

OPINION NO. 84-024**Syllabus:**

1. A board of township trustees may, pursuant to R.C. 505.27, provide, maintain, and operate facilities for the collection and disposal of garbage and refuse on behalf of the township, and pay the costs of such services by establishing fees for the use and benefit of the services, to be charged only to the persons, firms, and corporations whose premises are served, pursuant to R.C. 505.29.

2. A board of township trustees may expend moneys from the township's general fund for the purpose of supplementing the fees charged to those persons availing themselves of garbage and refuse collection and disposal services provided, maintained, and operated by the board of behalf of the township.

To: W. Duncan Whitney, Delaware County Prosecuting Attorney, Delaware, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, May 11, 1984

I have before me your request for my opinion on the following questions:

1. Can a Board of Township Trustees provide, maintain, and operate facilities for the collection and disposal of garbage and refuse, said service being primarily paid for by a user fee, charged only to the persons availing themselves of the service?
2. Can a Board of Township Trustees expend general funds for the purposes of supplementing user fees in providing, maintaining and operating facilities for the disposal of garbage and refuse?

A response to your questions entails an examination of R.C. 505.27-.29. The provisions of R.C. 505.27 read:

Boards of township trustees, either severally or jointly, may provide, maintain and operate facilities for the collection and disposal of garbage and refuse or may enter into written contracts with the proper municipal or county authorities or with independent contractors for such services for the township, or for a waste disposal district as provided in section 505.28 of the Revised Code.

R.C. 505.28 provides for the formation of a waste disposal district by a board of township trustees. The territory in a waste disposal district "shall consist of an area in which at least two-thirds of the residents reside on lots no greater in area than one acre." Each district must be given a name. R.C. 505.28 further provides that "the entire cost of any necessary equipment and labor shall be apportioned against each district by the respective boards."

R.C. 505.29 reads:

The board of township trustees may, in any year, levy a sufficient tax within the ten-mill limitation, upon all taxable property in a waste disposal district to provide and maintain waste disposal service.

In the alternative the board of any township which has provided or contracted for the collection or disposal of garbage or refuse on behalf of the township or any district may, by resolution, establish equitable charges of rents to be paid such township, for the use and benefit of such service, by every person, firm, or corporation whose premises are so served. Such charges shall constitute a lien upon the property served, and, if not paid when due, shall be collected in the same manner as other township taxes.

You have noted in your request that the township in question is not establishing a waste disposal district. Rather, the trustees wish to directly provide a collection and transfer facility for township residents.

Turning to your first question, R.C. 505.29 explicitly permits a board of township trustees which has provided garbage or refuse collection and disposal services on behalf of the township to charge those persons, firms, and corporations availing themselves of the service, a fee for the use and benefit of the service. As emphasized in 1948 Op. Att'y Gen. No. 2855, p. 113, a service charge may only be assessed against the persons actually using the service. If a property owner refuses

to take advantage of the service or if unimproved or vacant property is not served, then no fee may be charged. Although 1948 Op. No. 2855 dealt with property in a waste disposal district, I find its conclusion to be applicable to fees charged by a board of township trustees on behalf of the township for the provision of garbage collection and disposal services.

I turn now to your second question, whether a board of township trustees may expend money from the general fund of the township to supplement user fees in providing garbage collection and disposal services.¹ You note in your letter that R.C. 505.29 "seems to limit the financing of such a facility to either a tax levy or through equitable charges of rent to the person whose premises are being served." You draw my attention to 1956 Op. Att'y Gen. No. 7010, p. 647, which concluded that money from a township's general fund could not be expended to provide waste disposal service in a waste disposal district.

I note that the first paragraph of R.C. 505.29 with regard to a tax levy applies only to a board of township trustees which is acting as the taxing authority of a waste disposal district, and thus has no application to your question. See R.C. 5705.01(A) and (H) (for purposes of the Uniform Tax Levy Law, a township waste disposal district is a "subdivision" and "taxing unit"); R.C. 5705.01(C) (the board of township trustees is the "taxing authority" of a township waste disposal district). See also 1956 Op. No. 7010 at 649-650 (a waste disposal district is a "separate, independent 'subdivision' and 'taxing unit' " from the township, and "[t]ownship trustees, in their capacity as the governing body of the township, should be distinguished from the same board of township trustees in their capacity as the governing body of a waste disposal district"); 1948 Op. No. 2855. The second paragraph of R.C. 505.29 with regard to charges, however, applies to a board of township trustees which, as the governing agency of the township, is providing waste disposal services directly on behalf of the township, as well as to township trustees who are acting on behalf of a waste disposal district.

The authority of a board of township trustees to charge a user fee for the provision of waste disposal services and to pay the costs of providing such services from the waste collection fund made up of such fees, does not limit the authority of the board to supplement the fees with money from the general fund. R.C. 5705.03 authorizes the board of township trustees, as the township's taxing authority, see R.C. 5705.01(A) and (C), to "levy taxes annually. . . on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements." See R.C. 5705.01(E) (defining "permanent improvement" as "any

¹ R.C. 505.31 provides that the service charges for waste disposal service

shall be kept in a separate fund designated as "the waste collection fund," and shall be appropriated and administered by the board. Such funds shall be used for payment of the costs of the management, maintenance, and operation of the garbage and refuse collection and disposal system in the township or several waste disposal districts.

See R.C. 5705.10 ("[a]ll revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose. . . . Money paid into any fund shall be used only for the purposes for which such fund is established"). See also R.C. 5705.09(F).

² Pursuant to R.C. 5705.06(A), a special levy is authorized within the ten-mill limitation, without the vote of the people "for any specific permanent improvement which the subdivision is authorized by law to acquire, construct, or improve, or any class of such improvements which could be included in a single bond issue." R.C. 5705.06 further provides that, "[e]xcept for the special levies authorized in this section any authority granted by the Revised Code to levy a special tax within the ten-mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses." See generally 1974 Op. Att'y Gen. No. 74-083.

property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more"; R.C. 5705.01(F) (defining "current operating expenses" and "current expenses" as "the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision"); R.C. 5705.04(B). The purpose of the general levy for current expenses is set forth in R.C. 5705.05, which reads in part:

The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements. . . . The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. . . .

Pursuant to R.C. 5705.10, money derived from the general levy for current expenses, as well as money derived from "sources other than the general property tax, unless its use for a particular purpose is prescribed by law" must be paid into the general fund.³ R.C. 5705.10 provides that money paid into the general fund may only be used for those purposes for which the fund was established. See R.C. 5705.09.

I note that pursuant to R.C. 5705.07 and R.C. 5705.19, a property tax may be levied outside the ten-mill limitation, see R.C. 5705.02, after resolution of the taxing authority and vote of the electorate, for current expenses of the subdivision, R.C. 5705.19(A), for the construction or acquisition of a specific permanent improvement, R.C. 5705.19(F), as well as for garbage collection and disposal services, R.C. 5705.19(V). See R.C. 5705.04; R.C. 5705.19I. Pursuant to R.C. 5705.10, money derived from a general levy for current expenses in excess of the ten-mill limitation must be paid into the general fund, and money from a special levy must be paid into a special fund for the purpose for which the tax was levied. See R.C. 5705.09. Again, R.C. 5705.10 provides that money paid into a fund may only be used for the purposes for which the fund was established.

From an examination of the foregoing provisions of R.C. Chapter 5705, I believe that in order to supplement the revenue derived from the fees charged users of the waste disposal services, a board of township trustees may expend money from the general fund to meet current expenses associated with the waste disposal system and to provide for permanent improvements for waste disposal. Cf. 1964 Op. Att'y Gen. No. 64-1255 (authority of township to expend general funds for police protection). There is no indication that the ability of a board of township trustees to charge a fee to users of the garbage collection and disposal system restricts the broad authority of the trustees to expend money from the general fund for the expenses of the township. See generally 1981 Op. Att'y Gen. No. 81-035.

In your letter of request, you note that 1956 Op. No. 7010 concluded that general township funds could not be expended for providing or maintaining waste disposal service. As you note, 1956 Op. No. 7010 dealt with service rendered in a

³ As discussed in 1981 Op. Att'y Gen. No. 81-035, not all money in the general fund is derived from the general property tax levy for current expenses. Moneys paid into the general fund which are not derived from the general levy or otherwise similarly restricted as to use may be used for any proper purpose of the subdivision. Because of the difficulties outlined in Op. No. 81-035 in segregating money in the general fund as to source, I am assuming for purposes of discussion that the general fund money of which you are inquiring has been derived from the general property tax.

waste disposal district. As pointed out in 1956 Op. No. 7010 and discussed above, a township and a township waste disposal district are independent subdivisions, and a board of township trustees which acts as the governing body or taxing authority of the township must be distinguished from the board acting in its capacity as the governing board or taxing authority of the waste disposal district. 1956 Op. No. 7010 notes that the financing and support of a waste disposal district is also separate from that of the township. In acting on behalf of a waste disposal district, the township trustees have no authority to expend the money which belongs to a separate and independent subdivision. Cf. R.C. 505.31 (the funds collected by one waste disposal district may not be used for any other district). The conclusion of 1956 Op. No. 7010 that the general funds of a township may not be expended by the board of trustees applies only to trustees acting on behalf of a waste disposal district. This conclusion has no application to the authority of a board of trustees to expend money from the township's general fund on behalf of the township to provide waste collection and disposal services.

In conclusion, it is my opinion, and you are advised, that:

1. A board of township trustees may, pursuant to R.C. 505.27, provide, maintain, and operate facilities for the collection and disposal of garbage and refuse on behalf of the township, and pay the costs of such services by establishing fees for the use and benefit of the services, to be charged only to the persons, firms, and corporations whose premises are served, pursuant to R.C. 505.29.
2. A board of township trustees may expend moneys from the township's general fund for the purpose of supplementing the fees charged to those persons availing themselves of garbage and refuse collection and disposal services provided, maintained, and operated by the board on behalf of the township.