township trustees of a civil service township that has created a township police district designates a police officer of the district as a police constable, both the board of township trustees and the district's chief of police are required to comply with the annual reporting provisions of R.C. 109.761(B).

3. The board of township trustees of a civil service township that has created a township police district may appoint police constables pursuant to R.C. 509.01 that are not included in the township police district and under the direction and control of the district's chief of police.

Respectfully,

JIM PETRO
Attorney General