

OPINION NO. 92-081**Syllabus:**

A board of township trustees may not allow a non-profit water company to tap into a water supply line constructed by the township under R.C. 505.37(A) in order for the water company to provide water to township residents.

To: Donald W. White, Clermont County Prosecuting Attorney, Batavia, Ohio
By: Lee Fisher, Attorney General, December 30, 1992

You have requested my opinion concerning a township's authority to construct water supply lines and hydrants to extend water service for fire protection purposes in certain areas of the township. You question whether the township may construct a water supply line for fire protection purposes under R.C. 505.37(A), and then permit a non-profit water company, the sole supplier of water to the township, to tap into the system to provide water to residential customers.

Additional information provided by your office indicates that the township is not included in a water and sewer district. Further, the water supply lines currently located within the township were provided by the water company and do not serve the entire township.

Township's Authority to Provide Water under R.C. 505.37(A)

Since a board of township trustees is a creature of statute, it may proceed with the proposed construction of the water lines only if it is so authorized by statute. See *New London Township v. Miner*, 26 Ohio St. 452 (1875). You specifically question the township's authority under R.C. 505.37(A), which states:

The board of township trustees may establish all necessary rules to guard against the occurrence of fires and to 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 any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes that seems advisable to the board. The board shall provide for the care and maintenance of fire equipment, and, for such purposes, may purchase, lease, or construct and maintain necessary buildings, and it may establish and maintain lines of fire-alarm communications within the limits of the township. 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 fire-fighting equipment. The board may compensate the members of a volunteer fire company on any basis and in any amount that it considers equitable. (Emphasis added.)

R.C. 505.37(A), thus, expressly empowers a board of township trustees to purchase or otherwise provide a water supply for fire-fighting purposes. 1956 Op. Att'y Gen. No. 6541, p. 344. In 1962 Op. Att'y Gen. No. 3066, p. 437, the Attorney General found that because R.C. 505.37(A) authorizes a township to establish regulations to "protect the property and lives of the citizens against damage and accidents," the township's authority under that statute extends to the provision of water to the township, not only for fire-fighting purposes, but for other emergency purposes as well. See also 1986 Op. Att'y Gen. No. 86-058. A township's authority under R.C. 505.37(A) to provide water does not, however, extend beyond fire-fighting or other emergency purposes.

The township trustees' proposal contemplates the water company's use of the township water lines to provide certain township residents with water for domestic purposes. A similar proposal was rejected in 1956 Op. No. 6541, which stated at 346-47:

If owners of property were allowed to connect with township water supply lines laid for fire-fighting purposes then the township would be in the water supply business. The board of trustees of townships being created by statute have no authority other than that given by statute and there is no enabling statute permitting township trustees to supply water to the residents of the township.

Your proposal differs from the situation addressed in 1956 Op. No. 6541 only in that, under your proposal, township residents would not directly tap into the water lines constructed by the township; rather, a third party (the water company) would tap into the water lines to provide water service to those township residents who are not yet its customers. The result, however, is the same. The water supply lines laid for fire-fighting purposes would be used to supply water to township residents for domestic purposes. Under R.C. 505.37(A), the township trustees have no authority to construct a water supply line to be used for any purposes other than fire-fighting or other emergencies.

Alternative Public Water Supplies Available to Township Residents

There may, however, be other means for a township to assist those of its residents who are currently without a source of public water supply. For example, R.C. 505.263 states:

The board of township trustees may enter into a contract with the board of county commissioners under which the trustees agree to pay all or any part of the cost of constructing, maintaining, repairing,

or operating any water supply improvement established within the limits of the township pursuant to [R.C. Chapter 6103].¹ The contract shall be upon mutually agreed terms. For the purpose of meeting contractual obligations incurred pursuant to this section, the board of township trustees may levy taxes, subject to [R.C. Chapter 5705], and issue bonds and other evidences of indebtedness, subject to [R.C. Chapter 133]. (Footnote added.)

Thus, the board of township trustees may be able to provide a water supply to its residents through a contract with the county in accordance with the terms of R.C. 505.263. *See also* R.C. 505.705 ("[a] board of township trustees may appropriate township general revenue fund moneys to any political subdivision with authority to provide water or sewerage services, or both, to the township, for the purpose of providing moneys to the political subdivision for the construction, maintenance, repair, and operation of water or sewerage systems, or both, that service the township").

Another option that may be available to the township is the creation of a regional water and sewer district under R.C. 6119.01, which states in part: "[a]ny area situated in any unincorporated part of one or more contiguous counties...may be organized as a regional water and sewer district...for either or both of the following purposes: (A) [t]o supply water to users within and without the district...."² In addition, R.C. 6119.05 allows a township whose territory is not wholly included within a regional water and sewer district to apply to have the township or a portion of the township included in the district.

Conclusion

It is, therefore, my opinion, and you are hereby advised that, a board of township trustees may not allow a non-profit water company to tap into a water supply line constructed by the township under R.C. 505.37(A) in order for the water company to provide water to township residents.

¹ The statutory scheme of R.C. Chapter 6103 permits the *county* to exercise general authority over public water supplies in the unincorporated portions of the county. *See generally* 1991 Op. Att'y Gen. No. 91-070.

² Pursuant to R.C. 6119.04(A), a regional water and sewer district created under that chapter is a distinct political subdivision and is managed by its board of trustees, as provided for in R.C. 6119.07. *See generally* Op. No. 91-070 and 1990 Op. Att'y Gen. No. 90-073 (creation of regional water and sewer districts).