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VIA E-MAIL

Ohio Attorney General
c/o Opinions Section
30 East Broad Street
Columbus, OH 43215
Email: OpinionsRequest@OhioAttorneyGeneral.gov

RE: Request for Opinion – Limited Home Rule Government Authorizing Employees to Incur Obligations Greater Than Ten Thousand Dollars

Dear Attorney General Yost:

Washington Township (the “Township”) is requesting an opinion regarding its current purchasing policy. The Township has adopted a limited home rule government in accordance with Ohio Revised Code Chapter 504. I serve as the Township’s Law Director.

The Township requests an opinion regarding whether the Township Board of Trustees may authorize, by resolution, Township officers and employees to incur obligations greater than ten thousand dollars on behalf of the Township.

BACKGROUND AND RELEVANT LAW

Ohio Revised Code Section 507.11(A) authorizes a board of township trustees to authorize, by resolution, township officers and employees to incur obligations of ten thousand dollars or less on behalf of the township, or it may authorize, by resolution, the township administrator to so authorize township officers and employees.

Pursuant to Ohio Revised Code Section 504.04(A)(1), a township that adopts a limited home rule government may “[e]xercise all powers of local self-government within the unincorporated area of the township, other than powers that are in conflict with general laws, except that the township shall comply with the requirements and prohibitions of this chapter, and shall enact no taxes other than those authorized by general law, and except that no resolution adopted pursuant to this chapter shall encroach upon the powers, duties, and privileges of elected township officers or change, alter,

combine, eliminate, or otherwise modify the form or structure of the township government unless the change is required or permitted by this chapter.” General laws, for the purpose of home-rule analysis, must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally. *See Canton v. State*, 2002-Ohio-2005, ¶ 21. A state statute takes precedence over a local ordinance, for purposes of the Home Rule Amendment, when (1) the ordinance is in conflict with the statute; (2) the ordinance is an exercise of the police power, rather than of local self-government; and (3) the statute is a general law. *See Mendenhall v. Akron*, 2008-Ohio-270, ¶ 17.

In several opinions provided by your office, it was determined that because the General Assembly chose to enact language in Chapter 504 that closely reflects the language of Ohio Const. art. XVIII, Sec. 3, “[i]t is, therefore, reasonable to conclude that the General Assembly intended to grant to limited home rule townships home rule authority that is similar to the home rule authority of municipal corporations under Ohio Const. art. XVIII, Sec. 3. . . . Other than the specific limitations upon a limited home rule township’s authority that are set forth in R.C. Chapter 504, the home rule powers granted to a township by R.C. Chapter 504 appear to correspond to the home rule powers of a municipality under Ohio Const. art. XVIII, Sec. 3. When examining the confines of a limited home rule township’s authority, it is, therefore, instructive to examine relevant case law discussing the home rule authority of Ohio municipalities.” 2014 Op. Att’y Gen. No. 2014-041, at 2; *see also* 2017 Op. Att’y Gen. No. 2017-024; 2015 Op. Att’y Gen. No. 2015-031; 2016 Op. Att’y Gen. No. 2016-023.

As a limited home rule township, the Washington Township Board of Trustees desires to exercise its power of local self-government to increase the maximum amount of obligations that it can authorize township officers and employees to incur on behalf of the township.

QUESTION PRESENTED

Does the board of trustees of a limited home rule township have the authority to authorize, by resolution, township officers and employees to incur obligations greater than ten thousand dollars on behalf of the township, or authorize, by resolution, the township administrator to authorize township officers and employees?

ISSUES

If Washington Township were to establish a policy authorizing township officers to incur

obligations greater than ten thousand dollars on behalf of the Township, such policy arguably conflicts with R.C. 507.11(A). To determine whether an ordinance is in conflict with a general state statute, it must be determined “whether [an] ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.” *Vill. of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923), at paragraph two of the syllabus. As stated, a state statute takes precedence over a local ordinance, for purposes of the Home Rule Amendment, when (1) the ordinance is in conflict with the statute; (2) the ordinance is an exercise of the police power, rather than of local self-government; and (3) the statute is a general law. *See Mendenhall*, at ¶ 17. The Supreme Court of Ohio has held that “[i]f an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.” *Am. Fin. Servs. Assn. v. Cleveland*, 2006-Ohio-6043, ¶ 23. Legislation relates solely to local self-government if the result of such legislation “affects only the municipality itself, with no extra-territorial effects.” *Vill. of Beachwood v. Bd. of Elections of Cuyahoga Cnty.*, 167 Ohio St. 369, 371 (1958). Conversely, “the police power allows municipalities to enact regulations only to protect the public health, safety, or morals, or general welfare of the public.” *Downing v. Cook*, 69 Ohio St.2d 149, 150 (1982).

Establishing a policy that authorizes the township officers and employees to incur obligations greater than ten thousand dollars would only affect the Township and would not be enacted only to protect the public health, safety, or morals, or general welfare of the public. Therefore, under this analysis, such policy relates solely to local self-government and, as a result, should take precedence over R.C. 507.11, if established by a resolution adopted by the Board.

However, courts have recognized that the General Assembly can validly limit home rule authority if a specific provision in the Ohio Constitution explicitly authorizes the General Assembly to limit a specific municipal power. *See Dublin v. State*, 2002-Ohio-2431, ¶ 221. For example, Article XVIII, Section 13 of the Constitution states: “Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.” However, Article XVIII only applies to cities and villages. Regarding townships, Article X, Section 2 states: “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.” There is limited guidance to determine if this prohibition only applies to the actual procedure of drawing money, like in R.C. 507.11(B), for example, which states, “No money belonging to the township shall be paid out, except upon an order signed by at least two of the township trustees, and countersigned by the township fiscal officer” or if drawing money also includes the first step of

“incurring obligations ... on behalf of the township.”

Therefore, the Township respectfully requests your opinion as to whether the board of trustees of a limited home rule township has the authority to authorize, by resolution, township officers and employees to incur obligations greater than ten thousand dollars on behalf of the township, or authorize, by resolution, the township administrator to authorize township officers and employees.

If you have any questions about the Township, please contact Washington Township Administrator Mike Thonnerieux at 937-433-0152 or mike.thonnerieux@washingtontwp.org. Thank you for your assistance in this matter.

Very Truly Yours,

FROST BROWN TODD LLP

A handwritten signature in black ink, appearing to read "S.D. Phillips", written in a cursive style.

Scott D. Phillips

SDP/jccj

cc: Mike Thonnerieux, Washington Township Administrator
Don Buczek, Washington Township Finance Director