

OPINION NO. 89-011**Syllabus:**

1. A board of township trustees may not contract for the services of a professional traffic engineer for the purpose of obtaining a recommendation about the desirability of a township road regulation under R.C. 4511.07(I), in lieu of having such a recommendation provided by the office of the county engineer.
2. A board of township trustees may not contract for the services of a professional traffic engineer for the purpose of conducting the engineering and traffic investigation required by R.C. 4511.21(K) in connection with a speed limit reduction on a township road, in lieu of having such an investigation conducted by the office of the county engineer.

To: David P. Joyce, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 24, 1989

You have requested my opinion regarding the authority of a board of township trustees to contract for professional traffic engineering services in connection with the adoption of truck traffic regulations under R.C. 4511.07(I) and speed limit reductions under R.C. 4511.21(K). Specifically, you have asked that I address the following questions:

1. Does a board of township trustees have authority to contract for professional traffic engineering services, other than with the county engineer, in order to obtain a traffic engineer's professional recommendation regarding the desirability of adopting a township regulation of the use of township streets or highways by prohibiting commercial truck traffic from using a township road pursuant to R.C. 4511.07(I)?

2. Does a board of township trustees have authority to contract with a professional traffic engineer, other than the county engineer, in order to obtain "an engineering and traffic investigation" to form a basis for a resolution reducing a speed limit on a township road pursuant to R.C. 4511.21(K)?

R.C. 4511.07 addresses the power of local authorities to adopt certain types of traffic regulations with respect to roads, streets, and highways that are within their respective jurisdictions, and to which the provisions of R.C. Chapters 4511 (traffic laws; operation of motor vehicles) and 4513 (traffic laws; equipment; loads) otherwise apply. See generally 1987 Op. Att'y Gen. No. 87-098. In particular, R.C. 4511.07(I) reads as follows:

Sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code do not prevent local authorities from carrying out the following activities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power:

....
Regulating the use of certain streets by vehicles, streetcars, or trackless trolleys.

R.C. 4511.01-.78 set forth various laws that apply to the operation of motor vehicles on all streets, roads, and highways throughout the state, and R.C. 4513.01-.37 further prescribe the devices and equipment that shall be included on motor vehicles that travel upon those streets, roads, and highways, and the load limits applicable thereto. R.C. 4511.01(AA) states that the term, "[l]ocal authorities," as used in R.C. 4511.07, *inter alia*, means "every county, municipal, and other local board or body having authority to adopt police regulations under the constitution and laws of [Ohio]." It has been determined that a board of township trustees is a local authority for purposes of R.C. 4511.07. *Slicker v. Trustees of Boardman Township*, 25 Ohio Op. 2d 75, 187 N.E.2d 392 (App. Mahoning County 1961), *appeal dismissed*, 173 Ohio St. 119, 180 N.E.2d 10 (1962). Thus, under R.C. 4511.07(I), a board of township trustees may adopt a regulation pertaining to the use of streets and roads that are within the board's jurisdiction. Any such regulation, however, must be reasonably related to the purpose it is intended to serve, nondiscriminatory, and of uniform operation. 1981 Op. Att'y Gen. No. 81-008 (syllabus).

You have stated that the board of township trustees of a township in Geauga County is considering adopting a regulation under R.C. 4511.07(I) that would prohibit the use of a certain township road by commercial truck traffic. You wish to know whether the board of township trustees may contract for the services of a professional traffic engineer other than the county engineer for the purpose of obtaining a recommendation about the desirability of such a regulation.

I note initially that it is a long-established proposition of law that a board of township trustees, being a creature of statute, see R.C. 505.01 ("[i]n each township there shall be a board of township trustees consisting of three members"), may exercise only those powers and responsibilities expressly conferred upon it by statute, or that may be implied by those that have been expressly granted. *Yorkavitz v. Board of Township Trustees*, 166 Ohio St. 349, 142 N.E.2d 655 (1957); *Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875). Thus, whether a board of township trustees may contract for the services of a professional traffic engineer for the purpose described in your first question will depend upon the extent to which the pertinent statutes grant such authority to the board either expressly or by implication.

Applying the foregoing proposition of law in this instance, I conclude that a board of township trustees is not authorized to contract for the services of a professional traffic engineer for the purpose of obtaining a recommendation about the desirability of a township road regulation under R.C. 4511.07(I), in lieu of having such a recommendation provided by the office of the county engineer. First, it is plainly evident that neither R.C. 4511.07 nor any other provision in R.C. Chapter 4511 expressly confers such authority upon a board of township trustees. I also discern no basis from which to conclude that such authority may be implied from the terms of those statutes. Further, while R.C. 9.36 permits a board of township

trustees, *inter alia*, to "contract for the services of fiscal and management consultants to aid it in the execution of its powers and duties," I am of the opinion that such language does not imply authority on the part of a board of township trustees to retain the services of a private professional engineer in connection with the adoption of a township road regulation under R.C. 4511.07(I). In this regard, I concur with the reasoning of my predecessor in 1978 Op. Att'y Gen. No. 78-021 that the language of R.C. 9.36 referring to a "fiscal and management" consultant cannot, as a general matter, be construed to include a traffic consultant. Similarly, I conclude that such language cannot, in this instance, be construed to include a professional engineer experienced in traffic design and maintenance.

In your second question you have asked whether a board of township trustees is authorized to contract with a professional traffic engineer, other than the county engineer, in order to obtain "an engineering and traffic investigation" that will form the basis for a resolution under R.C. 4511.21(K) reducing the speed limit on a township road. R.C. 4511.21 addresses the speed at which motor vehicles may be operated and driven upon streets and highways in Ohio. R.C. 4511.21(A) states that no person shall "operate a motor vehicle...at a speed greater or less than is reasonable or proper," or "drive any motor vehicle...in and upon any street or highway at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead." R.C. 4511.21(B) further enumerates the "prima-facie lawful" speed limits that apply to the various types of roads, streets, and highways situated throughout the State of Ohio. See R.C. 4511.21(B)(1)-(10). In addition, however, R.C. 4511.21(I)-(K) confer limited discretionary power upon local authorities to alter the speed limits otherwise set by R.C. 4511.21(B) for roads and highways within their jurisdictions. As pertains to your question, R.C. 4511.21(K) describes the circumstances in which a board of township trustees may alter or modify the speed limit otherwise prescribed for an "unimproved highway," as defined in R.C. 4511.21(K)(1), that is within the board's jurisdiction. R.C. 4511.21(K)(2)-(5). As relevant herein, R.C. 4511.21(K)(2) reads as follows:

Except as otherwise provided in divisions (K)(4) and (5) of this section, whenever a board of township trustees determines upon the basis of an engineering and traffic investigation that the speed permitted by division (B)(5) of this section¹ on any part of an unimproved highway under its jurisdiction and in the unincorporated territory of the township is greater than is reasonable or safe under the conditions found to exist at the location, the board may by resolution declare a reasonable and safe prima-facie speed limit of fifty-five but not less than twenty-five miles per hour.² An altered speed limit adopted by a board of township trustees under this division becomes effective when appropriate traffic control devices, as prescribed in section 4511.11 of the Revised Code, giving notice thereof are erected at the location, which shall be no sooner than sixty days after adoption of the resolution. (Footnotes and emphasis added.)

Thus, under R.C. 4511.21(K)(2), a board of township trustees may alter the speed limit on any part of an unimproved highway under its jurisdiction, provided the board determines, on the basis of an engineering and traffic investigation, that the speed

¹ R.C. 4511.21(B)(5) prescribes a speed limit of "[f]ifty-five miles per hour on highways outside of municipal corporations, other than freeways as provided in [R.C. 4511.21(B)(10)]." R.C. 4511.21(B)(10) prescribes a speed limit of "[s]ixty-five miles per hour at all times on freeways that are part of the interstate system and are located outside urbanized areas having a population of fifty thousand or more according to the most recent federal census for any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus."

² It appears that the General Assembly may have inadvertently omitted the words, "less than," from the language of R.C. 4511.21(K)(2) quoted above. Those words most likely should precede immediately the numerical designation "fifty-five." See, e.g., R.C. 4511.21(K)(4)(a); R.C. 4511.21(K)(5).

otherwise prescribed by R.C. 4511.21(B) for the highway in question is greater than is reasonable or safe under the conditions found to exist at the location.³

You wish to know whether a board of township trustees is authorized to contract with a professional traffic engineer, instead of the county engineer, for the purpose of conducting the engineering and traffic investigation required by R.C. 4511.21(K). As in the case of your first question, I conclude that a board of township trustees does not possess such authority. Again, neither R.C. 4511.21 nor any other provision in R.C. Chapter 4511 expressly grants such authority to a board of township trustees. Further, I am of the opinion that such authority may not reasonably be implied by the terms of R.C. 4511.21. In particular, I am not persuaded that R.C. 4511.21(K)'s reference to "an engineering and traffic investigation" may be interpreted as permitting a board of township trustees to contract with a professional traffic engineer in lieu of having such an investigation undertaken by the office of the county engineer. Rather, it is clear from the entire context in which such language appears that the General Assembly has simply intended to emphasize the necessity of having such an investigation undertaken before the board of township trustees actually decides upon, and implements, a speed limit reduction on any road within its jurisdiction.⁴

³ R.C. 4511.21(K)(5) confers similar authority upon a board of township trustees in the case of unimproved highways under the board's jurisdiction that are located in certain residential subdivisions.

⁴ I find the conclusions set forth in this opinion especially compelling in view of the fact that the activities about which you have inquired under R.C. 4511.07(I) and R.C. 4511.21(K) fall squarely within the county engineer's areas of special expertise. The duties, powers, and responsibilities conferred upon the county engineer are described and enumerated throughout several chapters of the Revised Code. R.C. Chapter 315 creates the office of county engineer, and provisions within that chapter, as well as R.C. Chapters 5543 (duties of county engineer), 5553 (county roads; establishment; alteration; vacation), 5555 (county road improvement), 5559 (platted territory road improvement), and 5571 and 5573 (township trustees; township road improvement) vest in the county engineer a wide range of duties and powers with regard to the construction, repair, improvement, and maintenance of roads and highways within the county and its townships, and functions and activities related thereto. Thus, for example, R.C. 315.14 states that the county engineer "shall make all surveys required by law and perform all necessary services to be performed by a registered surveyor or registered professional engineer in connection with the construction, repair, or opening of all county roads...constructed under the authority of the board [of county commissioners]," and other provisions throughout the foregoing enumerated chapters of R.C. Title 55 require the county engineer to compile and submit to the county commissioners or township trustees various reports, findings, recommendations, and surveys with regard to particular road and highway matters over which the county commissioners and township trustees have jurisdiction respectively. *See, e.g.,* R.C. 5543.02 (each year the county engineer shall report to the board of county commissioners the condition of the county roads, bridges, and culverts, and estimate the probable amount of funds required to maintain and repair or to construct any new roads, bridges, or culverts required within the county); R.C. 5543.17 (no person shall close a county or township highway, bridge, or culvert, in connection with an improvement thereof, unless such action has first been determined to be necessary by the county engineer; such determination shall be made in writing, and shall accompany the copy of the county engineer's surveys, plans, profiles, cross sections, estimates, and specifications filed with the board of county commissioners or the board of township trustees); R.C. 5543.20 (the county engineer shall furnish each board of township trustees with an annual report of the condition of bridges on the township road system); R.C. 5555.07 (the county engineer shall prepare and file with the board of county commissioners copies of the surveys, plans, profiles, cross sections, estimates of costs, and specifications for a county road improvement undertaken pursuant to R.C. 5555.02 and R.C. 5555.06); R.C.

It is, therefore, my opinion, and you are advised that:

1. A board of township trustees may not contract for the services of a professional traffic engineer for the purpose of obtaining a recommendation about the desirability of a township road regulation under R.C. 4511.07(I), in lieu of having such a recommendation provided by the office of the county engineer.
2. A board of township trustees may not contract for the services of a professional traffic engineer for the purpose of conducting the engineering and traffic investigation required by R.C. 4511.21(K) in connection with a speed limit reduction on a township road, in lieu of having such an investigation conducted by the office of the county engineer.

5571.05 (in the maintenance and repair of roads, the board of township trustees and any township highway superintendent appointed thereby shall be subject to the general supervision and direction of the county engineer; such board of township trustees shall follow the direction of the county engineer as to the methods to be followed in making those repairs); R.C. 5573.01 (as directed by the board of township trustees, the county engineer shall make such surveys, plans, profiles, cross sections, estimates, and specifications as are required for a township road improvement resolved upon by such board). Given his evident expertise in such matters, therefore, it is entirely appropriate that a board of township trustees should, in the first instance, call upon the county engineer for the purpose of obtaining an opinion about the desirability of a proposed township road regulation under R.C. 4511.07(I), and conducting the engineering and traffic investigation required by R.C. 4511.21(K) in connection with a township road speed limit reduction. Further, when the General Assembly has intended to grant a board of township trustees the option of contracting for the services of a private professional engineer in connection with a particular road or highway project, it has done so in language that communicates such intent unambiguously and unequivocally. *See, e.g.*, R.C. 5571.011 (when a board of township trustees receives a petition from a landowner requesting to turn, relocate, or change the direction of a road or any part thereof that passes through his land, the board "shall cause a competent engineer to make a survey of the ground over which the road is proposed to be changed, and to make a report in writing, together with a plat and survey of the proposed change and his opinion as to its advantage or disadvantage").