

**OPINION NO. 81-103**

**Syllabus:**

A township may not purchase liability insurance for its volunteer firefighters to cover that liability incurred within the scope of their duties as certified EMT-A's, ADV EMT-A's, or paramedics, since negligence in the performance of those duties falls within the

immunity granted to such EMT-A's, ADV EMT-A's, or paramedics by R.C. 4731.90(A). A township may, however, provide liability insurance pursuant to R.C. 505.23 to cover nonimmune activities of volunteer firefighters "while in the line of duty," or provide liability insurance to cover other activities of volunteer firefighters pursuant to its authority to compensate such firefighters.

**To: John J. Plough, Portage County Pros. Atty., Ravenna, Ohio**  
**By: William J. Brown, Attorney General, December 22, 1981**

I have before me your request for my opinion upon the following question:

May a Township lawfully obtain a rider to [its] liability insurance for volunteer firemen to cover and insure the volunteer firemen acting as Emergency Medical Technicians and pay the premium for such insurance out of Township funds?

Several sections of the Revised Code provide methods by which a township may acquire emergency medical service. R.C. 505.44 authorizes a township to contract with one or more townships, municipal corporations, counties, nonprofit corporations, or private ambulance owners within or without the state to obtain ambulance or emergency medical service. R.C. 9.60 authorizes any county, political subdivision, or state agency or instrumentality to contract with a firefighting agency of this state, a private fire company or a governmental entity of an adjoining state to obtain "fire protection," which includes emergency medical services. You have indicated to my staff, however, that the particular township in question, Brimfield, does not contract for services but operates its own emergency medical service through its volunteer fire department, under the authority of R.C. 505.37.

R.C. 505.37 provides, in pertinent part, that:

The board of township trustees may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damage and accidents, and may, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide such fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes as seems advisable to the board. . . . The board may employ one or more persons to maintain and operate fire-fighting equipment, or it may enter into an agreement with a volunteer fire company for the use and operation of such equipment.

1969 Op. Att'y Gen. No. 69-038 (syllabus) concluded that "[a] fire department, volunteer or hired, maintained by a township may operate an ambulance purchased under authority of Section 505.37, Revised Code, to protect property and lives against damages and accidents, and such use is not limited to emergency situations in conjunction with fire protection." See also 1969 Op. Att'y Gen. No. 69-123. Pursuant to the Emergency Medical Technicians and Services Act, 1975-1976 Ohio Laws 3042 (Am. Sub. H.B. 832, eff. Aug. 31, 1976), which enacted R.C. 4731.82 to 4731.90, 4731.92 and 4731.93, the rescue squads of volunteer fire departments whose personnel were performing the functions of emergency medical technicians were required to be certified as such by August 31, 1979. 1979 Op. Att'y Gen. No. 79-050. The EMT provisions of R.C. Chapter 4731 are, therefore, applicable to the Brimfield Township volunteer firefighters performing emergency medical services.

"Emergency medical service" is defined by R.C. 4731.82(E) as: "a public or private organization using EMT-As, ADV EMT-As, or paramedics, or a combination of EMT-As, ADV EMT-As, and paramedics, to provide emergency medical care to

victims of serious illness or injury prior to the victims receiving professional medical care or hospitalization."

R.C. 4731.82 to 4731.99 contain those provisions regulating persons administering emergency medical services. The purpose of the enactment of these sections was "to give political subdivisions express authority to operate emergency medical services and to establish statewide standards for the education of emergency personnel in order to provide good emergency medical care for Ohioans." 1976 Op. Att'y Gen. No. 76-060 at 2-201. R.C. 4731.84 sets forth the statutory requirements for the accreditation of programs of instruction in emergency medical services. Those persons seeking to administer emergency medical care must be certified as EMT's, ADV EMT's, or paramedics under R.C. 4731.86 upon completion of the requisite training, including the programs provided for in R.C. 4731.84, or under R.C. 4731.87 or 4731.871 upon satisfying alternate qualifications for certification. Any person who represents himself as an EMT-A, ADV EMT-A or paramedic, and who is not certified as such under R.C. 4731.86, 4731.87, or 4731.871, subjects himself to the misdemeanor penalty provisions of R.C. 4731.99. See R.C. 4731.92.

Your question asks whether a township may provide liability insurance for its volunteer firefighters acting as emergency medical technicians. In conversations with my staff, you have indicated that your interest is with coverage for negligence with respect to injury, death, or loss to persons or property resulting from the administration of emergency medical care or treatment, rather than injury, death or loss resulting from the negligent operation of an ambulance by an EMT-A, ADV EMT-A or paramedic. Therefore, I will limit my discussion to whether a township may purchase liability insurance for its volunteer firemen acting as emergency medical technicians for injury, death, or loss resulting from the administration of emergency medical care or treatment.

Townships are creatures of statute, and, accordingly, possess only such powers as are specifically conferred by statute, or necessarily implied therefrom. Yorkavitz v. Board of Township Trustees, 166 Ohio St. 349, 142 N.E.2d 655 (1957); Hopple v. Trustees of Brown Township, 13 Ohio St. 311 (1862). As is the case with county commissioners, the authority of township trustees is to be narrowly construed with respect to spending powers. State ex rel. Clarke v. Cook, 103 Ohio St. 465, 134 N.E. 655 (1921); State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916).

It is well established that the authority to provide liability insurance for public officers or employees must be expressly granted by statute, except where there is some statutory liability to be insured against, the rationale being that where there is no liability to be insured against, there can be no implied authority to use public funds to purchase such insurance. 1981 Op. Att'y Gen. No. 81-060; 1979 Op. Att'y Gen. No. 79-025; 1974 Op. Att'y Gen. No. 74-098; 1950 Op. Att'y Gen. No. 2498, p. 730. Therefore, if there is a statutory imposition of liability upon a township or upon volunteer firefighters acting as EMT's for injury, death, or loss resulting from the negligent administration of emergency care or treatment, said township is implicitly authorized to purchase insurance to protect against that liability.

Thus, township trustees may be said to be authorized to purchase liability insurance for their volunteer firefighters acting as EMT's where (1) such purchase is authorized by statute, or (2) such purchase is not authorized by statute, yet there is a statutory liability to be insured against which impliedly authorizes the trustees to acquire liability insurance.

You have noted in your letter that emergency medical service is provided by the various volunteer fire departments throughout Portage County, and that R.C. 505.23 provides authority for the townships to purchase liability insurance for their volunteer firefighters while acting in the line of duty.

R.C. 505.23 states:

Any political subdivision which maintains and operates a volunteer fire department may provide for insurance against liability, and accident and death benefits, for the members of such fire department by the purchase of standard liability and casualty insurance, insuring such members while acting in the line of duty.

R.C. 505.22(A) indicates that "political subdivision" includes a township for purposes of R.C. 505.23.

Thus, R.C. 505.23 clearly authorizes a township to provide liability insurance which will cover volunteer firefighters "while acting in the line of duty." The question, then, is whether firefighters who are acting as emergency medical technicians are "acting in the line of duty" so as to be eligible for insurance coverage under R.C. 505.23. I note that R.C. 9.60(A)(4) defines "[f]ire protection" to include "the provision of ambulance, emergency medical, and rescue service by the fire department" of a township or by a private fire company. Hence, the duties of at least some firefighters may clearly include the provision of emergency medical services. See also 1979 Op. Att'y Gen. No. 79-072 at 2-236 (ambulance or emergency medical services may be provided by a fire department or fire company "under any circumstances and need not be restricted to fire-related matters"); 1969 Op. Att'y Gen. No. 69-038 at 2-66 ("[a] fire department, volunteer or hired, maintained by a township may operate an ambulance. . .to protect property and lives against damages and accidents, and such use is not limited to emergency situations in conjunction with fire protection"). I do not, however, find it necessary to make a determination as to whether all services provided by a volunteer firefighter who serves as an emergency medical technician are within the scope of his duties as firefighter, since it is clear that, where such firefighter acts as an EMT-A, ADV EMT-A, or paramedic, the firefighter comes under the immunity provisions of R.C. 4731.90, and there is no need for the township to provide any sort of liability insurance.<sup>1</sup>

R.C. 4731.90(A) provides to EMT-A's, ADV EMT-A's, and paramedics a full immunity from civil liability for the negligent administration of emergency medical care or treatment. R.C. 4731.90(A) reads:

No EMT-A, ADV EMT-A, or paramedic is liable in civil damages for injury, death, or loss to persons or property resulting from his administration of emergency medical care or treatment, unless the care or treatment is administered in a manner constituting willful or wanton misconduct. No licensed medical doctor, doctor of osteopathic medicine and surgery, or registered nurse designated by a physician, who is advising or assisting in the emergency care or treatment by means of any communication device or telemetering system, is liable in civil damages for injury, death, or loss to persons or property resulting from his advisory communication or assistance, unless the advisory communication or assistance is provided in a manner constituting willful or wanton misconduct.

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<sup>1</sup>In fact, R.C. 4731.92 prohibits any person from representing himself as an EMT-A, ADV EMT-A or paramedic unless certified under R.C. 4731.86, 4731.87 or 4731.871. R.C. 4731.92(D) also prohibits any public or private agency from advertising or disseminating information "leading the public to believe that the agency is an emergency medical service, unless that agency actually provides emergency medical care" as described under R.C. 4731.82(E).

A township, as a political subdivision, is likewise protected by the provisions of R.C. 4731.90(B):

No political subdivision, joint ambulance district, or other public agency, nor any officer or employee of a public agency or of a private organization operating under contract or in joint agreement with one or more political subdivisions, that provides emergency medical services, or that enters into a joint agreement or a contract with the state, any political subdivision, or joint ambulance district for the provision of emergency medical services, is liable in civil damages for injury, death, or loss to persons or property arising out of any actions taken by an EMT-A, ADV EMT-A, or paramedic working under the officer's or employee's jurisdiction, or for injury, death, or loss, to persons or property arising out of any actions of licensed medical personnel advising or assisting the EMT-A, ADV EMT-A or paramedic, unless the care, treatment, or assistance is provided in a manner constituting willful or wanton misconduct. (Emphasis added.)

R.C. 4731.82(A), (B), and (C) defines EMT-A, ADV EMT-A and paramedic for purposes of R.C. 4731.90 and lists those activities within the scope of their duties:

(A) "Emergency medical technician-ambulance["] or "EMT-A" means a trained or qualified person certified under division (A) of section 4731.86 or 4731.87 of the Revised Code, who is responsible for the operation of an ambulance and care of patients, and who in an emergency determines the nature and extent of illness or injury and establishes priority for required emergency care; renders emergency care, such as opening and maintaining an airway, giving positive pressure ventilation, cardiac resuscitation, controlling of hemorrhage, treatment of shock, immobilization of fractures, bandaging, assisting in childbirth, management of mentally disturbed patients, and initial care of poison and burn patients; and where patients must in an emergency be extricated from entrapment, assesses the extent of injury and gives all possible emergency care and protection to the entrapped patient; provides light rescue service if an ambulance has not been accompanied by a specialized unit; and after extrication, provides additional care in sorting of the injured in accordance with standard emergency procedures.

(B) "Advanced emergency medical technician-ambulance" or "ADV EMT-A" means an EMT-A who is further certified under division (C) of section 4731.86 or section 4731.871 of the Revised Code. In addition to performing the functions described in division (A) of this section, an ADV EMT-A may, in conjunction with a cooperating licensed medical doctor, doctor of osteopathic medicine and surgery, or a physician advisory board and in accordance with section 4731.891 of the Revised Code, establish and maintain an intravenous lifeline using an infusion of saline, Ringer's lactate, or five percent dextrose and distilled water, or an infusion that has been approved by the cooperating licensed medical doctor, doctor of osteopathic medicine and surgery, or physician advisory board.

(C) "Emergency medical technician-paramedic" or "paramedic" means a person specially trained beyond the emergency medical technician-ambulance and advanced emergency medical technician-ambulance levels, who is certified under division (B) of section 4731.86 or 4731.87 of the Revised Code, who, in addition to performing those functions described in division (A) of this section, renders rescue and emergency medical services and, in conjunction with a cooperating licensed medical doctor, doctor of osteopathic medicine and surgery, or a physician advisory board, may perform the following life support or intensive care techniques:

- (1) Cardiac monitoring;
- (2) Defibrillation;

- (3) Airway or gastric intubation;
- (4) Relief of pneumothorax;
- (5) Administration of appropriate drugs and intravenous fluids.

The immunity from civil liability granted by R.C. 4731.90(A) to EMT-A's, ADV EMT-A's and paramedics is applicable to such persons when they are rendering or administering "emergency medical care or treatment." Although "emergency medical care or treatment" is not defined by R.C. 4731.82 through 4731.99, such phrase must be read in light of the definitions of EMT-A, ADV EMT-A and paramedic outlined in R.C. 4731.82. The definitions contained in that section outline the scope of each individual's duty with respect to the administration of emergency medical care. R.C. 4731.90(A) must also be read in light of the basic definition of "[e]mergency medical service," as per R.C. 4731.82(E), quoted above.

Further, R.C. 4731.82(F) defines "[e]mergency medical services training" as: "the study and training that is conducted by an institution accredited under section 4731.83 of the Revised Code relating to the provision of emergency medical care to victims of serious illness or injury prior to the victims receiving professional medical care or hospitalization." (Emphasis added.)

Essentially, whether particular actions constitute "emergency medical care or treatment" is a factual determination. Such actions must be analyzed in light of the definitions of EMT-A, ADV EMT-A, and paramedic under R.C. 4731.82(A), (B), and (C) and in light of the definition of "[e]mergency medical service" as per R.C. 4731.82(E). Provided that an EMT's actions fall within this framework, he would be protected by the immunity of R.C. 4731.90, and hence there would be no need for liability insurance. Op. No. 81-060; Op. No. 79-025; Op. No. 74-098; 1950 Op. No. 2498.

If an EMT-A's, ADV EMT-A's or paramedic's actions fall outside the scope of the immunity granted to him by R.C. 4731.90, such actions may nonetheless be insurable if they can be characterized as those of a volunteer firefighter "acting in the line of duty," for purposes of R.C. 505.23.

If the activities in question fall outside of the scope of the duties of an EMT-A, ADV EMT-A or paramedic to which immunity from civil liability is granted by R.C. 4731.90, and the activities cannot be considered to be those of a volunteer firefighter "acting in the line of duty" and hence insurable under R.C. 505.23, those actions may nonetheless be insurable under an application of the analysis used by the Ohio Supreme Court in the case of Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980) (per curiam). In 1981 Op. Att'y Gen. No. 81-061, I opined that the power to employ and compensate includes the power to fix any fringe benefit. Relying upon Ebert, I stated in 1981 Op. Att'y Gen. No. 81-061 that:

Pursuant to R.C. 505.38, a board of township trustees may "provide for the employment of such fire fighters as it considers best, and shall fix their compensation." A board of township trustees also has the authority to "appoint such superintendents, architects, clerks, laborers, and other employees as are necessary and fix their compensation." R.C. 511.10. Thus, a board of township trustees possesses the power to compensate which, under Ebert, carries with it the power to award fringe benefits.

Since there is no statute of which I am aware which prohibits the purchase of liability insurance as a fringe benefit for EMT's, ADV EMT-A's, paramedics or firefighters, the township may provide such a benefit.

In specific response to your question, it is my opinion, and you are advised, that a township may not purchase liability insurance for its volunteer firefighters to cover that liability incurred within the scope of their duties as certified EMT-A's, ADV EMT-A's or paramedics, since negligence in the performance of those

duties falls within the immunity granted to such EMT-A's, ADV EMT-A's, or paramedics by R.C. 4731.90(A). A township may, however, provide liability insurance pursuant to R.C. 505.23 to cover nonimmune activities of volunteer firefighters "while in the line of duty," or provide liability insurance to cover other activities of volunteer firefighters pursuant to its authority to compensate such firefighters.