

OPINION NO. 90-010**Syllabus:**

Pursuant to R.C. 505.262, the board of township trustees may, by unanimous vote, adopt a resolution allowing the township to contract for the purchase or construction of a town hall and, by unanimous vote adopt a resolution authorizing the issuance of notes as prescribed by R.C. 505.262(A). Neither the question of whether to so purchase or construct the town hall or whether to issue such notes need be submitted to the electorate for approval.

To: Michael F. Boller, Shelby County Prosecuting Attorney, Sidney, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 9, 1990

I have before me your opinion request in which you ask:

Do the provisions of the newly-enacted Ohio Revised Code

§505.262 authorize the trustees of a given township to purchase or construct a "town" or "township" hall, and to finance such purchase or construction as provided in that statute, without the necessity of submitting the question to the voters as would otherwise be required by Ohio Revised Code §511.01?

I begin by noting that 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). It is, therefore, necessary to examine those statutes governing the purchase or construction of a town hall in order to determine the nature of the board's authority in that regard.

R.C. 505.26 states in pertinent part:

The board of township trustees may *purchase*, appropriate, *construct*, enlarge, improve, rebuild, repair, furnish, and equip a *township hall*, a township park, public library buildings, and bridges and viaducts over streets, streams, railroads, or other places where an overhead roadway or footway is necessary, and such board may acquire sites by lease or otherwise for any of such improvements, including lands and buildings for recreational purposes. (Emphasis added.)

The general authority of the township trustees under R.C. 505.26 with respect to a township hall is, however, limited by the provisions of R.C. 511.01, which states: "If, in a township, a town hall¹ is to be built, improved, enlarged, or removed at a cost greater than ten thousand dollars, the board of township trustees shall submit the question to the electors of such township and shall certify their resolution to the board of elections...." (Footnote added.) Pursuant to R.C. 511.01, if a town hall is to be built, improved, enlarged, or removed at a cost in excess of ten thousand dollars, the question of whether to so proceed must be submitted to the electors of the township for approval.²

Confusion has arisen, however, out of the provisions of R.C. 511.02,³ concerning the issuance of bonds to finance a project which has received voter approval under R.C. 511.01. The authority of the board of township trustees under

¹ See generally 1940 Op. Att'y Gen. No. 2914, vol. II, p. 944 (concluding that a township hall, see R.C. 505.26, and a town hall, see R.C. 511.01, are the same thing).

² In 1940 Op. No. 2914, one of the issues considered was whether the decision to "purchase" a lot on which was located a building to be used, in part, as a town hall was subject to the approval of the voters. The opinion found that because G.C. 3395 (predecessor of R.C. 511.01) did not apply when such a building was to be "purchased," as opposed to being "built, improved, enlarged or removed," such a purchase was not included within the terms of G.C. 3395. If bonds were to be issued to finance such purchase, however, such bond issue was subject to voter approval as required by G.C. 2293-17 (predecessor of R.C. 133.09).

³ R.C. 511.02 states:

At the election provided for by [R.C. 511.01], if a majority of all the ballots cast are in the affirmative, the board of township trustees shall levy the necessary tax, which, in any year, shall not exceed four mills on the dollar valuation. Such tax shall not be levied for more than seven years. In anticipation of the collection of taxes, the board may borrow money and issue bonds for the whole or any part of such work, which bonds shall not bear interest to exceed the rate provided in [R.C. 9.95], payable annually.

R.C. 511.02 and its predecessors was discussed in 1973 Op. Att'y Gen. No. 73-100. The opinion states that once the electorate's approval has been obtained, as required by R.C. 511.01, R.C. 511.02 "would appear to give the board of township trustees authority to borrow the money and issue the bonds without further approval by the electorate." Op. No. 73-100 at 2-378. The opinion notes, however, that the township trustees' authority to issue bonds must be read in conjunction with R.C. Chapter 133 which sets forth various procedures and limitations on a township's authority to issue bonds. As explained in Op. No. 73-100 at 2-378 through 2-380:

The Uniform Bond Law itself specifically gives a board of township trustees power to issue bonds to cover the costs of a town hall, and sets forth the procedures to be followed....The power of a township to incur bonded indebtedness is specifically limited, under R.C. 133.07 [now R.C. 133.09], to two [now five] per cent of the total value of all property listed and assessed for taxation, and no such indebtedness is to be incurred *except when authorized by the electorate.*

....
Since the Uniform Bond Law places such specific restrictions on the authority of a board of township trustees to issue bonds, I conclude that the broad provision of R.C. 511.02 [allowing the board of trustees, without voter approval, to issue bonds to fund the activity approved by the electorate under R.C. 511.01] is no longer in effect, and that the question must be submitted to the electorate, unless the indebtedness to be incurred comes within the exceptions included in R.C. 133.02 [now R.C. 133.04 (defining "net indebtedness" and setting forth exceptions thereto)]....Bonds issued for the construction or improvement of a town hall do not, however, come within any of these exceptions....[T]he question of issuance of the bonds must be submitted to the electorate under R.C. 133.07 [now R.C. 133.09].⁴ (Emphasis and footnote added.)

See 1929 Op. Att'y Gen. No. 909, vol. II, p. 1406 (syllabus, paragraph two) ("[i]f funds are not available for [the purchase of a township hall already constructed], the question of issuing bonds therefor should be submitted to the electors in accordance with the provisions of the Uniform Bond Act"). Thus, under the scheme provided by R.C. 511.01 and R.C. 511.02, once the voters have approved the improvement or acquisition of a town hall under R.C. 511.01, if the township plans to issue bonds to fund such project, the question of whether to issue bonds under R.C. 511.02 must be submitted to the electors of the township as required by R.C. 133.09. See 1940 Op. Att'y Gen. No. 2914, vol. II, p. 944 (syllabus, paragraph two).

The authority of township trustees with respect to the town hall has recently been altered by the enactment of the provisions now appearing in R.C. 505.262 which states in pertinent part:

(A) *Notwithstanding [R.C. 505.37(D)]⁵ or any other statute of this state, the board of township trustees of any township may, by unanimous vote, adopt a resolution allowing the township to contract for the purchase of equipment, buildings, and sites, or for the construction of buildings, for any lawful township purpose.* The board may, by resolution adopted by unanimous vote, issue the notes of the township to finance purchases and construction made pursuant to this division....The notes shall...not be subject to [R.C. Chapter 133].

⁴ R.C. 133.09 states: "A township shall not incur net indebtedness that exceeds an amount equal to five per cent of its tax valuation, and *shall not incur any net indebtedness unless authorized by vote of the electors.*" (Emphasis added.)

⁵ R.C. 505.37(D) concerns the authority of township trustees, among others, to acquire fire-fighting equipment, building and sites and to issue notes to finance the cost.

The resolution authorizing the issuance of the notes shall provide for levying and collecting annually by taxation, amounts sufficient to pay the interest on and principal of the notes. Not less than one-tenth of the purchase price or construction cost shall be paid in cash at the time of purchase, as provided in the contract, and the remainder of the purchase price or construction cost shall be paid in annual installments of not less than one-tenth of the total purchase price or construction cost, secured by notes of equal amounts....Notes may be issued for a period of nine years or less....

(B) No purchase or construction pursuant to division (A) of this section shall be undertaken unless the county auditor certifies that, if the purchase or construction is undertaken, the debt service charge for the purchase or construction in the first year, together with the debt service charge for that same year for any other purchase or construction already undertaken pursuant to division (A) of this section, does not exceed one-tenth of the township's total revenue from all sources. (Emphasis and footnote added.)

R.C. 505.262 thus provides a mechanism whereby the board of trustees of a township may adopt a resolution, by unanimous vote, authorizing the township to contract for the purchase or construction of buildings for any lawful township purpose, *notwithstanding any other statutory provision*. The statute further provides for the issuance of notes to finance such purchase or construction. Such notes shall not be subject to, among other things, R.C. 133.09. See note 2, *supra*. As is evident from the many requirements which must be met before the township may proceed under R.C. 505.262 and from the limitations imposed upon the issuance of notes under that section, the scheme set forth therein is separate and distinct from other statutory methods available to finance such projects, such as the method described in R.C. 511.02. Only when all the conditions set forth in R.C. 505.262 are met may the board of township trustees proceed under that section.

The introductory phrase of the first sentence of R.C. 505.262(A) clearly establishes the power of the board of township trustees to act by resolution, unanimously adopted, to allow the township to contract for the purchase or construction of a building for any lawful township purpose, regardless of the requirements or limitations imposed by R.C. 505.37(D) or any other statute.⁶ The purchase or construction of a town hall, as in the situation you contemplate, is undoubtedly a lawful township purpose. See R.C. 505.26; R.C. 511.01. Pursuant to R.C. 505.262, therefore, the board of township trustees may, by unanimous adoption of a resolution, authorize the township to acquire or construct a town hall, without approval of the electorate under R.C. 511.01 to so proceed; the board may then, by unanimous vote, adopt a resolution to issue notes as specified in R.C. 505.262(A) without voter approval.

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to R.C. 505.262, the board of township trustees may, by unanimous vote, adopt a resolution allowing the township to contract for the purchase or construction of a town hall and, by unanimous vote adopt a resolution authorizing the issuance of notes as prescribed by R.C. 505.262(A). Neither the question of whether to so purchase or construct the town hall or whether to issue such notes need be submitted to the electorate for approval.

⁶ Under R.C. 505.262, the township may "purchase" or "construct" a town hall. The distinction between the purchase and construction of a town hall, as discussed in note 2, *supra*, is irrelevant for purposes of R.C. 505.262.