

**OPINION NO. 77-097****Syllabus:**

Where township voters pass a levy pursuant to R.C. 5705.19(J) for the stated purpose of "providing and maintaining motor vehicles, communications, and other equipment used directly in the operation" of the township police department, and there is located entirely within that township a chartered village which already has its own police force, the township trustees may not appropriate proceeds of that levy to the village for its police force, nor use such proceeds to fund its obligation under a contract for additional police protection for the township under R.C. 505.50 or R.C. 505.44.

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**To: David E. Bowers, Allen County Pros. Atty., Lima, Ohio**  
**By: William J. Brown, Attorney General, December 19, 1977**

I have before me your request for an opinion which reads, in part, as follows:

At a recent election, Shawnee Township placed on the ballot a one mill tax levy to be used for the operation of the Shawnee Township Police Department, which was approved by the voters by a narrow margin.

As a result of the above, the taxpayers of the Village of Fort Shawnee have been assessed the additional one mill levy to help pay for the Shawnee Township Police Department.

We wish to state that Shawnee Township organized its own full-time police department in 1972, however, the Village of Fort Shawnee, which is totally in Shawnee Township, likewise has had its own police department since 1961. The total amount generated in 1977 from the one mill levy is \$167,594.00 of which \$21,542.47 is generated from Fort Shawnee.

Therefore, you have raised the following question:

Is there any method by which the money, which the township is collecting as the result of the one mill levy, can be allocated either by the township, or by the Allen County Auditor, to the Village of Fort Shawnee for use in its Police Department Budget?

Before addressing your question, it is necessary to point out the following additional facts which you have supplied. First, Shawnee Township has not established a police district under the authority established by R.C. 505.48. Second, Fort Shawnee is a chartered municipality with its own police force.

Finally, it is important to set forth the exact language of the levy resolution passed by the voters. The operative language of the levy reads as follows:

. . . providing and maintaining motor vehicles, communications, and other equipment used directly in the operation of the Shawnee Township Police Department and the payment of salaries of permanent police personnel.

The situation you describe appears to involve a very inequitable result, since the residents of Fort Shawnee are forced to pay a one mill levy for police protection which is already being provided them by the municipal force. While the General Assembly has not specifically provided for relief in the situation you describe, it has provided several methods by which the result can be avoided. First, R.C. 503.07 specifies that where the limits of a municipal corporation do not comprise the whole of the township in which it is situated, the legislative authority of the municipality may petition the board of county commissioners for a change of township lines. A municipality thus is empowered to act to avoid problems such as you describe which arise when the municipality remains a part of the township.

Moreover, the General Assembly has provided for the establishment of a township police district under R.C. 505.48, which provides in part as follows:

The trustees of any township may, by resolution adopted by two-thirds of the board, create a township police district comprised of all or a portion of the unincorporated territory of the township. . .

Under R.C. 505.51, the township police district is a taxing authority separate from the township. Nevertheless, the establishment of a township police district at this time would be unavailing, the levy already having been passed.

Under R.C. 5705.10, monies derived from a special levy, "shall be credited to a special fund for the purpose for which the levy was made." In addition, that section provides:

Money paid into any fund shall be used only for the purposes for which such fund is established.

Applying this statute to the levy passed by the voters of Shawnee Township, it is apparent that the proceeds of the levy may be used only to provide equipment for and pay the salaries of members of the township police department. Therefore, it would not be permissible for the township to merely appropriate levy proceeds to the village for its police force, as that would clearly be violative of R.C. 5705.10, supra. Cf., Roddy v. Andrix, infra.

R.C. 505.441 allows townships to contract with municipal corporations for police protection. It provides, in part:

In order to obtain police protection, or to obtain additional police protection in times of emergency, any township may enter into a contract with one or more townships, municipal corporations, or county sheriffs upon such terms as are agreed to by them, for services of police departments or use of police equipment, or the interchange of the service of police departments or the use of police equipment within the several territories of the contracting subdivisions, if such contract is first authorized by respective boards of township trustees or other legislative bodies.

While it might be argued that this section would permit the township to contract with the Fort Shawnee Police Force to provide police protection within the municipality, this section has been interpreted to allow contracts only for the benefit of the township in its entirety. 1971 Op. Att'y Gen. No. 71-045. Since Fort Shawnee does not comprise the "entire" township, a contract which limits the

obligation of the municipal force to the territorial limits of the village would not be permissible.

Another possible alternative might be a contract which requires the village to provide additional police protection to the entire township under R.C. 505.50. That section provides, in part, as follows:

The board of trustees of any township may enter into a contract with one or more townships, a municipal corporation, or the county sheriff upon such terms as are mutually agreed upon for the provision of additional police protection services either on a regular basis or for additional protection in times of emergency. Such contract shall be agreed to in each instance by the respective board of township trustees, the county commissioners, or the municipal corporation involved. Such contract may provide for a fixed annual charge to be paid at the time agreed upon in the contract.

Thus, the village and the township may agree to have the village police provide extra protection to the township as a whole under this section. Whether the monies derived from the special levy may be used for such a contract, however, requires further analysis.

The special levy was placed before the voters of Shawnee Township pursuant to R.C. 5705.19(J). R.C. 5705.19 limits the levy resolution to "a single purpose," and this language has been applied strictly to the expenditure of levy revenues. Roddy v. Andrix, 32 Ohio Ops.2d 349 (Madison Co. Common Pleas, 1964). Accordingly, the purpose set forth in the levy resolution, as in the case of any taxing statute, must be strictly construed, and may not be enlarged to embrace subjects not specifically enumerated therein. Clark Restaurant Co. v. Evatt, 146 Ohio St. 86 (1945).

The levy resolution, as indicated supra, is limited to, "providing motor vehicles, communications, and other equipment used directly in the operation of the Shawnee Township Police Department and the payment of salaries of permanent police personnel." Clearly, a contract pursuant to R.C. 505.50, which would involve paying the municipality with levy proceeds would not be permissible since it would not be used "directly in the operation" of the township force. Applying the rule of strict construction, the portion of the levy resolution which allows payment of salaries to "permanent police personnel" is also unavailing since the municipal officers would not be "permanent" personnel of the township force.

It therefore appears that the limitation of the purpose expressed in the levy resolution will prevent expenditure of the levy proceeds from being "appropriated" to the Fort Shawnee Police budget. In addition, no contract between the township and the village would be permissible if levy proceeds are used. However, if there are sufficient general fund monies at the disposal of the township trustees to allow a "contract" under R.C. 505.50 between the township and the village, such moneys could be used to indirectly increase the village's police budget. Under such a contract, the village force would be required to provide additional protection to the entire township, and would receive general fund monies of the township in return. The township would then cover the deficit with monies derived from the levy. While such a plan does not completely resolve the inequity, it does tend to relieve it.

Accordingly, it is my opinion, and you are so advised that:

Where township voters pass a levy pursuant to R.C. 5705.19(J) for the stated purpose of "providing and maintaining motor vehicles, communications, and other equipment used directly in the operation" of the township police department, and there is located entirely within that

township a chartered village which already has its own police force, the township trustees may not appropriate proceeds of that levy to the village for its police force, nor use such proceeds to fund its obligation under a contract for additional police protection for the township under R.C. 505.50 or R.C. 505.441.