

OPINION NO. 92-018**Syllabus:**

When a board of township trustees determines, in the exercise of its sound discretion, that it is reasonably necessary for some or all of the township trustees to be qualified to operate commercial motor vehicles of the township and that, but for the operation of such township vehicles, a trustee would have no need for a commercial driver's license as required pursuant to R.C. 4506.03(A)(1), township funds may be used to reimburse a trustee for the additional cost of a commercial driver's license over a normal driver's license.

To: Russell B. Wiseman, Crawford County Prosecuting Attorney, Bucyrus, Ohio

By: Lee Fisher, Attorney General, May 13, 1992

You have requested an opinion on the following question:

May township funds be used to reimburse a trustee for the additional cost of a commercial driver's license over a normal driver's license expense, when a commercial driver's license is required for a trustee to operate the township's truck?

You have provided us with the following facts. A number of townships use trucks for road maintenance purposes. Because of their weight, the trucks are commercial motor vehicles as defined at R.C. 4506.01(E). These trucks are normally operated by the trustees personally in the performance of their duties, although there is no statutory requirement that the trustees do so. Effective April 1, 1992, however, only persons holding a valid commercial driver's license may operate commercial motor vehicles. R.C. 4506.03(A)(1). The fees for a commercial driver's license, R.C. 4506.08; R.C. 4506.09(E), are higher than for an ordinary driver's license, R.C. 4507.23-.24. You state that a majority of the trustees have no need for a commercial driver's license except to enable them to operate the township trucks. Accordingly, the trustees wish to know if the additional expense can be reimbursed from township funds.

Personal Expenses May Be Reimbursed When Incurred in the Performance of An Authorized Duty and Necessary for the Benefit of the Public

It has long been established, that a board of township trustees possesses only such powers as are expressly conferred by statute or are necessarily implied in order to execute statutory duties. *Hopple v. Trustees of Brown Township*, 13 Ohio St. 311, 324 (1862). There are no statutes that expressly authorize the trustees to spend township funds to acquire commercial driver's licenses for the trustees. As a general rule, however, in the absence of either an express authorization or prohibition of a particular expenditure of public funds, authority can be implied when the purpose is reasonably related to the duties of the public agency involved. *See State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470, 423 N.E.2d 105, 112-13 (1981) (finding implied authority for county commissioners to purchase newspaper ads). A higher level of scrutiny is involved when applying this general rule to the more specific category of reimbursement of personal expenses:

[A] public officer or public employe may lawfully be reimbursed from public funds for traveling and other personal expenses actually and necessarily incurred by him in the performance of a public duty in furtherance of a definite project or undertaking then under way or in immediate prospective contemplation, provided, in the exercise of a sound and proper discretion, it appears that the incurring of said expenses is necessary for the benefit of the political subdivision which the officer serves and the expenses are incurred in the performance of a duty enjoined or authorized by law.

1930 Op. Att'y Gen. No. 2170, vol. II, p. 1241, 1243.

The initial determination that a personal expense may be reimbursed with public funds is a matter entrusted to the discretion of the body authorized to approve expenditures. In considering whether a particular personal expense is reasonably necessary for the subdivision or agency, the funding authority should consider whether the expenditure has a definite relationship to the duties of the officer or employee and whether the primary benefit is to the public. 1946 Op. Att'y Gen. No. 1016, p. 428, 430-31; *accord* 1983 Op. Att'y Gen. No. 83-029 at 2-111. When the primary purpose of the expense is to benefit the public it may be permissible, even though it indirectly benefits the officer or employee. Op. No. 83-029 at 2-111. Thus, past opinions of the attorney general have held that, upon a finding of necessity for the efficient operation of the agency or subdivision, public funds may be expended to provide free staff parking, 1977 Op. Att'y Gen. No. 77-090, reimbursement for personal tools lost, stolen or destroyed in the course of public employment, Op. No. 83-029, or to pay the attorney registration fees of a county prosecuting attorney, assistant prosecuting attorneys, or agency staff attorneys, 1983 Op. Att'y Gen. No. 83-042 (syllabus paragraphs 4, 6, 7).

Additional Expense of Commercial Driver's Licenses may be Reimbursed from Public Funds upon Proper Determination of Need by Board of Township Trustees

The board of township trustees is ultimately responsible for the construction, maintenance and improvement of township roads and have authority to employ labor or contract work out for this purpose. *See generally* R.C. 5571.01-.03; R.C. 5571.08; R.C. 5571.12; R.C. 5575.01. There is no express requirement that the township trustees themselves operate the township's commercial motor vehicles in the performance of their statutory duties. You have indicated, however, that it is common practice for the trustees to do so, on either a regular or emergency basis, in order to accomplish the required work in an efficient and cost-effective manner.¹

In townships with limited budgets and/or staffs, the ability of the board to accomplish its duties with respect to roads could be impaired if the trustees were unable to operate the township vehicles. Although it is not necessary in the sense of

¹ The trustees are entitled to no additional compensation for personally performing roadwork. 1951 Op. Att'y Gen. No. 680, p. 401.

an absolute statutory duty for the trustees personally to operate the vehicles, in such townships it may well be a matter of practical necessity.

Thus, if the pertinent facts in a particular township support a determination by the board of trustees that it is reasonably necessary for some or all of the trustees to be qualified to operate the township vehicles, there would be a definite relationship between the expense of a commercial driver's license and the duties of the trustees. Further, when a trustee has no personal need for a commercial driver's license, it is clear that the primary purpose of this expense is to benefit the township, and not simply to provide the trustee with a valuable fringe benefit. It also appears probable that the cost savings to a township resulting from the trustees operating vehicles in lieu of contracting with a third party would offset the cost of the licenses to the township. Under such circumstances, it would not be an abuse of discretion for the board of trustees to reimburse the additional expense of a commercial driver's license.²

It is, therefore, my opinion, and you are hereby advised that, when a board of township trustees determines, in the exercise of its sound discretion, that it is reasonably necessary for some or all of the township trustees to be qualified to operate commercial motor vehicles of the township and that, but for the operation of such township vehicles, a trustee would have no need for a commercial driver's license as required pursuant to R.C. 4506.03(A)(1), township funds may be used to reimburse a trustee for the additional cost of a commercial driver's license over a normal driver's license.

² You should note that legislation has been introduced to allow township trustees to operate township commercial vehicles without a commercial driver's license. See H.B. 703, 119th Gen. A. (1992) (as introduced, March 17, 1992). Should this legislation pass, obviously there would no longer be any situation in which it would be appropriate for the township to reimburse the expense of a commercial driver's license.