

Note from the Attorney General's Office:

1973 Op. Att'y Gen. No. 73-090 was reversed by
1977 Op. Att'y Gen. No. 77-098.

OPINION NO. 73-090

Syllabus:

A board of township trustees may not expend public funds to engage the services of an independent insurance consultant.

To: Jerry A. Petersen, Geauga County Pros. Atty., Chardon, Ohio
By: William J. Brown, Attorney General, September 7, 1973

I have before me your request for my opinion, the question in which may be summarized as follows:

May a board of township trustees expend public funds to engage the services of an independent insurance consultant?

It is well settled in Ohio that boards of township trustees and boards of county commissioners possess only such powers as may be expressly conferred upon them by statute, or as may be required, by necessary implication, to perform the duties so imposed. Wipple v. Brown Township, 13 Ohio St. 311 (1862); State ex rel. Locher v. Menning, 95 Ohio St. 27 (1916). See also State ex rel. Clarke v. Cook, 103 Ohio St. 465 (1921). Since the statutes under which a board of township trustees acts are in derogation of the common law, they must be strictly construed. Johnson v. Grunkenreyer, 8 Ohio St. 274 (1901); Opinion No. 407, Opinions of the Attorney General for 1963. It would, therefore, be appropriate first to examine the statutes to determine whether they contain a specific grant of authority to a board of township trustees, permitting such board to hire an independent insurance consultant.

R.C. 9.03, 505.22 and 505.60 authorize a board of township trustees to procure different types of insurance. However, none of these statutes specifically provides for the hiring of a consultant to assist the board in this procurement.

R.C. 511.10 is the only statute which grants the power to employ personnel to a board of township trustees, and it provides, in part, as follows:

The board of township trustees may appoint such superintendents, architects, clerks, laborers, and other employees as are necessary and fix their compensation.

This Section appears to apply only to the construction and operation of memorial buildings, since its statutory context is exclusively concerned with that subject (see R.C. 511.08 - 511.17). Reinforcing this conclusion is the fact that the types of employees mentioned in R.C. 511.10 are associated with building construction, i.e., "superintendents", "architects", and "laborers". Since insurance consultant is not specifically enumerated, it must fall within "other employees" in order to make this Section applicable. It seems clear, however, that an insurance consultant would not be a "necessary" employee with regard to construction and operation of a township's

memorial building. Thus, P.C. 511.10 does not authorize the employment of an independent insurance consultant by a board of township trustees.

There also are no statutory provisions which specifically provide that a board of township trustees may contract for the services of an independent insurance consultant. The principle that a board of township trustees possesses only such powers as are expressly conferred upon it by statute applies as well to such board's authority to bind the township by its contracts. People v. Brown Township, supra. This principle is consistent with several decisions on similar matters concerning boards of county commissioners, who, like boards of township trustees, derive their powers only by direct legislative grant. In Branch One of the Syllabus of Opinion No. 71-092, Opinions of the Attorney General for 1971, I stated that:

A board of county commissioners may not enter into a contract for services in analyzing, appraising, and making recommendations as to future needs of the county unless there is specific statutory authority for such a contract.

One of my predecessors made a similar ruling in Opinion No. 2887, Opinions of the Attorney General for 1931. By analogy, I conclude that a board of township trustees may not contract for the services of an independent insurance consultant, since there is no specific statutory authority for such a contract.

The next consideration must be whether the power to hire an independent insurance consultant is one which is necessarily implied by the board's specific powers and duties. Thus the issue is whether the power to hire an independent insurance consultant is one necessarily implied from the power to procure insurance. The answer must be in the negative. First, a board of township trustees could procure insurance without any help or advice from anyone. Perhaps it could not do so as efficiently or as economically as a trained insurance specialist, but such a specialist would not be 'necessary' to enable the board to procure insurance. A second consideration is that large insurance companies will provide a consultation service free of charge to prospective clients, as your letter notes. Any danger of an insurance company's inflating the township's insurance needs can be effectively eliminated by inviting several insurance companies to provide this service, thus assuring the fairest and most economical advice through competition.

The court in State, ex rel. Locher v. Menning, supra, which is equally applicable to boards of township trustees and boards of county commissioners, stated at page 99 as follows:

The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed on the county.

This rationale was reinforced by the court in Gorman v. Weuck, 41 Ohio App. 453 (1931), which held that although county officials lacked the technical knowledge necessary to run their offices efficiently, they could not secure expert advice from a private source and pay for the same with public funds, when such expenditure was neither explicitly nor implicitly authorized by statute. In that case the court did not permit the board of county commissioners to contract for expert services to recommend new, more economical, and more efficient methods of conducting and coordinating various agencies of county government, even though such services would save the county a considerable amount of money. The Gorman case, supra, has been followed consistently in many Opinions of the Attorney General, e.g. Opinion No. 3063, Opinions of the Attorney General for 1953, prohibiting the board of county commissioners from contracting for a survey of the county welfare department where no statutory authority existed for such a survey; Opinion No. 2188, Opinions of the Attorney General for 1961; Opinion No. 70-003, Opinions of the Attorney General for 1970 and Opinion No. 71-092, supra.

Based on the absence of express or implied statutory authority for a board of township trustees to engage the services of an independent insurance consultant, I must conclude that a board of township trustees may not retain an independent insurance consultant with public funds. Despite the fact that the purpose in hiring an independent insurance consultant may be a good one, it is a legal purpose, not a laudable purpose, that justifies an expenditure of the taxpayers' money." Opinion No. 2887, supra, at page 132.

In specific answer to your question, it is my opinion and you are so advised, that a board of township trustees may not expend public funds to engage the services of an independent insurance consultant.