

OPINION NO. 2004-036**Syllabus:**

1. If a township trustee, who is paid on a per diem basis, spends time working on matters related to the township's ambulance and emergency medical services, and properly documents his time under the method adopted by the board of township trustees pursuant to R.C. 505.24(C), then the per diem earned by the trustee for that work may be paid from the ambulance and emergency medical services fund established pursuant to R.C. 505.84. If, however, a township trustee is paid an annual salary, his compensation is not eligible for payment from the ambulance and emergency medical services fund, unless the trustee documents all time spent on township business and the portion of that time spent on matters related to the township's ambulance and emergency medical services.

2. The portion of a fire district employee's salary that is earned for providing ambulance and emergency medical services is eligible for payment from the ambulance and emergency medical services fund established pursuant to R.C. 505.84. Township payments of employer contributions to the Ohio Public Employees Retirement System and for employees' health insurance may be made from the ambulance and emergency medical services fund in the same

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proportion that the employee's salary is eligible for payment from the fund.

3. A board of township trustees may, in the reasonable exercise of its discretion, develop appropriate methods for determining and documenting the proportion of expenses that are incurred by a township fire district for managing, maintaining, and operating ambulance and emergency medical services, and are eligible for payment from the ambulance and emergency medical services fund established pursuant to R.C. 505.84.

To: Stephen J. Pronai, Madison County Prosecuting Attorney, London, Ohio
By: Jim Petro, Attorney General, October 19, 2004

You have asked several questions about the proper expenditure of moneys collected by a township for the use of its ambulance and emergency medical services. Your questions are occasioned by the township's creation of a fire district that provides both fire protection and emergency medical services, and are better understood if we first discuss briefly the underlying authority of a township to act in these matters.

A board of township trustees may, but is not required to, provide either fire protection or emergency medical services to township residents. 1994 Op. Att'y Gen. No. 94-067; 1979 Op. Att'y Gen. No. 79-042 at 2-140. If it decides to do so, the board may choose from a number of organizational schemes set forth in statute. The township about which you ask has created a fire district pursuant to division (C) of R.C. 505.37, which authorizes a board of township trustees to create a fire district, encompassing any portions of the township "whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence."¹

Although R.C. 505.37(C) "does not explicitly authorize a township fire district to provide emergency medical or rescue services ... it is reasonable to interpret this division as granting a township fire district such authority." 1997 Op. Att'y Gen. No. 97-060 at 2-368. See also R.C. 9.60(A)(2) and (3) ("fire protection" includes "the provision of ambulance, emergency medical, and rescue services," as well as the use of firefighting equipment, by, *inter alia*, a township or township fire district); R.C. 505.37(F) (a board of township trustees "may choose to have the Ohio medical transportation board license any emergency medical service organization it operates"); R.C. 5705.19(I) (special levy in excess of the ten-mill limitation for "the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company"). The General Assembly has recognized that "the provision of emergency medical and rescue services are legitimate functions of the fire department of a township fire

¹Other options available to a township may be found in: R.C. 9.60 (contracts to obtain fire protection, including ambulance, emergency medical, and rescue services); R.C. 505.37(A) (acquisition of equipment and buildings, and employment of personnel); R.C. 505.37(B) (taking joint action with other townships and political subdivisions to acquire and operate equipment and pro rate expenses); R.C. 505.371 (creation of joint fire district); R.C. 505.375 (creation of fire and ambulance district); R.C. 505.44 (contract to obtain services of ambulance service organizations or emergency medical service organizations); R.C. 505.71 (creation of a joint ambulance district).

district.” 1997 Op. Att’y Gen. No. 97-060 at 2-369. *See also* 1994 Op. Att’y Gen. No. 94-076; 1979 Op. Att’y Gen. No. 79-072; 1969 Op. Att’y Gen. No. 69-123.

A board of township trustees may “establish reasonable charges for the use of ambulance or emergency medical services.”² R.C. 505.84. If it does so, the board must appropriate and administer an “ambulance and emergency medical services fund” (EMS Fund) in which the charges that are collected must be kept. *Id.* The EMS Fund may be used only for the “payment of the costs of the management, maintenance, and operation of ambulance and emergency medical services in the township.”³ *Id.* *See generally* R.C. 5705.10 (“all revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose,” and “[m]oney paid into any fund shall be used only for the purposes for which such fund is established”).

You have asked whether certain types of expenditures are eligible for payment from the EMS Fund, and how expenditures should be apportioned for payment if they support both the firefighting and EMS operations of the fire district:

1. Does cost of management include board members’ [township trustees] salaries, salaries of fire department officers who participate in emergency medical services? Does it also include payment of benefits such as PERS, insurance, etc.?
2. Does cost of maintenance include maintenance of fire vehicles that respond to an EMS scene and maintenance of the fire station? If so, should a log be kept that reflects the percentage of fire equipment used for EMS purposes?
3. Does cost of operation of EMS include payment of utilities, etc. in the operation of the fire station? If so, should costs reflect the percentage of area of space EMS uses in the fire station?

In order to determine whether an expenditure is eligible for payment from the ambulance and emergency services fund, we must examine first whether there is a statute

²Charges collected pursuant to R.C. 505.84 are not, of course, the sole source of revenue available to support a township’s ambulance and emergency medical services. A board of township trustees may levy a tax on all property within the fire district, R.C. 505.39, issue bonds and other securities, R.C. 505.37(D), R.C. 505.40 (with voter approval), R.C. 505.401, and, with the approval of the voters in the fire district, levy one or more taxes in excess of the ten-mill limitation on the property in the fire district, R.C. 5705.19(I), (U), (W), (JJ). *See* 1990 Op. Att’y Gen. No. 90-065 (a township that has levied an emergency services tax under R.C. 5705.19 is not precluded from imposing charges under R.C. 505.84); 1979 Op. Att’y Gen. No. 79-072 (syllabus) (“[f]unds raised by a levy passed pursuant to R.C. 5705.19(I) may be used to purchase a rescue vehicle which provides ambulance or emergency medical services, whether or not such services are provided in connection with fire-related matters”); 1969 Op. Att’y Gen. No. 69-123 at 2-258 (“if an activity is authorized under [R.C. 505.37], revenues acquired under [R.C. 505.39] may be used to support the activity”). *See also* 1962 Op. Att’y Gen. No. 3332, p. 793.

³If a township discontinues its ambulance and emergency medical services, any money remaining in the ambulance and emergency medical services fund is paid into the township’s general fund. R.C. 505.84.

dictating the fund from which the expense must be paid and, if not, whether the expenditure meets the conditions set forth in R.C. 505.84. *See generally Madden v. Bower*, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969).

Management Costs

Compensation of Township Trustees

A board of township trustees may choose to pay trustees a per diem amount or an annual salary. R.C. 505.24.⁴ *See generally* 2000 Op. Att'y Gen. No. 2000-043. If trustees are compensated per diem, that is, "for each day of service in the business of the township," R.C. 505.24(A), the compensation "shall be paid from the township general fund or from other township funds in such proportions as the kinds of services performed may require," R.C. 505.24(C). If trustees receive an annual salary, the amount, which is paid in equal monthly payments, "shall be paid from the township general fund or from other township funds in such proportions as the board may specify by resolution." R.C. 505.24. Although a board of trustees thus has the authority to designate funds other than the general fund as sources of payment for trustee compensation, whether paid per diem or as an annual salary, the expenditures for compensation must still be for the purpose of managing, maintaining, or operating township ambulance and emergency medical services in order to be payable from the EMS Fund.

When trustees are compensated per diem, the board is required to "establish, by resolution, a method by which each member of the board shall periodically notify the township clerk of the number of days spent in the service of the township and *the kinds of services rendered on those days*" (emphasis added). R.C. 505.24(C). The time spent by a trustee on matters related to the township's ambulance and emergency medical services would thus be tracked and verifiable. If a trustee properly documents his work on EMS matters under the method adopted pursuant to R.C. 505.24(C), the compensation associated with that work may be paid from the EMS Fund.

When trustees are paid an annual salary, however, their compensation is not based on the time actually spent in the service of the township, and R.C. 505.24 does not require trustees to provide the township with documentation of the time they spent on township business or the kind of services rendered. The time spent by a trustee on EMS matters (or any other township matter) need not be tracked, either in absolute numbers or relative to the total time spent in the service of the township, and does not bear on the amount of a monthly payment or the total annual salary received by a trustee.⁵

⁴The rate of per diem compensation to which trustees are entitled is based on the size of a township's budget, and trustees may not be paid for more than two hundred days. R.C. 505.24(A). If a board of township trustees unanimously votes to have the compensation of trustees paid in the form of an annual salary rather than on a per diem basis, the amount of the annual salary may not exceed "the maximum amount that could be received annually by a trustee if the trustee were paid on a per diem basis." R.C. 505.24. *See also* note 5, *infra*.

⁵At one time, trustees who were paid an annual salary could earn no more or less than if paid on a per diem basis. They were required to maintain an itemized statement of their per diem account, and adjustments were then made to their December monthly payment to reflect what was due (or owing from) a trustee in light of the number of days he had actually spent in the performance of township duties and the amount of salary he had already been paid. 1975-1976 Ohio Laws, Part I, 623 (Am. S.B. 237, eff. Jan. 11, 1977); 1977 Op. Att'y Gen. No. 77-055. In 1981, the General Assembly eliminated this parity, deleting the require-

As noted above, however, a board of trustees is authorized by R.C. 505.24 to pay trustees' salaries from the general fund or other township funds "in such proportions as the board may specify by resolution." The board may therefore determine, as part of its budgeting process, to appropriate money in the EMS Fund for payment of trustees' salaries. In order to meet the proviso in R.C. 505.84, that the EMS Fund be used only for ambulance and emergency medical services, however, the board would be required to establish administrative procedures for assuring that the proportionate amount paid from the EMS Fund for trustees' salaries properly reflected the proportion of time each trustee spent on EMS matters relative to other township matters. This would necessitate trustees documenting all time spent on township business and the type of service performed, in a manner similar to trustees paid a per diem.

To the extent that the board is able to determine the portion of time spent on EMS matters, relative to the total time spent on township business, it may pay the proportionate cost of the trustee's salary from the EMS fund. If a trustee's time is not documented, however, then no part of his salary may be paid from the EMS Fund.

Salary and Benefits of Fire District Employees

The salaries of fire district employees who provide ambulance and emergency medical services obviously meet the criteria of R.C. 505.84, and there is no statute that requires payment of their salaries from a particular fund. If, however, an employee provides both emergency medical and fire protection services, payment of his salary must be prorated so that only the portion of his salary earned while performing emergency services is eligible for payment from the EMS Fund. The time spent by fire district employees who provide emergency services, therefore, should be carefully documented and verified as eligible for payment from the EMS Fund. As discussed more fully below, the board of township trustees has the discretion to adopt a reasonable method for documenting employees' time, considering the method used to pay fire district employees, the manner in which assignments are made, the recommendations of fire district officials, and other pertinent factors. If circumstances are such that it is impossible to prorate employees' time, then none of their compensation may be paid from the EMS Fund.

You have also asked whether the employer's contributions to the Public Employees Retirement System (PERS) may be paid from the EMS Fund. The payment of employer contributions to PERS "may be made directly out of any funds, whether derived from taxation or otherwise, from which the salaries or compensation of public employees, on account of whom such payments are to be made, are payable"⁶ (emphasis added).⁶ R.C.

ment that salaried trustees maintain statements of their per diem accounts, removing the December adjustment, and requiring the annual salary of trustees to equal the maximum amount they could receive if paid on a per diem basis. 1981-1982 Ohio Laws, Part I, 2029 (Sub. H.B. 188, eff. Nov. 5, 1981). Currently, the trustees' annual salary may be established in any amount that is no more than the maximum amount they could receive annually if paid on a per diem basis. See 1987-1988 Ohio Laws, Part I, 1639, 1654 (Am. S.B. 452, eff. Dec. 15, 1988). See also 2000 Op. Att'y Gen. No. 2000-043; n. 4, *supra*.

⁶You have asked about employer contributions to PERS, but certain firefighters may choose to be a member of the Ohio Police and Fire Pension Fund (OPFPF) rather than PERS. R.C. 145.012(A)(6); R.C. 145.013; R.C. 742.01(B)(2); R.C. 742.515; R.C. 742.516. R.C. 742.34(A) provides that, "[e]ach employer shall pay quarterly, on such dates as the board of trustees of the Ohio police and fire pension fund requires, from its general fund, or

145.12. Thus, the township may pay its employer contributions to PERS from the EMS Fund in the same proportion that the employee's salary is eligible for payment from the Fund. The same is true for a township's payments for employees' health insurance, which are likewise payable "from the funds or budgets from which the officers or employees are compensated for services." R.C. 505.60(B).

Maintenance and Operational Expenses

You also ask how to apportion the expenses paid by a fire district for the maintenance and operation of equipment and vehicles that are used for both fire protection and ambulance and emergency medical services, and for the operation of the fire station which houses the fire district's operations.

These expenditures are obviously eligible for payment from the EMS Fund to the extent they are for the purpose of managing, maintaining, and operating ambulance and emergency medical services. As to the method of allocation, we note that, as a general rule, "[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." *Jewett v. Valley Railway Co.*, 34 Ohio St. 601, 608 (1878). In the absence of a constitutional or statutory directive, a public officer "has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded." *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 11-12, 112 N.E. 138 (1915). See also *State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) ("[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty").

We applied this principle, for example, in 2003 Op. Att'y Gen. No. 2003-017, which concluded that, "the language of R.C. 505.84 authorizing the establishment of reasonable charges for the use of ambulance or emergency medical services ... does not specify a method of collection," and therefore, "R.C. 505.84 confers upon the board of township trustees authority to collect charges for the use of ambulance or emergency medical services and vests the board with discretion to establish the method of collection, so long as the discretion is exercised in a reasonable manner." *Id.* at 2-131. *Accord* 1984 Op. Att'y Gen. No. 84-048 at 2-157. See also 1962 Op. Att'y Gen. No. 3332, p. 793, 796 (in purchasing an ambulance, township trustees must "exercise their own best judgment, bearing in mind the actual needs and the proportion of the expenditure to the total resources of the township on hand for the purpose concerned"). Similarly, a board of trustees may, in consultation with fire district officials, establish methods for reasonably identifying and documenting the proportion of expenses that are incurred by a fire district for managing, maintaining, and operating ambulance and emergency medical services, and are eligible for payment from the EMS Fund. The reasonableness of the method or system established by the board will, of course, depend upon all pertinent circumstances of the nature of the expenditure being tracked.

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

1. If a township trustee, who is paid on a per diem basis, spends time working on matters related to the township's ambulance and

from a levy imposed pursuant to division (I) or (W) of section 5705.19 of the Revised Code, to the fund an amount known as the 'firefighter employers' contribution'" (emphasis added). Thus, the sources for payments to OPFPF appear to be statutorily limited, and do not include the EMS Fund.

emergency medical services, and properly documents his time under the method adopted by the board of township trustees pursuant to R.C. 505.24(C), then the per diem earned by the trustee for that work may be paid from the ambulance and emergency medical services fund established pursuant to R.C. 505.84. If, however, a township trustee is paid an annual salary, his compensation is not eligible for payment from the ambulance and emergency medical services fund, unless the trustee documents all time spent on township business and the portion of that time spent on matters related to the township's ambulance and emergency medical services.

2. The portion of a fire district employee's salary that is earned for providing ambulance and emergency medical services is eligible for payment from the ambulance and emergency medical services fund established pursuant to R.C. 505.84. Township payments of employer contributions to the Ohio Public Employees Retirement System and for employees' health insurance may be made from the ambulance and emergency medical services fund in the same proportion that the employee's salary is eligible for payment from the fund.
3. A board of township trustees may, in the reasonable exercise of its discretion, develop appropriate methods for determining and documenting the proportion of expenses that are incurred by a township fire district for managing, maintaining, and operating ambulance and emergency medical services, and are eligible for payment from the ambulance and emergency medical services fund established pursuant to R.C. 505.84.