

Note from the Attorney General's Office:

1987 Op. Att'y Gen. No. 87-003 was overruled in part by
2004 Op. Att'y Gen. No. 2004-032.

OPINION NO. 87-003**Syllabus:**

R.C. 505.371 does not authorize the establishment of a joint fire district for the sole purpose of building, operating, and maintaining a facility for training firefighters.

To: James L. Flannery, Warren County Prosecuting Attorney, Lebanon, Ohio
By: Anthony J Celebrezze, Jr., Attorney General, February 4, 1987

I have before me your request for an opinion concerning the authority of various townships and municipal corporations to form a joint fire district for the sole purpose of building, operating, and maintaining a facility for training firefighters. You have indicated that the joint fire district would perform no functions apart from provision of the training facility and that one of the purposes of forming the district would be to allow the political subdivisions "to levy a tax on all taxable property within the joint fire district for the sole purpose of raising funds to build, operate and maintain this training facility."

I note, first, that a joint fire district is not a county board and a county prosecutor has no duty to act as legal adviser to such a board. See R.C. 505.37-.371; 1985 Op. Att'y Gen. No. 85-071 (syllabus, paragraph one) ("[a] county prosecuting attorney is not, under R.C. 309.09, legal adviser to a joint fire district organized pursuant to R.C. 505.37 and R.C. 505.371"). A county prosecutor may, however, render legal advice to a township trustee who serves as a representative to a board of fire district trustees on matters arising from the person's position as township trustee. See Op. No. 85-071 (syllabus, paragraph two) ("[a] county prosecuting attorney has a duty to act as legal adviser to a township trustee who serves as a representative to a board of fire district trustees on matters relating to the activities of the joint fire district which arise from such individual's position as township trustee"). It is, similarly, appropriate for a county prosecutor to advise township trustees concerning the possible participation of their township in a joint fire district. See R.C. 309.09. Your question is, accordingly, an appropriate subject for a legal opinion from this office. See R.C. 109.14.

R.C. 505.371 authorizes the creation of a joint fire district, as follows:

The boards of township trustees of one or more townships and the legislative authorities of any one or more municipal corporations within or adjoining

such townships, or the boards of township trustees of two or more townships, may, by adoption of a joint resolution by a majority of the members of each board of township trustees and by a majority of the members of the legislative authority of each municipal corporation, create a joint fire district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon. A joint fire district so created shall be given a name different from the name of any participating township or municipal corporation.

The governing body of the joint fire district shall be a board of fire district trustees, which shall include one representative from each board of township trustees and one representative from the legislative authority of each municipal corporation in the district. The board of fire district trustees may exercise the same powers as are granted to a board of township trustees in sections 505.37 to 505.45, inclusive, of the Revised Code, including, but not limited to, the power to levy a tax upon all taxable property in the fire district, as provided in section 505.39 of the Revised Code.... (Emphasis added.)

A joint fire district is a creature of statute and, as such, has only those powers, express or implied, that are granted by statute. See generally State ex rel. Byrd v. Sherwood, 140 Ohio St. 173, 42 N.E.2d 889 (1942); Op. No. 85-071. Pursuant to R.C. 505.371, the board of fire district trustees of a joint fire district may exercise the same powers as are granted to a board of township trustees in R.C. 505.37-.45. R.C. 505.37 sets forth the general powers relating to fire protection, as follows:

(A) The board of township trustees may establish all necessary regulations to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents, and may, with the approval of the specifications by the prosecuting attorney, 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. The board shall provide for the care and maintenance of fire equipment, and, for such purposes, may purchase, lease, or construct and maintain necessary buildings, and it may establish and maintain lines of fire-alarm communications within the limits of the township. The board may employ one or more persons to maintain and operate fire-fighting equipment, or it may enter into an agreement with a volunteer fire company for the use and operation of fire-fighting equipment. The board may compensate the members of a volunteer fire company on any basis and in any amount that it considers equitable.

....
(D)...[T]he board of fire district trustees of a fire district created under section 505.371 of the Revised Code...may purchase the necessary fire-fighting equipment, buildings, and sites for the...fire district...and pay for it over a period of four years. The...board of fire district trustees...may also construct any buildings necessary to house fire-fighting equipment and pay for the

buildings over a period of four years. The...board of fire district trustees...may issue the notes of the...fire district...covering such deferred payments and payable at the times provided....

(E)....

When a board of township trustees cannot, by deed of gift or by purchase and upon terms it considers reasonable, procure land for a township fire station that is needed in order to respond in reasonable time to a fire or medical emergency, the board may appropriate such land for that purpose under sections 163.01 to 163.22 of the Revised Code. If it is necessary to acquire additional adjacent land for enlarging or improving the fire station, the board may purchase, appropriate, or accept a deed of gift for the land for these purposes.

See also R.C. 9.60.

Under R.C. 505.371, the board of fire district trustees may levy a tax upon all taxable property in the fire district, as provided in R.C. 505.39. R.C. 505.39 states:

The board of township trustees may, in any year, levy a sufficient tax upon all taxable property in the township or in a fire district, to provide protection against fire, to provide and maintain fire apparatus and appliances, buildings and sites for apparatus and appliances, sources of water supply, materials for such water supply, lines of fire-alarm telegraph, and to pay permanent, part-time, or volunteer fire-fighting companies to operate such equipment.

No express mention is made in R.C. 505.37, R.C. 505.371, R.C. 505.39, or elsewhere in R.C. 505.37-.45 of the authority to build, operate, and maintain a fire training facility. Cf. R.C. 505.45 (made applicable to a joint fire district by R.C. 505.371, and authorizing the district to "send any of the officers and firemen of its fire department to schools of instruction designed to promote the efficiency of firemen, and...[to] pay their necessary expenses from the funds used for the maintenance and operation of such department"). It might be argued that the authority to provide training for firefighters is implied from the existing statutory language as necessary for the performance of statutory duties, since the proper training of firefighters is essential to the provision of fire protection. Indeed, certification of the satisfactory completion of a training program is required by law for firefighters of a township, fire district, or municipal corporation. See R.C. 505.38 (providing that firefighters appointed by the fire department of a township or fire district must hold or receive certificates issued by the State Board of Education under R.C. 3303.07 evidencing satisfactory completion of a firefighter training program); R.C. 737.08 (imposing the same requirement upon firefighters of the fire department of a city); R.C. 737.22 (imposing the same requirement upon firefighters of the fire department of a village). See generally State ex rel. Kuntz v. Zangerle, 130 Ohio St. 84, 197 N.E. 112 (1935); Op. No. 85-071. Few would question that some practical training and practice activities for firefighters would be incidental to the provision of fire services and would come within the authority granted by R.C. 505.37-.45. It might even be argued, in particular factual situations, that the construction of training facilities comes, by necessary implication, within the provisions of R.C. 505.371. In the

situation that you have presented, however, the joint fire district would not seek to carry out any duties expressly imposed by statute, but would seek only to provide training facilities. The provision of such facilities would not be necessarily incidental to the performance of other duties by that district, since the district would perform no other duties. There is, therefore, no basis upon which to imply the authority for such a district to build, operate, and maintain a training facility for firefighters. See generally State ex rel. Kuntz v. Zangerle (syllabus, paragraph one) (creatures of statute "can exercise only such powers as are expressly delegated by statute and only such implied powers as are necessary to carry into effect the powers expressly delegated").

I note that there are specific statutory provisions authorizing the establishment of training facilities for firefighters. R.C. 3737.33 authorizes the State Fire Marshal to establish and conduct a training school, as follows:

The fire marshal shall establish and conduct a training school for firemen, including volunteer firemen, of any political subdivision of the state, and for other persons interested in the vocation of firefighting and desiring to attend. The school shall be known as the Ohio fire academy.

The fire marshal shall establish the training program and all rules governing qualifications for admission to the academy. He may require competitive examinations to determine the fitness of prospective trainees so long as the examinations or other criteria for admission to the academy are not inconsistent with Chapter 124. of the Revised Code.

The fire marshal shall determine reasonable tuition costs and other fees which shall be charged for the courses of instruction or other programs offered by the academy....The costs of acquiring and equipping the academy shall be paid from appropriations made by the general assembly to the fire marshal for that purpose, or from gifts or grants received for that purpose.

The firemen, during the period of their training, shall receive compensation as determined by the political subdivision which sponsors them. Such political subdivisions may pay the tuition costs of the firemen they are sponsoring. (Emphasis added.)

Other statutory provisions govern the establishment and maintenance of programs under which firefighters and fire safety inspectors may be trained and certified, as required by law. See R.C. 505.38; R.C. 737.08; R.C. 737.22; R.C. 3737.34. R.C. 3303.07 states:

The state superintendent of public instruction shall, with the advice and counsel of the advisory committee for fire fighter and fire safety inspector training, assist in the establishment and maintenance by any state agency, or any county, township, city, village, or school district of a fire service training program for the training of all paid and volunteer fire fighters and fire safety inspectors in this state. The state board of education shall adopt standards to regulate such fire fighter and fire safety inspector training programs which may include, but need not be limited to, provisions for minimum courses of study, minimum hours of instruction,

attendance requirements, required equipment and facilities, qualifications of instructors, basic physical and methods training required of fire fighters and fire safety inspectors, and training schedules. The standards adopted to regulate training programs for volunteer fire fighters shall not require more than thirty-six hours of training. The state superintendent of public instruction shall provide for the classification and chartering of such training programs and may revoke any charter for failure to meet standards. The state superintendent of public instruction shall prescribe a certificate which shall be issued by it to each person satisfactorily completing a chartered training program.

The advisory committee for fire safety inspector training and for fire fighter training consisting of nine members shall be approved by the state superintendent of public instruction, one member being selected by each of the following: the Ohio state firemen's association, the Ohio association of professional fire fighters, the Ohio fire chiefs association, inc., the insurance services office of Ohio, the international association of fire chiefs, inc., the international association of fire fighters, the state fire marshal, and two members to be appointed by the state superintendent of public instruction who shall be chosen from mayors, city or village managers, or members of municipal legislative authorities. The advisory committee may select a chairman who shall serve for a term of one year.

Nothing in this section invalidates any part of section 3737.33 of the Revised Code relative to the fire training academy. (Emphasis added.)

It has been established that the Ohio Fire Academy conducted by the State Fire Marshal is independent of the programs chartered by the State Superintendent of Public Instruction under R.C. 3303.07. See 1973 Op. Att'y Gen. No. 73-101 (syllabus) ("[t]he Firemen's Training Academy [now the Ohio Fire Academy] established pursuant to R.C. 3737.42 [now R.C. 3737.33], is not governed by the provisions of R.C. 3303.07, but is conducted by the State Fire Marshal independently of the Department of Education").

It is my understanding that the political subdivisions to which your request relates seek to establish a fire training facility that could be used both for the training and certification of firefighters under R.C. 3303.07 and for additional training of certified firefighters of the sort currently provided by the Ohio Fire Academy. See Op. No. 73-101 at 2-383 ("the curriculum of the [Ohio Fire Academy] is not intended to substitute for the training program [under R.C. 3303.07], but is perhaps a more specialized, supplementary training program"). As discussed above, there is no authority for the establishment of a joint fire district for the sole purpose of providing facilities for training the firefighters of various political subdivisions. It appears, further, that a joint fire district is not, in any circumstances, eligible to operate a training program that is chartered under R.C. 3303.07. R.C. 3303.07 authorizes the State Superintendent of Public Instruction, with the advice and counsel of the Advisory Committee for Fire Fighter and Fire Safety Inspector Training, to assist in the establishment and maintenance by "any state agency, or any county, township, city, village, or school district" of a fire service training program for the training

of firefighters and fire safety inspectors in the state, whether paid or volunteer, leading to certification of such firefighters and fire safety inspectors. See generally 1986 Op. No. 86-014. No mention is made of the establishment and maintenance of such a program by a joint fire district, and such language may not be read into the statute. See generally Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph five) ("[t]he court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged..."); 1986 Op. Att'y Gen. No. 86-084. It is true that a joint fire district is authorized by R.C. 505.371 to exercise many of the same powers as those granted to a board of township trustees. The reference in R.C. 505.371 is, however, to powers granted in R.C. 505.37-.45; it does not extend to powers granted in R.C. 3303.07.

I am aware that R.C. 505.37(B) authorizes the "boards of township trustees of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination thereof...through joint action [to] unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in [R.C. 505.37-.42], and [to] prorate the expense of the joint action on any terms that are mutually agreed upon." Again, however, the authority to act jointly extends to purposes designated in R.C. 505.37-.42 and not to the establishment of a training facility as authorized by R.C. 3303.07. Furthermore, this provision authorizes the various political subdivisions to enter into mutual agreements for joint action, rather than forming a separate entity such as a joint fire district. See also R.C. Chapter 167 (authorizing the creation of regional councils of governments); Op. No. 86-084; 1986 Op. Att'y Gen. No. 86-068.

Based upon the foregoing discussion, I conclude that there is no statutory authority for various political subdivisions to establish a joint fire district for the sole purpose of building, operating, and maintaining a facility for training firefighters. In light of this conclusion, it is unnecessary for me to address your concern as to whether political subdivisions that have already formed a joint fire district that provides the entire range of fire services may also join a joint fire district established for the sole purpose of providing a training facility.

It is, therefore, my opinion, and you are hereby advised, that R.C. 505.371 does not authorize the establishment of a joint fire district for the sole purpose of building, operating, and maintaining a facility for training firefighters.