

OPINION NO. 90-048**Syllabus:**

1. When a portion of the territory of a township is included within a municipal corporation and no steps are taken to modify township boundaries, electors who reside in that portion of the township are residents of both the township and the municipal corporation. Unless a statute provides a specific exclusion, such residents are entitled to vote on both municipal and township officers, issues, and tax levies, and are subject to taxation by both the municipal corporation and the township.
2. When individuals residing in a particular area are residents of both a township and a municipal corporation and the township and the municipal corporation both submit tax levies for fire protection to the electors, electors who reside in that area are entitled to vote on both levies and, if both levies are adopted by the electors, residents of such area are subject to taxation under both levies.
3. When a portion of the territory of a township is included within a municipal corporation, steps may be taken under R.C. 503.07 or R.C. 503.09 to modify the township boundaries so that such

portion of territory is no longer part of the township and electors residing in such portion of territory are no longer electors of the township.

4. A fire district or joint fire district may be created under R.C. 505.37 or 505.371. Only residents of the district are entitled to vote on, and benefit from, a district tax for fire protection. Such a tax is levied throughout the district.

To: Keith A. Shearer, Wayne County Prosecuting Attorney, Wooster, Ohio
By Anthony J. Celebrezze, Jr., Attorney General, July 13, 1990

I have before me your request for an opinion on several questions relating to the voting rights and tax obligations of individuals who reside within a village and within a township that is not coextensive with the village. Your letter states, in part:

In November of 1960, the Trustees of Norton Township in Summit County, acting pursuant to former Sections 707.18 and 707.19 of the Ohio Revised Code, created the Village of Norton. The new village limits incorporated all of Norton Township, a portion of Franklin Township (both in Summit County), and a small tract of land in Chippewa Township of Wayne County.

At the time there were no residents on the land in Chippewa Township, but presently there are several new homes, and questions have been raised regarding the owners' voting privileges and taxes.

Based upon information that I have been able to obtain from officials in what is now the City of Norton and Summit County, it does not appear that Norton has taken any action pursuant to Section 503.07 of the Ohio Revised Code to petition the county commissioners for a change of township lines or to erect a new township.

At the May primary, the Board of Elections of Wayne County informs me that the City of Norton has a levy on the ballot for fire protection in the City. Also on the May ballot for residents of Chippewa Township is a levy for fire protection being promoted by the Chippewa Township Trustees.

In light of the foregoing facts, are the residents of the City of Norton who are also residents of Chippewa Township in Wayne County entitled to vote on the Chippewa Township Fire Levy as well as the Norton Fire Levy?

If both levies pass, are these same residents subject to taxation by both subdivisions for the same services?

Are these residents of Chippewa Township electors for any township office and issues?

Your letter thus indicates that the Village of Norton was formed of land that had been part of three different townships. When the village was incorporated in 1960, it included all of Norton Township (in Summit County), a portion of Franklin Township (in Summit County), and a small tract of land in Chippewa Township (in Wayne County). The village is now a city. *See* Ohio Const. art. XVIII, §1; R.C. 703.01-.06. You are concerned with the rights and duties of individuals who reside within Chippewa Township (in Wayne County) and are also residents of the City of Norton.

R.C. 703.22 provides that, "[w]hen the limits of a municipal corporation become identical with those of a township, all township offices shall be abolished, and the duties thereof shall be performed by the corresponding officers of the municipal corporation." R.C. 503.07 establishes procedures for making the township limits identical with those of a municipal corporation. *See also* R.C. 503.08. R.C. 503.09 provides that, when a township contains all or part of a municipal corporation, electors owning land in the portion of the township outside the municipal corporation may petition to have the unincorporated territory erected into a new township, excluding the territory within the municipal corporation, and states: "the territory lying within the limits of the municipal corporation in the original township shall be considered as not being located in any township." *See generally*

1985 Op. Att'y Gen. No. 85-033; 1984 Op. Att'y Gen. No. 84-051. Your letter indicates that the City of Norton has not taken any action pursuant to R.C. 503.07 to petition the county commissioners for a change of township lines or to erect a new township. I assume for purposes of this opinion that no action has been taken to modify the township boundaries as they existed when the village was incorporated.

It is firmly established under Ohio law that, if part of the territory of a township is incorporated into a municipal corporation, that territory also remains part of the township unless steps are taken to change the township boundaries. See R.C. 503.07; R.C. 503.09; R.C. 703.22; *State ex rel. Halsey v. Ward*, 17 Ohio St. 543 (1867); 1988 Op. Att'y Gen. No. 88-036; Op. No. 85-033; Op. No. 84-051; 1977 Op. Att'y Gen. No. 77-031; 1967 Op. Att'y Gen. No. 67-013; 1959 Op. Att'y Gen. No. 888, p. 584. Where, as in the case that you have presented, the boundaries remain unchanged, the persons who reside in the territory that is part of the township and also part of the municipality are residents of both political subdivisions. Unless a specific statute provides to the contrary, they are entitled to vote on levies that are submitted to the electors of either of such entities and are subject to taxes that are imposed by either of such entities. See, e.g., Op. No. 88-036 at 2-168 (persons who are residents of both a municipality and a township "have obligations to both the municipal corporation and the township"); Op. No. 85-033 at 2-118 ("[t]axpayers who reside in both the city and the township face extra tax burdens, since they must support the expenses of both the city and the township"); 1959 Op. No. 888. See generally, e.g., R.C. 5575.10; 1969 Op. Att'y Gen. No. 69-055 (overruled in part by Op. No. 88-036). Op. No. 77-031 states, at 2-114 through 2-115:

[I]t would appear that property of the township, even though it is also located within the limits of a municipality, still retains a complete and independent existence as part of the township. The inhabitants of the territory located within the municipality still retain their full voting rights with regard to the election of the various township officers and the property of such territory still remains subject to township tax levies, unless there is some exception in the statute providing for the specific tax. Accordingly, the owners of such property would clearly have the right to vote on levies and issues which might result in any additional taxation to their property. See: 1944 Op. Att'y Gen. No. 7038, p. 406 and 1939 Op. Att'y Gen. No. 198, p. 249 (dealing with the issue of taxation of the township area located within a municipality).

See also Op. No. 69-055 at 2-118 (overruled in part on other grounds by Op. No. 88-036) ("[a]ny tax authorized and levied by a subdivision or taxing unit must be levied uniformly upon all taxable property within such subdivision or taxing unit unless otherwise provided by law"); 1939 Op. Att'y Gen. No. 198, vol. I, p. 249 at 252 ("it is the general rule that a township can levy a tax on all of the taxable property located in the township, including the property in a village or city located within the township, unless an exception is found in the statute providing for the tax"); 1924 Op. Att'y Gen. No. 1213, p. 82 (syllabus, paragraph 1) ("[a] levy of a tax 'on all the taxable property of a township' includes the property of a village within such township unless the property of the village is expressly excepted by statute from such levy"). It follows that residents of the City of Norton who are also residents of Chippewa Township are electors of Chippewa Township for purposes of voting on officers, issues, and taxes, and for purposes of paying taxes, unless they are excluded by the provisions of a particular statute. See, e.g., R.C. 5575.10; cf. Op. No. 85-033 (finding that, when a city is located within a township and has its own health department, taxable valuations situated within the city should be excluded from the taxable valuations of the township used to apportion the appropriation for a general health district pursuant to R.C. 3709.28).

Your questions concern particularly the matter of levies for fire protection. A municipal corporation may submit to the voters a tax levy for fire protection in the municipal corporation. See Ohio Const. art. XII, §2; Ohio Const. art. XIII, §6; Ohio Const. art. XVIII, §§3, 13; R.C. Chapter 737; R.C. 5705.01; R.C. 5705.19-191. Similarly, a township is authorized to submit to its voters a tax levy to pay for fire protection throughout the township. See R.C. 505.39 ("[t]he board of township trustees may...levy a...tax upon all taxable property in the township..." for fire

protection purposes); R.C. 5705.01; R.C. 5705.19-.191. If particular individuals are residents of both the city and the township, they are entitled to vote on both levies and are subject to both levies, if both levies are adopted by the voters. *See, e.g.*, Op. No. 88-036; Op. No. 84-051; Op. No. 77-031; 1924 Op. No. 1213.

Your letter reflects a concern that inequities may exist in a situation in which residents are subject to both municipal and township levies for the provision of fire services. *See, e.g.*, Op. No. 84-051. It should be noted that, if adopted, the levies in question would not be for precisely the same services. Rather, the tax levied by the township would be for such fire protection services as the township might provide, and the tax levied by the city would be for such fire protection services as the city might provide. *See* Op. No. 88-036 at 2-169 ("[w]hen a municipal corporation exists within a township, the legislative authority of the municipal corporation and the board of township trustees are separate taxing authorities, and the proceeds of a tax levied by one of those taxing authorities accrues to the subdivision for which the taxing authority acts"). It is not clear that the provision of both township and municipal fire protection services would provide a benefit to the residents. *Cf.* Op. No. 88-036 at 2-176 to 2-177 and 1959 Op. No. 888 at 587 (discussing benefits that electors of a municipal corporation within a township may derive from a tax levy for township roads). *See generally* 1989 Op. Att'y Gen. No. 89-028; 1988 Op. Att'y Gen. No. 88-042; 1987 Op. Att'y Gen. No. 87-040 (syllabus) ("[a] township that chooses to provide fire protection without the creation of one or more fire districts cannot exclude portions of the township from the area to which fire protection is provided"); 1924 Op. No. 1213. There are, however, procedures that could be used to avoid any perceived inequities or duplication of services. *See generally, e.g.*, Op. No. 84-051; Op. No. 77-031; Op. No. 67-013.

As noted above, steps might be taken to conform township boundaries to municipal boundaries, so that the township government ceases to exist, *see* R.C. 503.07; R.C. 703.22; 1959 Op. No. 888, or to exclude the territory in question from a township, *see* R.C. 503.09. In either of such circumstances, residents of the territory in question would be subject to municipal but not township government and could be taxed by the municipal corporation but not by a township. *See* Op. No. 88-036; Op. No. 77-031; Op. No. 67-013 (concluding that a single township may cross county lines).

On the matter of fire protection, a township is authorized to create a fire district of any portions of the township and to provide services for that district with moneys derived from a tax levied only on property within that district. *See* R.C. 505.37; R.C. 505.39; R.C. 505.40 (bond issue); R.C. 5705.01; R.C. 5705.19-.191; 1988 Op. Att'y Gen. No. 88-074; Op. No. 88-042; Op. No. 87-040. If a fire district were created in Chippewa Township that excluded territory located in the City of Norton, a tax for the fire district could not be submitted to any voters residing in the City of Norton or levied against any property in the City of Norton; proceeds of such tax could be used for fire protection only within the fire district and not within any part of the City of Norton. Alternatively, a fire district or joint fire district including both the City of Norton and all or part of Chippewa Township might be created under R.C. 505.37 or R.C. 505.371. *See* Op. No. 88-074. Only residents of such a district would be entitled to vote on, and benefit from, a district tax for fire protection. The tax would be levied throughout the district. *See* R.C. 505.37; R.C. 505.371; R.C. 505.39. *See generally* 1989 Op. Att'y Gen. No. 89-021.

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

1. When a portion of the territory of a township is included within a municipal corporation and no steps are taken to modify township boundaries, electors who reside in that portion of the township are residents of both the township and the municipal corporation. Unless a statute provides a specific exclusion, such residents are entitled to vote on both municipal and township officers, issues, and tax levies, and are subject to taxation by both the municipal corporation and the township.
2. When individuals residing in a particular area are residents of both a township and a municipal corporation and the township and

the municipal corporation both submit tax levies for fire protection to the electors, electors who reside in that area are entitled to vote on both levies and, if both levies are adopted by the electors, residents of such area are subject to taxation under both levies.

3. When a portion of the territory of a township is included within a municipal corporation, steps may be taken under R.C. 503.07 or R.C. 503.09 to modify the township boundaries so that such portion of territory is no longer part of the township and electors residing in such portion of territory are no longer electors of the township.
4. A fire district or joint fire district may be created under R.C. 505.37 or 505.371. Only residents of the district are entitled to vote on, and benefit from, a district tax for fire protection. Such a tax is levied throughout the district.