

OPINION NO. 84-050**Syllabus:**

1. A board of township trustees may use a bank credit card to purchase supplies, materials, machinery, tools, parts, or equipment pursuant to R.C. 505.37, R.C. 5549.04, or R.C. 5549.21 so long as the board duly authorizes such expenditure pursuant to R.C. 507.11, the township clerk certifies the existence of sufficient unencumbered funds to pay for such expenditure where such certificate is required under R.C. 5705.41(D), and the expenditure otherwise conforms with law.
2. A board of township trustees may not use a bank credit card to defer all or part of the purchase price or create an installment payment plan for the purchase of supplies, materials, machinery, tools, parts, or equipment purchased pursuant to R.C. 505.37, R.C. 5549.04, or R.C. 5549.21.

To: John W. Allen, Richland County Prosecuting Attorney, Mansfield, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 17, 1984

I have before me your request for my opinion concerning the purchase of materials, supplies, machinery, tools, parts and equipment for use by a township road department or a township fire department. Specifically, you have asked whether a board of township trustees may purchase such items by use of a bank credit card. During conversations with your office, it was indicated that the board of township trustees wishes to use a credit card because a potential supplier of certain materials, tools, parts, and equipment accepts payment only by means of cash or credit card. Your office has further indicated that the board of township trustees does not intend to use the credit card to provide a plan of deferred or

installment payment for such purchases; rather, the trustees intend to pay any credit card bill in full as it may become due.

Initially, it must be noted that a board of township trustees is a creature of statute and may act only pursuant to statutory authorization. See State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Further, it has been held that the authority of a statutorily created board to act in financial transactions must be clearly and distinctly granted. See State ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916).

The authority to purchase the items to which your letter refers is expressly conferred upon a board of township trustees by various statutes. R.C. 505.37(A) authorizes a board of township trustees to "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," when the specifications for such purchases are approved by the prosecuting attorney. Similar authority is provided under R.C. 505.37(C) which empowers a board of township trustees to "create a fire district of any portion of the township that it considers necessary," and to "purchase or otherwise provide any fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes," or to contract for the fire protection of such district in accordance with R.C. 9.60. R.C. 505.37(D) provides that "[t]he board of township trustees of any township. . .may purchase the necessary fire-fighting equipment. . .for the township." R.C. 5549.04 provides that a "board of township trustees may contract for and purchase such materials as is [sic] necessary for the purpose of constructing, improving, maintaining, or repairing any highways, bridges, or culverts within the county." R.C. 5549.21 also authorizes purchase of items for roadway use by providing, in pertinent part:

The board of township trustees may purchase or lease such machinery and tools as are necessary for use in constructing, reconstructing, maintaining, and repairing roads and culverts within the township, and shall provide suitable places for housing and storing machinery and tools owned by the township. It may purchase such material and employ such labor as is necessary for carrying into effect this section, or it may authorize the purchase or employment of such materials and labor by one of its number, or by the township highway superintendent, at a price to be fixed by the board. All payments on account of machinery, tools, material, and labor shall be made from the township road fund. Except as otherwise provided in sections 505.08, 505.101 [505.10.1], and 5513.01¹ of the Revised Code, all purchases of materials, machinery, and tools shall, where the amount involved exceeds five thousand dollars, be made from the lowest responsible bidder after advertisement, as provided in section 5575.01 of the Revised Code. (Footnote added.)

¹ R.C. 505.101 authorizes a board of township trustees, *inter alia*, to purchase materials, equipment or supplies from any department, agency, or political subdivision of the state without competitive bidding; it is not contemplated that such purchases would involve use of a bank credit card. R.C. 5549.21 refers to this exception to competitive bidding requirements, as well as to exceptions set forth under R.C. 505.08 and R.C. 5513.01. R.C. 505.08 permits a limited exemption from competitive bidding requirements where a board of township trustees unanimously declares a real and present emergency; this provision applies to purchases necessary for the administration of township services or execution of duties assigned by law to a township officer. R.C. 5513.01(E) permits a township to participate in a contract into which the state Director of Transportation has entered for the purchase of machinery, materials, supplies or other articles under the terms and conditions which the director prescribes; purchases made under authority of this statutory provision are exempted from competitive bidding requirements.

Thus, a board of township trustees is empowered to purchase supplies, materials, machinery, equipment, and tools for use by the township road department or the township fire department.²

The statutes which authorize purchase of materials, supplies, equipment, machinery, tools, and parts for use by township road and fire departments do not specify the manner in which such purchases may be made. Consequently, the manner selected to accomplish such purchases is within the discretion of the board of township trustees, provided that the manner chosen conforms to any restrictions which may be imposed by law. *Jewett v. Valley Railway Co.*, 34 Ohio St. 601, 608 (1878) ("[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner"). While I cannot, for purposes of this opinion, anticipate all restrictions which the law may impose, certain restrictions are apparent.

In order to make such purchases, certain statutorily mandated procedures must be followed. R.C. 5705.41 provides restrictions upon the appropriation and expenditure of money in part under the following terms:

No subdivision or taxing unit shall:

(A) Make any appropriation of money except as provided in Chapter 5705. of the Revised Code; provided that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the same for the purpose for which such bonds were issued, but no expenditure shall be made from any bond fund until first authorized by the taxing authority;

(B) Make any expenditures of money unless it has been appropriated as provided in such chapter;

(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn;

(D) Except as otherwise provided in section 5705.413 [5705.41.3] of the Revised Code, make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. This certificate need be signed only by the the subdivision's fiscal officer. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. If no certificate is furnished as required, upon receipt by the taxing authority of the subdivision or taxing unit of a certificate of the fiscal officer stating that there was at the time of the making of such contract or order and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract and in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, such taxing authority may authorize the issuance of a warrant in payment of amounts due upon such contract, but such resolution or ordinance shall be passed within

² R.C. 5549.03 empowers "the county engineer, when so authorized by . . .the board of township trustees, [to] purchase from any public institution within the state any road material, machinery, tools or equipment, quarried, mined, prepared, or manufactured by such institution." It is not, however, contemplated that such purchase from public institutions would be made through use of a bank credit card.

thirty days from the receipt of such certificate; provided that if the amount involved is less than one hundred dollars, the fiscal officer may authorize it to be paid without such affirmation of the taxing authority of the subdivision or taxing unit, if such expenditure is otherwise valid.

Upon certification by the auditor or other chief fiscal officer that a certain sum of money, not in excess of five thousand dollars, has been lawfully appropriated, authorized, or directed for a certain purpose and is in the treasury or in the process of collection to the credit of a specific line-item appropriation account in a certain fund free from previous and then outstanding obligations or certifications, then for such purpose and from such line-item appropriation account in such fund, over a period not exceeding three months and not extending beyond the end of the fiscal year, expenditures may be made, orders for payment issued, and contracts or obligations calling for or requiring the payment of money made and assumed, provided that the aggregate sum of money included in and called for by such expenditures, orders, contracts, and obligations shall not exceed the sum so certified. Such a certification need be signed only by the fiscal officer of the subdivision or the taxing district and may but need not be limited to a specific vendor. An itemized statement of obligations incurred and expenditures made under such certificate shall be rendered to the auditor or other chief fiscal officer before another such certificate may be issued, and not more than one such certificate shall be outstanding at a time.

In any case in which a contract is entered into upon a per unit basis, the head of the department, board, or commission for whose benefit the contract is made shall make an estimate of the total amount to become due upon such contract, which estimate shall be certified in writing to the fiscal officer of the subdivision. Such a contract may be entered into if the appropriation covers such estimate, or so much thereof as may be due during the current year. In such a case the certificate of the fiscal officer based upon the estimate shall be a sufficient compliance with the law requiring a certificate.

Any certificate of the fiscal officer attached to a contract shall be binding upon the political subdivision as to the fact set forth therein. Upon request of any person, firm, or corporation receiving an order or entering into a contract with any political subdivision, the certificate of the fiscal officer shall be attached to such order or contract. "Contract" as used in this section excludes current payrolls of regular employees and officers.

Taxes and other revenue in process of collection, or the proceeds to be derived from authorized bonds, notes, or certificates of indebtedness sold and in process of delivery shall for the purpose of this section be deemed in the treasury or in process of collection and in the appropriate fund. (Emphasis added.)

Thus, pursuant to the foregoing statute, a township³ may not expend money except by a warrant drawn against the proper fund and showing the proper appropriation of revenues to finance such expenditure. R.C. 5705.41(B), (C). Furthermore, a township may not make any contract or give any order involving the expenditure of money unless the township clerk⁴ certifies that sufficient unencumbered money exists in the treasury or is in the process of collection to the credit of an appropriate fund. R.C. 5705.41(D). Upon certification of the availability of a specific sum of money, not exceeding five thousand dollars, which has been appropriated, authorized, or directed to the credit of a specific line-item

³ A township is among those entities defined as a "subdivision" as that term is used in R.C. Chapter 5705. R.C. 5705.01(A).

⁴ Pursuant to R.C. 5705.01(D), the township clerk is the "fiscal officer" of a township for purposes of R.C. Chapter 5705.

appropriation account in a certain fund free of previous encumbrances, then expenditures, payment orders, and contracts or obligations calling for payment of money from such line-item appropriation account in such fund may be made, over a period not exceeding three months. However, the aggregate sum of money called for by such expenditures, orders, contracts, or obligations may not exceed the sum which the township clerk has certified.

The exception to which R.C. 5705.41(D) refers authorizes a township with total receipts of three hundred fifty thousand dollars or less to "make any purchase, order, or contract and give any order involving the expenditure of money without obtaining the certificate otherwise required under . . . [R.C. 5705.41(D)], provided that the total amount involved in the contract or expenditure is not more than seven hundred fifty dollars." R.C. 5705.413(A). A person authorized to make a purchase not requiring a certificate of available funds must file appropriate documents regarding such purchase with the township clerk, who shall use such documents to calculate a new unencumbered balance in the applicable fund line-item account for the township. R.C. 5705.413(B).

In addition, township funds may be expended only when authorized by the township trustees in accordance with R.C. 507.11 which provides as follows:

(A) The board of township trustees may, by resolution, authorize township officers and employees to incur obligations of seven hundred fifty dollars or less on behalf of the township. The obligations incurred on behalf of the township by a township officer or employee acting pursuant to any such resolution shall be subsequently approved by the adoption of a formal resolution of the board of township trustees.

(B) No money belonging to the township shall be paid out, except upon an order signed personally by at least two of the township trustees, and countersigned by the township clerk.

The foregoing discussion regarding appropriation and encumbrance of funds pursuant to R.C. 5705.41 and R.C. 5705.413, and regarding the requirement that the township trustees formally approve all obligations incurred on behalf of the township by a township officer or employee, is applicable whether the expense is to be incurred through use of a credit card or through any other payment order, contract or obligation calling for payment of money, or means of expenditure of township funds. The pertinent statutory provisions make no distinctions among these various means of incurring such expense. Thus, a board of township trustees may use a bank credit card to purchase supplies, materials, machinery, tools, parts or equipment pursuant to R.C. 505.37, R.C. 5549.04, and R.C. 5549.21 so long as the board duly authorizes such expenditure, the township clerk certifies the availability of unencumbered funds sufficient to pay for such expenditure where such certificate is required, and the expenditure otherwise conforms with law.

As previously stated, it is not the intention of the board of township trustees to undertake an installment purchase or to create a deferred payment plan for the purchase of materials, supplies, tools, parts, or equipment for the township road department or the township fire department. The intention of the board is significant because the use of credit cards to defer payment of all or part of the purchase price of such products would be violative of both the Ohio Constitution and the intent of the legislature as expressed in the statutes which authorize the purchase of such products. In this regard, I note that R.C. 505.37(D) provides a deferred payment plan for the purchase of fire-fighting equipment, in pertinent part, as follows:

The board of township trustees of any township. . . may purchase the necessary fire-fighting equipment. . . for the township, [or] fire district. . . and pay for it over a period of four years. . . . The board of township trustees. . . may issue the notes of the township. . . signed by the board. . . and attested by the signature of the township. . . clerk, covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed

the rate provided in section 9.95 of the Revised Code, and shall not be subject to sections 133.01 to 133.65 of the Revised Code. The legislation authorizing the issuance of the notes shall provide for levying and collecting annually by taxation, amounts sufficient to pay the interest on and principal of the notes. Not less than one-fourth of the purchase price. . . shall be paid in cash at the time of purchase as provided in the contract and the remainder of the purchase price. . . shall be paid in annual installments of not less than one-fourth of the total purchase price secured by notes of equal amounts. Notes in amounts greater than one-fourth of the total purchase price may be issued and, in either event, the notes shall contain an option for prepayment. The notes shall be offered for sale on the open market or given to the vendor or contractor if no sale is made.

R.C. 5549.02 sets forth a deferred payment plan for the purchase of machinery, tools, trucks and other equipment for use in construction, maintenance, and repair of roads by providing, in pertinent part:

[B] oards of township trustees, in the purchase of machinery, tools, trucks, and other equipment for use in constructing, maintaining, and repairing roads, may make such purchases upon the following terms: not less than one-fourth of the purchase price shall be paid in cash, and the remainder of the purchase price shall be paid in annual installments of not less than three-twentieths of the total purchase price secured by notes of equal amounts. Provided, notes in amounts greater than three-twentieths of the total purchase price may be issued and, in either event, the notes shall contain an option for prepayment. Such boards may issue the notes of the. . . township signed by the. . . board of township trustees, attested by the signature of the. . . township clerk, and covering such deferred payments and payable at the times above provided. Such notes may bear interest at not to exceed the rate provided in section 9.95 of the Revised Code, and are not subject to sections 131.23, 133.01 to 133.65, and 135.51 to 135.54 of the Revised Code. In the legislation under which such notes are authorized, the. . . board of township trustees shall make provision for levying and collecting annually, by taxation, an amount sufficient to pay the interest and provide a sinking fund for the final redemption of such notes at maturity.

Sections 5705.41 and 5705.44 of the Revised Code apply only to such portion of the purchase price of such machinery, tools, trucks, or equipment as is to be paid in cash.

"It is one of the well recognized canons of statutory construction that when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner." Akron Transportation Co. v. Glander, 155 Ohio St. 471, 480, 99 N.E.2d 493, 497 (1951), citing Utah Rapid Transit Co. v. Ogden City, 89 Utah 546, 58 P.2d 1 (1936). Consequently, a township may not establish a deferred payment plan for the purchase of fire-fighting equipment or the purchase of machinery, tools, trucks and other equipment for use in road construction, maintenance, or repair, except as provided pursuant to R.C. 505.37(D) and R.C. 5549.02.

Moreover, I note that there is no statutory authorization for deferring payment of the purchase price of materials and supplies for township fire protection or for use by a township in road construction, maintenance, and repair other than those set forth under R.C. 507.37(D) and R.C. 5549.02. Accordingly, the board of township trustees, as a creature of statute, may not establish a deferred payment plan for the purchase of such other supplies and materials. Rather, the township must pay the purchase price of materials, supplies, tools, equipment, and machinery for use by the township road or fire departments as a current obligation unless bonds or notes are issued, and taxes levied for their payment pursuant to R.C. 505.37(D) and R.C. 5549.02. This procedure is in accordance with Ohio Const. art. XII, §11 which provides:

No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

If a credit card were to be used to enable a township to defer payment of part of the purchase price for any material, supplies, tools, machinery, or equipment, the township would thereby create a debt which it would be obligated to pay in the future. Where such debt would not be funded by the issuance of notes or bonds, the Supreme Court of Ohio has stated as follows:

Had bonds been issued and the taxing power of the . . . [political subdivision] pledged for their payment, a debt within Section 11 of Article XII [of the Ohio Constitution] would have been created. A pledge to make future appropriations of tax revenues must be treated no differently. . . . "There is no distinction between a debt payable presently and one payable in installments in the future, except as to time of payment." . . . "The majority rule is that such a purchase gives rise to a debt in the amount of the payments to be made at future dates." (Citations omitted.)

State, ex rel. Kitchen v. Christman, 31 Ohio St. 2d 64, 71-72, 285 N.E.2d 362, 367 (1972). Ohio Const. art. XII, §11 prohibits creation of a debt by a township unless the legislation under which the debt is incurred provides for the levy and collection of taxes sufficient to pay the debt and the interest thereon. There is no statutory authorization for a board of township trustees to levy a tax to pay for a deferred debt incurred as a result of the purchase of fire-fighting equipment or the purchase of materials, supplies, tools, machinery, and equipment for use in township road construction, maintenance, and repair, except as provided under R.C. 505.37(D) and R.C. 5549.02. Consequently, a board of township trustees may not incur such a debt. See State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (a statutorily created board may act only pursuant to statutory authorization). To do otherwise would contravene the prohibition set forth under Ohio Const. art. XII, §11.

Based upon the foregoing, it is my opinion, and you are advised, that:

1. A board of township trustees may use a bank credit card to purchase supplies, materials, machinery, tools, parts, or equipment pursuant to R.C. 505.37, R.C. 5549.04, or R.C. 5549.21 so long as the board duly authorizes such expenditure pursuant to R.C. 507.11, the township clerk certifies the existence of sufficient unencumbered funds to pay for such expenditure where such certificate is required under R.C. 5705.41(D), and the expenditure otherwise conforms with law.
2. A board of township trustees may not use a bank credit card to defer all or part of the purchase price or create an installment payment plan for the purchase of supplies, materials, machinery, tools, parts, or equipment purchased pursuant to R.C. 505.37, R.C. 5549.04, or R.C. 5549.21.