

OPINION NO. 83-069**Syllabus:**

1. A board of township trustees may use funds derived from a tax levy adopted under R.C. 5705.19(I) to pay a private volunteer fire company to operate fire apparatus and appliances which are owned by the private volunteer fire company.
2. A board of township trustees may not use funds derived from a levy adopted under R.C. 5705.19(I) to simply donate a fire station, fire equipment or apparatus, or maintenance services to a private volunteer fire company, but the board may contract with a private volunteer fire company for the provision of fire equipment, real estate, or services to the township upon any terms and conditions which the board, in the reasonable exercise of its discretion, deems appropriate. Such terms and conditions may make funds derived from a levy adopted under R.C. 5705.19(I) available for the purchase of property or maintenance services for the fire company.

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 1, 1983

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

1. Is it permissible for a board of township trustees to use R.C. 5705.19(I) tax levy funds to pay a private volunteer fire fighting company to operate fire apparatus and appliances which are owned by the private volunteer fire company?
2. Is it permissible for a board of township trustees to use R.C. 5705.19(I) tax levy funds to pay for the purchase of a fire station, fire apparatus or equipment which would be owned by a private

volunteer fire company or to pay for the maintenance of any such non-township owned property?

R.C. 5705.19(I), the provision with which you are concerned, authorizes the taxing authority of a subdivision to place on the ballot a tax levy in excess of the ten-mill limitation for the following purpose:

For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of permanent, part-time, or volunteer firemen or fire fighting companies to operate the same or to purchase ambulance equipment, or to provide ambulance or emergency medical services operated by a fire department or fire fighting company;

. . . .

Your questions concern the uses for which funds derived pursuant to this provision may be expended.

It is, of course, clear that a board of township trustees has only those powers which are expressly granted by statute or which may be implied as necessary to the execution of such express powers. See, e.g., Hopple v. Trustees of Brown Township, 13 Ohio St. 311 (1862). It has, further, been firmly established in Ohio that "provisions of a tax statute cannot be extended beyond the clear import of the language used. Nor can their operation be enlarged to embrace subjects not specifically enumerated." Roddy v. Andrix, 95 Ohio L.Abs. 311, 314 (C.P. Madison County 1964) (citing Clark Restaurant Co. v. Evatt, 146 Ohio St. 86, 64 N.E.2d 113 (1945)). Thus, moneys derived from R.C. 5705.19(I) may be expended only for the uses set forth in that subdivision.

Your first question concerns the use of R.C. 5705.19(I) tax levy funds to pay a private volunteer fire company to operate fire apparatus and appliances which are owned by the private volunteer fire company. I note, first, that there is no question but that a township has authority to contract with a private volunteer fire company for the company to operate fire apparatus and appliances owned by the company. See R.C. 9.60.¹ Your question is whether funds derived from a tax levy under R.C. 5705.19(I) may be used for such purpose.

R.C. 5705.19(I) authorizes the expenditure of funds "[f]or the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor," and for "the payment of . . . volunteer firemen or fire fighting companies to operate the same." You suggest that R.C. 5705.19(I) must be narrowly construed to permit a township to contract with a fire company only if the company operates fire equipment which is owned by the township. Such an interpretation is based upon reading the words "providing and maintaining" as authorizing the township trustees to purchase fire apparatus, appliances, buildings, or sites, and upon reading the words "the same" to refer to the very apparatus, appliances, buildings, or sites which are so purchased by the township.

I note, however, that a less restrictive interpretation of that language was proposed by one of my predecessors in 1969 Op. Att'y Gen. No. 69-123 (overruled, as a result of statutory amendments, by 1978 Op. Att'y Gen. No. 78-014, which was

¹ R.C. 9.60 defines a "[p]rivate fire company" as "any nonprofit group or organization owning and operating firefighting equipment not controlled by any firefighting agency." I assume that this is the sort of company with which you are concerned.

overruled, as a result of further statutory amendments, by 1979 Op. Att'y Gen. No. 79-072). See notes 2 and 3, *infra*. That opinion considered R.C. 5705.19(I), as then in existence,² together with R.C. 505.39, which states:

The board of township trustees may, in any year, levy a sufficient tax upon all taxable property in the township or in a fire district, to provide protection against fire, to provide and maintain fire apparatus and appliances, buildings and sites for apparatus and appliances, sources of water supply, materials for such water supply, lines of fire-alarm telegraph, and to pay permanent, part-time, or volunteer fire-fighting companies to operate such equipment.

Op. No. 69-123 concluded, at 2-257, that funds derived under the two provisions could be expended for the same purposes, since "both sections are concerned with the same subject matter, [R.C. 5705.19(I)] merely providing a procedure for raising additional [revenues] if those acquired under [R.C. 505.39] are insufficient." You challenge this conclusion on the basis that the language of the two statutes is different, arguing that R.C. 505.39 permits the use of funds for the broad purpose of "[providing] protection against fire," whereas R.C. 5705.19(I) does not permit the expenditure of funds for such a broad purpose.

I agree that your argument is supported by the principle of expressio unius est exclusio alterius and that, because of the differences in language between R.C. 505.39 and R.C. 5705.19(I), there may be some expenditures of funds permitted by

² The references in R.C. 5705.19(I) to the purchase of ambulance equipment and provision of ambulance or emergency medical services were not added until 1978. See 1977-1978 Ohio Laws, Part I, 1293 (1978) (Am. S.B. 491, eff. July 13, 1978). That amendment had as its evident purpose the modification of the statute to make it consistent with prior practice. Section 3 (uncodified) of Am. S.B. 491 states:

In any subdivision in which the voters have approved the levy of tax under division (I) of section 5705.19 of the Revised Code prior to the effective date of this act and where the taxing authority has appropriated funds raised by a tax levied under that division to a fire department or fire fighting company to provide ambulance or emergency medical services or both, the taxing authority of the subdivision may continue to use the taxes levied under that division for that purpose after the effective date of this act for the duration of the period for which the levy was approved by the voters. No member of any taxing authority of any subdivision in which the voters approved the levy of a tax under division (I) of section 5705.19 of the Revised Code prior to the effective date of this act which appropriated funds raised by such tax to a fire department or fire company to provide ambulance or emergency medical services, or both, shall be liable in any civil damages or shall be subject to any criminal penalty for such appropriations.

See generally 1982 Op. Att'y Gen. No. 82-037 (discussing history and application of this provision); note 3, *infra*.

one which are not permitted by the other.³ I do not, however, find that it necessarily follows that R.C. 5705.19(I) does not permit the expenditure of funds derived pursuant to its provisions for payment of a private volunteer fire company which owns and operates its own fire apparatus and appliances.

R.C. 5705.19(I) permits a township to use funds derived pursuant to its provisions for the "purpose of providing and maintaining fire apparatus [and] appliances." It does not require that the township purchase the apparatus and appliances, but permits the township to use any authorized means—including leases or other contracts—to provide such equipment. Compare R.C. 5705.19(I) with R.C. 505.37(A) (authorizing board of township trustees to "purchase or otherwise provide" equipment and water supply for firefighting purposes). See generally C B Transportation, Inc. v. Butler County Board of Mental Retardation, 60 Ohio Misc. 71, 13 Ohio Op. 3d 382 (C.P. Butler County 1979) (authority of a board of mental retardation to provide such transportation as is necessary includes authority to contract for such transportation); 1980 Op. Att'y Gen. No. 80-089; 1980 Op. Att'y Gen. No. 80-027; 1928 Op. Att'y Gen. No. 2955, vol. IV, p. 2736 at 2740 (finding implied authority for a township to obtain fire services by contract with a neighboring municipality and stating: "The delegation of a power to accomplish a certain end, necessarily carries with it the power to do all things necessary to consummate that purpose"). Thus, R.C. 5705.19(I) permits a township to expend funds to provide fire apparatus and appliances by means of a contract, as well as by direct purchase or other means.

The words "the same," appearing in R.C. 5705.19(I), clearly refer to the terms used earlier in R.C. 5705.19(I)—specifically "fire apparatus [and] appliances." I find, however, that R.C. 5705.19(I) may reasonably be read as permitting the expenditure of funds to pay fire fighting companies to operate fire apparatus and appliances whether such equipment is provided by the township by purchase, contract, or other means, the relevant language of R.C. 5705.19(I) thus being construed to read: "For . . . the payment of . . . fire fighting companies to operate [fire apparatus, appliances. . .]." See R.C. 1.42 (words in a statute shall be construed according to common usage); Webster's New World Dictionary 1258 (2d college ed. 1978) (defining "same" as "4. before-mentioned, just spoken of").

R.C. 1.49 codifies certain rules of statutory construction, as follows:

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory provisions, including laws upon the same or similar subjects;

³ In 1969 Op. Att'y Gen. No. 69-123, one of my predecessors concluded that funds derived pursuant to R.C. 5705.19(I) could be used for all purposes for which funds derived under R.C. 505.39 could be used, even though the language of those provisions was not identical. In particular, he found that the furnishing of ambulance services came within the language of both provisions, though neither expressly mentioned it at the time. The General Assembly subsequently enacted R.C. 5705.19(U), which authorizes the adoption of a permissive tax for "providing ambulance service, emergency medical service, or both," see 1974 Ohio Laws, Part. II, 1151, 1159 (Am. Sub. H.B. 1173, eff. Aug. 30, 1974), and later amended R.C. 5705.19(I) to expressly permit the expenditure of funds derived pursuant to that subdivision to provide ambulance or emergency medical services, see 1977-1978 Ohio Laws, Part I, 1293 (Am. S.B. 491, eff. July 13, 1978). See 1978 Op. Att'y Gen. No. 78-014 (overruling Op. No. 69-123); 1979 Op. Att'y Gen. No. 79-072 (overruling Op. No. 78-014); note 2, supra. See generally R.C. 9.60, 505.44 (authorizing township to contract for fire, ambulance, and emergency medical services).

- (E) The consequences of a particular construction;
- (F) The administrative construction of the statute.

I find that both the construction outlined above and the construction which you propose are possible readings of R.C. 5705.19(I). It is, however, my conclusion that the broader reading of that provision is justified in light of both the history and prior application of the provision and the consequences which follow from such construction. It is my understanding that a number of townships have construed R.C. 5705.19(I) as permitting the expenditure of funds derived pursuant thereto to pay a private volunteer fire fighting company to operate its own equipment, and that the townships have acted on such construction. It is, further, my understanding that the office of the Auditor of State has concurred in such construction. I find, moreover, that such construction was justified by the analysis appearing in Op. No. 69-123, and I note that, despite subsequent amendments to R.C. 5705.19(I), see, e.g., notes 2 and 3, supra, the General Assembly did not change the language in question. I am, therefore, reluctant to adopt a more restrictive reading of the statute at this time, particularly since I find the construction outlined above to be a reasonable reading of the language of the statute. See generally 1982 Op. Att'y Gen. No. 82-037 (rejecting very literal interpretation of section 3 (uncodified) of Am. S.B. 491, discussed in note 2, supra, because it would produce an unreasonable result); 1953 Op. Att'y Gen. No. 2416, p. 114 (adopting liberal interpretation of the term "fire fighting equipment" as used in G.C. 3298-54, predecessor to R.C. 505.37).

In response to your first question, then, I conclude that a board of township trustees may use funds derived from a tax levy adopted under R.C. 5705.19(I) to pay a private volunteer fire company to operate fire apparatus and appliances which are owned by the private volunteer fire company.

Your second question is whether a board of township trustees may use R.C. 5705.19(I) tax levy funds to pay for the purchase of a fire station, fire apparatus, or equipment to be owned by a private volunteer fire company or to pay for the maintenance of any such property not owned by the township. You have indicated that you and your predecessor in office have taken the position that "it would not be permissible to use R.C. 5705.19(I) tax levy funds to pay for the purchase of a fire station, fire apparatus or equipment which would be titled in the name of a private volunteer fire company or to pay for the maintenance of any such non-township owned property." It is my understanding that this position is based on the lack of authority for a township to use tax levy funds for the purpose of providing and maintaining property of a private individual or corporation.

I agree that a specific grant of authority would be necessary for a township to simply donate tax funds, or property or maintenance services acquired with such funds, to a private individual or corporation. State ex rel. Smith v. Maharry, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1), ("[a]ll public property and public moneys. . . constitute a public trust fund. . . [which] can be disbursed only by clear authority of law"); cf. 1931 Op. Att'y Gen. No. 3598, vol. II, p. 1196, 1197 (discussing G.C. 3298-54, which provided that "when a volunteer fire company has been organized for service in the township, of such character as to give assurance of permanency and efficiency, [the township trustees] may purchase and provide, for the use of such company, such fire apparatus and appliances as may seem to the trustees advisable"). See generally 1982 Op. Att'y Gen. No. 82-024 (board of county commissioners may not purchase firefighting equipment for the use of other political subdivisions, except as authorized under R.C. 505.37). Further, any such arrangement would have to be reconciled with the provisions of Ohio Const. art. VIII, §6, which prohibit a township from raising money for, or lending its credit to, a private enterprise. See 1977 Op. Att'y Gen. No. 77-049. But see 1981 Op. Att'y Gen. No. 81-093 at 2-357 ("the Ohio Supreme Court held that, while art. VIII, §6 forbids the giving or loaning of aid or credit to or in aid of a private enterprise, it does not prohibit such a gift or loan to a public organization created for a public purpose or to a private non-profit organization for a public purpose" (citations omitted)).

As discussed above, however, there is clear authority for a township to contract with a "[p]rivate fire company," see note 1, *supra*, to obtain fire protection, upon authorization of the appropriate governing boards. R.C. 9.60(C). No statutory limitations are placed upon the terms which such contracts may include. Subject to the standard of abuse of discretion, a board of township trustees may, therefore, agree to such terms and conditions as it deems appropriate. See generally 1980 Op. Att'y Gen. No. 80-028 (concerning discretion of township trustees in entering into a lease); 1928 Op. No. 2955. I am aware of no principle of law which would prohibit a board of township trustees from including terms and conditions which may result in making township funds available for the purchase of property or maintenance services for the fire company, provided, of course, that the payments⁴ made by the township are reasonable compensation for the services to be rendered.

The type of expenditure with which you are concerned may, thus, be permissible if it is made pursuant to a contract for services rendered by a fire company. There remains the question whether moneys derived from a levy under R.C. 5705.19(I) may be used to fund such contracts.

As discussed above, the authority of a township to use funds derived under R.C. 5705.19(I) to provide and maintain "fire apparatus, appliances, buildings, or sites therefor," may reasonably be read as including the authority to provide and maintain such equipment or facilities by means of a lease or contract, rather than by direct purchase on behalf of the township. Thus, while a township has no statutory authority to simply donate money or property to a private fire company, it may, pursuant to contract, agree to make payment to the company, for the provision of such equipment or real estate to the township. See generally R.C. 9.60. Similarly, R.C. 5705.19(I) permits a township to expend funds derived under its provisions to pay fire companies to operate firefighting equipment. While this language would not authorize a direct grant of property or maintenance services to the company, it would permit the township trustees, in the reasonable exercise of their discretion, to agree to terms for the operation of equipment which would permit the expenditure of funds derived pursuant to R.C. 5705.19(I) for the purchase of property to be titled in the name of the company, or for the payment of maintenance of property owned by the company.

In response to your second question, I conclude, therefore, that, while a board of township trustees may not use funds derived from a levy adopted under R.C. 5705.19(I) to simply donate a fire station, fire equipment or apparatus, or maintenance services, to a private volunteer fire company, the board may contract with the company for the provision of fire equipment, real estate, or services to the township upon any terms and conditions which the board, in the reasonable exercise of its discretion, deems appropriate. Such terms and conditions may make funds derived from a levy adopted under R.C. 5705.19(I) available for the purchase of property or maintenance services for the fire company.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. A board of township trustees may use funds derived from a tax levy adopted under R.C. 5705.19(I) to pay a private volunteer fire company to operate fire apparatus and appliances which are owned by the private volunteer fire company.

⁴ In entering into any such contract, the township should, of course, remain mindful of Ohio Const. art. VIII, §6. A contract which provides benefits to a private company which are disproportionate to those received by the township, or which inextricably mingles assets of the two bodies, see 1979 Op. Att'y Gen. No. 79-101, may run afoul of this provision. See 1981 Op. Att'y Gen. No. 81-093; 1977 Op. Att'y Gen. No. 77-049.

2. A board of township trustees may not use funds derived from a levy adopted under R.C. 5705.19(I) to simply donate a fire station, fire equipment or apparatus, or maintenance services to a private volunteer fire company, but the board may contract with a private volunteer fire company for the provision of fire equipment, real estate, or services to the township upon any terms and conditions which the board, in the reasonable exercise of its discretion, deems appropriate. Such terms and conditions may make funds derived from a levy adopted under R.C. 5705.19(I) available for the purchase of property or maintenance services for the fire company.