Note from the Attorney General's Office:

1984 Op. Att'y Gen. No. 84-048 was modified by
2003 Op. Att'y Gen. No. 2003-017.

OPINION NO. 84-048

Syllabus:

1. Pursuant to R.C. 505.84, township trustees may establish reasonable charges for the use of ambulance or emergency medical services provided under a contract entered into between a board of township trustees and a private ambulance owner under R.C. 505.44. An arrangement to charge nonresidents but provide free services for residents will satisfy the rational basis test for equal protection if it bears a reasonable relationship to the achievement of a legitimate governmental purpose.

2. A board of township trustees may, under R.C. 505.44, enter into a contract with a private ambulance owner under which the private ambulance owner is to provide ambulance or emergency medical services and to collect for such services charges established by the township trustees pursuant to R.C. 505.84, provided that such charges are ultimately paid over to the township trustees and deposited by them in the ambulance and emergency medical services fund.

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 31, 1984

You have requested my opinion on the following questions:

1. May a contract entered into between a board of township trustees and a private ambulance owner pursuant to R.C. 505.44 for the furnishing of ambulance and emergency medical services in the township, provide that township residents receive these services free of charge and nontownship residents be charged a fee?

2. If the answer to question number one is in the affirmative, may the fee be charged and collected by the private ambulance owner or must it be charged and collected by the board of township trustees pursuant to R.C. 505.84? Please specify the proper procedure to be followed.

R.C. 505.44, which authorizes township trustees to contract for ambulance or emergency medical services, provides as follows:

> In order to obtain ambulance service, to obtain additional ambulance service in times of emergency, or to obtain emergency medical service, any township may enter into a contract with one or more townships, municipal corporations, counties, nonprofit corporations, or private ambulance owners, regardless of whether such townships, municipal corporations, nonprofit corporations, or private ambulance owners are located within or without the state, upon such terms as are agreed to by them, to furnish or receive ambulance services or emergency medical services or the interchange of ambulance services or emergency medical services within the several territories of the contracting subdivisions, if such contract is first authorized by respective boards of township trustees or other legislative bodies.
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> The contract may provide for a fixed annual charge to be paid at the times agreed upon and stipulated in the contract, or for compensation based upon a stipulated price for each run, call, or emergency, or the elapsed time of service required in such run, call, or emergency, or any combination thereof.

R.C. 505.84 provides as follows:

> A board of township trustees may establish reasonable charges for the use of ambulance or emergency medical services. Charges collected under this section shall be kept in a separate fund designated as "the ambulance and emergency medical services fund," and shall be appropriated and administered by the board. Such funds shall be used for the payment of the costs of the management, maintenance, and operation of ambulance and emergency medical services in the township. If the ambulance and emergency medical services are discontinued in the township, any balance remaining in the fund shall be paid into the general fund of the township.

The question whether township trustees may establish reasonable charges for the use of ambulance or emergency medical services obtained by the township trustees pursuant to a contract entered into under R.C. 505.44 has been addressed in the opinion of a prior Attorney General. "The language of R.C. 505.84 does not distinguish between the ambulance or emergency medical services provided by a township itself and those services provided by another entity through a contract with a township. I find, therefore, that R.C. 505.84 extends to both situations. . . ." 1981 Op. Att'y Gen. No. 81-023 at 2-86. It is clear, therefore, that under R.C. 505.84 township trustees may establish reasonable charges for the use of ambulance or emergency medical services which are provided through a contract pursuant to R.C. 505.44.

The term "reasonable charges," as used in R.C. 505.84, has not been defined by the legislature or construed by the courts of Ohio. In attempting to ascertain the meaning of this term, it should be remembered that township trustees possess only such powers as are expressly conferred upon them by statute or are by necessary implication requisite to perform the duties so imposed upon them. Trustees of New London Township v. Miner, 26 Ohio St. 452 (1875). It has, however, also been established that, when a statute clearly confers a grant of power to do a certain thing without placing any limitations on the manner or means of doing it, it is presumed that the grantee of such power is vested with discretion to do things incidental to the exercise of that power. Federal Gas & Fuel Co. v. City of Columbus, 96 Ohio St. 530, 118 N.E. 103 (1917), appeal dismissed, 248 U.S. 547 (1918). Thus, township trustees are vested with discretion in the establishment of "reasonable charges" for ambulance and emergency services pursuant to R.C. 505.84.

It is, of course, clear that, in exercising their discretion to establish reasonable charges, the township trustees must observe the limitations imposed by relevant provisions of the state and federal constitutions. In particular, the trustees may not adopt any classification for charges which would violate the fourteenth amendment of the Constitution of the United States or Article I, §2 of the Constitution of Ohio, both of which guarantee the equal protection of the laws. See City of New Orleans v. Dukes, 427 U.S. 297 (1976) (equal protection analysis of municipal ordinance).

The United States Supreme Court has held that, in the area of economics and social welfare, a statutory classification satisfies the equal protection requirements of the United States Constitution if it rationally furthers a legitimate state purpose and is free from invidious discrimination. Zobel v. Williams, 457 U.S. 55 (1982); Richardson v. Belcher, 404 U.S. 78 (1971); Dandridge v. Williams, 397 U.S. 471 (1970). In Vance v. Bradley, 440 U.S. 93, 97 (1979), the Court stated that, where no suspect group or fundamental interest is involved, "we will not overturn. . .a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational."

Similarly, the Ohio Supreme Court has established the reasonableness of a classification with respect to the achievement of a legitimate governmental purpose as the standard of constitutionality under Ohio Const. art. I, §2. City of Painesville v. Bd. of County Comm'rs, 17 Ohio St. 2d 35, 244 N.E.2d 892 (1969);

State v. Buckley, 16 Ohio St. 2d 128, 243 N.E.2d 66 (1968), appeal dismissed, 395 U.S. 163 (1969); Porter v. City of Oberlin, 1 Ohio St. 2d 143, 205 N.E.2d 363 (1965). Accord 1975 Op. Att'y Gen. No. 75-001. A standard of strict scrutiny will apply only if a suspect class is involved or if the right claimed is a fundamental one. See Menke v. Ohio High School Athletic Ass'n, 2 Ohio App. 3d 244, 441 N.E.2d 620 (1981).

The class of nonresidents has not been found, in itself, to constitute a suspect group. Rather, the United States Supreme Court has stated: "The Constitution does not. . .presume distinctions between residents and nonresidents of a local neighborhood to be invidious." County Board of Arlington County, Va. v. Richards, 434 U.S. 5 (1977). Similarly, the Ohio Supreme Court has stated: "It is not obnoxious to the constitution to classify owners of property into residents and non-residents." Taylor v. Crawford, 72 Ohio St. 560, 74 N.E. 1065 (1905).

Further, it does not appear that a distinction of the sort you propose would touch upon a fundamental interest of nonresidents, such as the right to vote or the right of access to civil and criminal litigation. See Menke v. Ohio High School Athletic Ass'n. An argument might be made that granting free ambulance services to residents may interfere with the nonresidents' right to travel. The parameters of this right have, however, not been clearly defined. Zobel v. Williams, 457 U.S. at n. 6, stated:

> The right to travel and to move from one state to another has long been accepted, yet both the nature and the source of that right has [sic] remained obscure. [Citations omitted.] In addition to protecting persons against the erection of actual barriers to interstate movement, the right to travel, when applied to residency requirements, protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer-term residents. In reality, right to travel analysis refers to little more than a particular application of equal protection analysis. (Emphasis added.)

In Shapiro v. Thompson, 394 U.S. 618 (1969), the United States Supreme Court held that a one-year residency requirement for welfare assistance created a classification of short-term residents which served to penalize the exercise of the right to move from state to state and was, therefore, unconstitutional unless it operated to promote a compelling governmental interest, which was not demonstrated in that case. The Court did, however, suggest that residency would be a reasonable requirement for eligibility to receive welfare benefits. See Memorial Hospital v. Maricopa County, 415 U.S. 250, 255 (1974) (Shapiro and related cases were not intended to " 'cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements.' Dunn v. Blumstein, 405 U.S. 330, 342 n. 13 (1972)"). It is not clear just when a distinction between residents and nonresidents might be found to impinge upon a fundamental right and thereby trigger the requirement that it be justified by a compelling state interest. It was suggested in Cole v. Housing Authority of the City of Newport, 435 F.2d 807, 811 (1st Cir. 1970), that certain language in Shapiro might logically be applied to any distinction between residents and nonresidents:

> The Court [in Shapiro] apparently uses "travel" in the sense of migration with intent to settle and abide. . . . Any residency requirement might be thought to penalize the right to travel if "travel" is used in the sense of movement. A resident of Maine vacationing for a month in New Hampshire might be penalized for traveling if he could not obtain the benefits of a library card in New Hampshire during his vacation. Nevertheless, a residency requirement so "penalizing" that kind of travel is probably permissible under Shapiro.[11] (Citations and footnote omitted.)

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[11] We do not think, for example, that Newport is required to convert its public housing into motel facilities for transients. A requirement that persons applying for public housing have a bona fide intent to reside in Newport would be permissible.

I am aware of no instance in which facts similar to those you pose have been found to trigger the more stringent test. Cf. Village of Belle Terre v. Boraas, 416 U.S. 1 (1973) (finding that a local zoning ordinance does not interfere with a person's right to travel). I note, however, that, as in Shapiro, various durational residence requirements have been found to impinge upon the right to travel and to trigger the requirement that they be justified by a compelling state interest. E.g., Memorial Hospital v. Maricopa County (striking down a statute which required an indigent to have been a resident of a county for twelve months in order to be eligible for free nonemergency medical care); Dunn v. Blumstein, 405 U.S. 330 (1972) (striking down certain durational residence requirements for voting). Further, the privileges and immunities clause. U.S. Const. art. IV, §2, has been held to prevent a state from limiting to its own residents the general medical care available within its borders. Doe v. Bolton, 410 U.S. 179, 200 (1973). See also Baldwin v. Fish & Game Comm'n of Montana, 436 U.S. 371, 394 (1978) (Burger, C.J., concurring) ("[Privileges and Immunities] Clause assures noncitizens the opportunity to purchase goods and services on the same basis as citizens. . ."). It is clear that "[w]hat would be unconstitutional if done directly by the State can no more readily be accomplished by a [local subdivision] at the State's direction." Memorial Hospital v. Maricopa County, 415 U.S. at 256.

I assume for purposes of this opinion that a distinction of the sort you propose would not be found to penalize travel to the extent that it would require the justification of a compelling state interest. See generally Menke v. Ohio High School Athletic Ass'n. I cannot, however, provide assurance that no court could reach a contrary conclusion. See generally Memorial Hospital v. Maricopa County, 415 U.S. at 259 ("[w]hatever the ultimate parameters of the Shapiro penalty analysis, it is at least clear that medical care is as much 'a basic necessity of life' to an indigent as welfare assistance") (footnote omitted). On the basis of this assumption, I conclude that the distinction about which you have inquired does not create a suspect class or infringe upon a fundamental right, and that the test of its constitutionality will be whether it is reasonably related to the achievement of a legitimate governmental purpose.

A distinction between residents and nonresidents has been upheld in a number of instances. E.g., Baldwin v. Fish & Game Comm'n of Montana (upholding the charging of a higher hunting license fee to nonresidents on the basis that the scheme was reasonably related to the preservation of a finite resource and a substantial regulatory interest of the state); County Board of Arlington County, Va. v. Richards (upholding a zoning ordinance which provided for the issuance of free parking permits to residents of designated areas, persons doing business there, and some visitors, and prohibited parking without such a permit, on the basis that such distinctions served legitimate goals of reducing air pollution and other environmental effects of automobile pollution); Taylor v. Crawford (upholding a scheme which granted different rights to resident and nonresident landowners with respect to ditches relating to their property); Menke v. Ohio High School Athletic Ass'n (upholding rule which made a student whose parents lived in another state ineligible for athletics in an Ohio member school); City of Clarkston v. Asotin County Rural Library Board, 573 P.2d 382, 18 Wash. App. 869 (1977) (upholding scheme in which persons who were not residents of library district and, thus, did not contribute to support and maintenance of library, were denied privilege of checking out books, though residents of other library districts were granting such privilege through a reciprocal arrangement). See generally Dunn v. Blumstein.

Certain provisions distinguishing between residents and nonresidents have, however, been held to violate equal protection provisions. Richter Concrete Corp. v. City of Reading, 166 Ohio St. 279, 142 N.E.2d 525 (1957) (holding that an ordinance which prohibited the operation of trucks over a certain weight on streets of a municipality, with exceptions for those dealing with residents of the municipality, constituted an unreasonable classification, in violation of state and federal equal protection guarantees); Myers v. City of Defiance, 67 Ohio App. 159, 36 N.E.2d 162 (Defiance County 1940) (holding that an ordinance which required licenses for dry cleaning establishments and imposed a bond requirement only upon nonresident establishments violated federal and state equal protection provisions); State v. Whisman, 24 Ohio Misc. 59, 263 N.E.2d 411 (C.P. Scioto County 1970)

(striking down municipal ordinance which required permits for on-street parking in a designated area and provided for issuance of permits only to residents and certain visitors on the basis that it violated equal protection and no valid justification for the classification existed); 1966 Op. Att'y Gen. No. 66-151 (finding that municipal ordinance which prohibited hunting by nonresidents was invalid). See Sipe v. Murphy, 49 Ohio St. 536, 31 N.E. 884 (1892) (power of municipality to regulate auctioneering did not authorize ordinance which required person selling imported goods to obtain a license); City of Columbus v. Jeffrey, 1 Ohio N.P. (n.s.) 265, 271 (C.P. Franklin County 1903) (striking down scheme for licensing vehicles and stating: "Discrimination in favor of any class of persons or against non-residents are [sic] unlawful"); 1966 Op. Att'y Gen. No. 66-114 at 2-206 ("[w]hen fire protection is available in a township or a fire district. . .it must be furnished to all on an equal basis. This should be true notwithstanding that the one benefiting from the fire protection may not be a taxpayer in the township or fire district. . ."). See also Borough of Neptune City v. Borough of Avon-by-the-Sea, 61 N.J. 296, 294 A.2d 47 (1972) (holding that the public trust doctrine prevented a municipality from charging nonresidents higher fees for use of a beach).

Where the standard to be met is reasonableness, the determining factor in deciding whether a particular distinction between residents and nonresidents is permissible is whether it rationally serves a legitimate governmental purpose. You have not specified what purpose is sought to be served in this instance. You have, however, noted that the voters of the township in question have passed a tax levy pursuant to R.C. 5705.19(U) for the purpose of providing ambulance and emergency medical services. Thus, the funds for such services are to be derived from taxes imposed upon owners of real property located within the township. An apparent purpose of the proposed distinction would, therefore, be to bestow upon township residents the benefit of ambulance or emergency medical services, paid for through their property taxes (whether paid directly by landowners or indirectly, through rental payments, by residents who do not own their places of abode), while charging a fee for such services to nonresidents, who presumably pay no real property taxes to the township.[1] The fact that the two classes may not be perfectly drawn will not invalidate the action of the township, if only the distinctions are reasonable. Baldwin v. Fish & Game Comm'n of Montana; Dandridge v. Williams.

The courts have recognized as legitimate the goal of equalizing payments between residents and nonresidents on the basis that nonresidents have not been subject to taxation.[2] In Vlandis v. Kline, 412 U.S. 441 (1973), the United States Supreme Court struck down a scheme which provided a permanent irrebutable presumption of nonresidence for purposes of charging higher tuition to certain

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1 Such a purpose should be distinguished from an attempt to reward citizens for past contributions by discriminating among residents. Zobel v. Williams, 457 U.S. 55 (1982) (holding that a plan for distributing dividends to citizens of Alaska in differing amounts depending upon the length of their residence in the state violated the equal protection clause of the fourteenth amendment); Shapiro v. Thompson, 394 U.S. 618, 632-33 (1969) (stating that such an argument in support of a one-year residency requirement for welfare assistance "would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services") (footnote omitted). See generally Vlandis v. Kline, 412 U.S. 441 (1973).

2 The United States Supreme Court has, however, indicated that the purpose of saving money is not sufficient to justify invidious distinctions:

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not

students, on the basis that it violated due process guarantees. The Court, however, stated, at 452-53: "We fully recognize that a State has a legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on preferential tuition basis." In Baldwin v. Fish & Games Comm'n of Montana, the Court recognized the tax support provided by residents as a factor supporting the reasonableness of charging nonresidents higher fees for hunting elk. See also Toomer v. Witsell, 334 U.S. 385, 399 (1948) (striking down scheme for charging much higher license fees to nonresident fishermen but acknowledging that a state may "charge non-residents a differential which would merely compensate the State for any added enforcement burden they may impose or for any conservation expenditures from taxes which only residents pay"); Hyland v. Borough of Allenhurst, 148 N.J. Super. 437, 444, 372 A.2d 1133, 1137, modified on other grounds, 78 N.J. 190, 393 A.2d 579 (1978) (upholding scheme whereby municipality charged nonresidents a higher fee for membership in a municipal beach facility on the basis that residents were already paying for the facilities as part of their tax bill and the difference "represents an attempt to equalize the nonresident and resident financial contributions to the maintenance of club facilities"). But see Op. No. 66-114.

You have not indicated what definition of "resident" would be used in the proposed plan, what public purposes the plan might serve, or what relationship the charges made to nonresidents would bear to actual cost. Further, it is axiomatic that only the courts may make the final decision upon the constitutionality of any particular legislative decision, State ex rel. Davis v. Hildebrant, 94 Ohio St. 154, 114 N.E. 55, aff'd on other grounds, 241 U.S. 565 (1916), and that the constitutionality of legislation depends upon its operation and effect, and not upon the mere form it may assume, State ex rel. Graves v. Bernon, 124 Ohio St. 294, 178 N.E. 267 (1931). Thus, although I may note that legislative acts are presumed to be constitutional, City of Xenia v. Schmidt, 101 Ohio St. 437, 130 N.E. 24 (1920), I am unable to provide you with a definite answer concerning the constitutionality of the plan you have outlined. I can, however, state generally that township trustees may exercise discretion in establishing reasonable charges pursuant to R.C. 505.84 for the use of ambulance or emergency medical services provided under a contract entered into between a board of township trustees and a private ambulance owner pursuant to R.C. 505.44. An arrangement to charge nonresidents for such services while providing such services free to residents will satisfy the rational relationship test for equal protection if it bears a reasonable relationship to the achievement of a legitimate governmental purpose, and it appears, subject to the limitations discussed above, that such test might be satisfied in the situation you have described.

The answer to your second question must begin with a review of R.C. 505.84, which is set forth above. While the statute authorizes township trustees to

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> accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification.

Shapiro v. Thompson, 394 U.S. 618, 633 (1969) (footnote omitted). Accord, Memorial Hospital v. Maricopa County, 415 U.S. 250, 263 (1974) ("a State may not protect the public fisc by drawing an invidious distinction between classes of its citizens, . . .so appellees must do more than show that denying free medical care to new residents saves money. The conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement which, in effect, severely penalizes exercise of the right to freely migrate and settle in another State") (citations omitted). Thus, if a particular program triggers the strict scrutiny standard, a purpose of conserving funds might not be found to constitute a sufficient state interest for its justification.

establish reasonable charges for the use of ambulance or emergency medical services and requires that charges collected be kept in "the ambulance and emergency medical services fund," no method of collection is specified.

As noted above, when a statute clearly confers a grant of power to do a certain thing without placing any limitations on the manner of doing it, it is presumed that the grantee of such power is naturally and necessarily vested with discretion to do things incidental to the exercise of that power. Since the township trustees are empowered to collect charges for the use of ambulance or emergency medical services, they are vested with discretion to establish the method of collection so long as the discretion is exercised in a lawful manner.

I am aware of nothing which prohibits the collection of charges by the private ambulance owner initially, especially if this is the most efficient and economical means available. 1971 Op. Att'y Gen. No. 71-066, in which the question was raised whether waste disposal charges required to be collected by the township clerk pursuant to R.C. 505.31 could be initially collected by a county sanitary engineering department, states at 2-224:

> It is true that the township clerk must eventually "collect" the charges and deposit them in "the waste collection fund", Section 505.31. . . , but the statute is silent as to the method of collection. Its mandate is fulfilled as long as the clerk ultimately receives the charges in his office and deposits them in the proper fund.

See 1983 Op. Att'y Gen. No. 83-040 (statute authorizing a county tuberculosis hospital board of trustees to enter into contracts for necessary services empowers the board to contract with a collection agency to collect unpaid charges against patients and former patients of the hospital).

In accordance with the holding in Op. No. 71-066, it is my conclusion that a board of township trustees may, under R.C. 505.44, enter into a contract with a private ambulance owner under which the private ambulance owner is to provide ambulance or emergency medical services and to collect for such services charges established by the township trustees pursuant to R.C. 505.84, provided that such charges are ultimately paid over to the township trustees and deposited by them in the ambulance and emergency medical services fund.

In conclusion, it is my opinion, and you are advised, that:

1. Pursuant to R.C. 505.84, township trustees may establish reasonable charges for the use of ambulance or emergency medical services provided under a contract entered into between a board of township trustees and a private ambulance owner under R.C. 505.44. An arrangement to charge nonresidents but provide free services for residents will satisfy the rational basis test for equal protection if it bears a reasonable relationship to the achievement of a legitimate governmental purpose.

2. A board of township trustees may, under R.C. 505.44, enter into a contract with a private ambulance owner under which the private ambulance owner is to provide ambulance or emergency medical services and to collect for such services charges established by the township trustees pursuant to R.C. 505.84, provided that such charges are ultimately paid over to the township trustees and deposited by them in the ambulance and emergency medical services fund.