

OPINION NO. 79-006**Syllabus:**

The term "budget" as used in R.C. 505.24 refers to appropriations and supplemental appropriations, adopted by a board of township trustees pursuant to R.C. 5705.38 and based upon the certificate of estimated resources, and any amended certificates, received from the county budget commission. If, during a current fiscal year, a township's budget increases so as to bring it within the next increment under R.C. 505.24, then per diem compensation of trustees may be increased for the balance of the fiscal year but may not be applied to days already served.

To: Roger R. Ingraham, Medina County Pros. Atty., Medina, Ohio
By: William J. Brown, Attorney General, March 12, 1979

I have before me your request for my opinion which reads as follows:

Ohio Revised Code Section 505.24 provides for the compensation of township trustees. The compensation is based upon the township budget. My question concerns the determination of what is a township budget. The township adopts a budget which they submit to the Budget Commission for purposes of obtaining a certificate of estimated resources. This budget is usually inflated and often has no real bearing on what the township expects to obtain. Subsequently, the Budget Commission issues a certificate of estimated resources. The township may then adopt an appropriation based on that certificate. Is the certificate of estimated resource really the budget for purposes of Ohio Revised Code Section 505.24 and is that so-called budget subject to amendment by subsequent amended certificates of estimated resources?

In order to answer your question it is necessary to first examine R.C. 505.24. It provides, in part, as follows:

Each township trustee is entitled to compensation as follows:

- (A) Twelve dollars for each day of service in the relation to partition fences, to be paid in equal proportions by the parties.
- (B) An amount for each day of service in the business of the township, to be paid from the township treasury as follows:
 - (1) In townships having a budget of less than ten thousand dollars, twelve dollars per day for not more than one hundred days;
 - (2) In townships having a budget of from ten thousand to twenty thousand dollars, twelve dollars per day for not more than one hundred thirty days;
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 - (6) In townships having a budget of three hundred fifty thousand dollars or over, twenty-two dollars per day for not more than two hundred days.

Each trustee shall present an itemized statement of his account for such per diem and service, which shall be filed with the township clerk and preserved for inspection by any persons interested.

(Emphasis added.)

There is, unfortunately, no indication in R.C. Chapter 505 as to how the township's budget is to be determined for purpose of R.C. 505.24.

The most analagous provisions are set forth in Chapter 5705—specifically, R.C. 5705.28 and 5705.29. R.C. 5705.28 provides that prior to July 15th of each year ". . .the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year." The section applies specifically to townships. R.C. 5705.01(A) and (C). The contents of the "tax budget" are delineated in R.C. 5705.29 as follows:

The tax budget shall present the following information in such detail as is prescribed by the bureau of supervision and inspection of public offices:

- (A)(1) A statement of the necessary current operating expenses for the ensuing fiscal year for each department and division of the subdivision, classified as to personal services and other expenses, and the fund from which such expenditures are to be made ;
- (2) A statement of the expenditures for the ensuing fiscal year necessary for permanent improvements ;
- (3) The amounts required for the payment of final judgments;
- (4) A statement of expenditures for the ensuing fiscal year necessary for any purpose which a special levy is authorized, and the fund from which such expenditures are to be made;
- (5) Comparative statements . . .of corresponding items of expenditures for the current year and the two proceeding years.
- (B)(1) An estimate of receipts from other sources than the general property tax during ensuing fiscal year, which shall include an estimate of

- unencumbered balances at the end of the current year, . . .;
- (2) The amount each fund requires from the general property tax . . .;
 - (3) Comparative statements . . . of taxes and other revenue for the current year and the two proceeding years.
- (C)(1) The amount required for debt charges;
- (2) The estimated receipt from sources other than the tax levy for payment of such debt charges . . .;
 - (3) The net amount for which a tax levy shall be made, classified as to bonds authorized . . ., and as to what portion of the levy will be within and what in excess of the ten-mill limitation.
- (D) An estimate of amounts from taxes authorized to be levied in excess of the ten-mill limitation on the tax rate, and the fund to which such amounts will be credited.

As noted, R.C. 505.24 does not indicate just how the township's budget is to be determined. However, R.C. 1.42 provides that:

Words and phrases shall be read in context and construed according to the rules of grammar and common usage

The word "budget" is defined as:

. . . a statement of the financial position of a soviergn body for a definite period of time based upon detailed estimates of planned or expected expenditures during the period and proposals for financing them. Webster's Third New International Dictionary (1961).

Under this definition and the common usage of the term "budget" it might appear that the budget of the township may be fairly said to be the total amount of projected expenditures set forth in R.C. 5705.29, supra. However, as further discussed, infra, the tax budget prepared under R.C. 5705.29 is subject to amendment prior to, and even during, the township's fiscal year.

Once the township prepares its tax budget it is sent to the county auditor. R.C. 5705.30. The county auditor, in turn, transmits the budget to the county budget commission along with an estimate of available revenues. R.C. 5705.31. The budget commission examines the budget as submitted to determine, inter alia, whether the tax levies proposed are ". . .clearly required by the taxing district or political subdivision. . . ." R.C. 5705.34. The revised budget is returned to the township, pursuant to R.C. 5705.36, along with the budget commission's certificate of estimated resources. The township trustees must then levy taxes accordingly. Prior to commencement of the fiscal year, each township must present to the county auditor a statement of unexpended monies remaining in each fund. Also included is the revised tax budget. The auditor thereupon transmits the statement and tax budget to the budget commission, which issues an amended certificate of estimated resources. R.C. 5705.36. Under R.C. 5705.36:

. . . The total appropriations made during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources or any amendment thereof, certified prior to the making of the appropriation or supplemental appropriation. . . .
(Emphasis added.)

Under this section it is clear that that actual expenditures which a township may properly make can exceed the amount originally budgeted, provided that the budget commission certifies that additional revenues are available.

These fluctuations in the amount which a township may properly spend during the course of a fiscal year are the source of your problem. In order to better understand the term "budget" in R.C. 505.24, it is first necessary to consider the intent of the General Assembly in establishing the sliding-scale of per diem allowances set forth in that section. By allowing the trustees of the townships with larger "budgets" to receive a greater compensation the General Assembly seems to be recognizing that as township expenditures increase, the time and effort required of the trustees increase as well. Thus, I conclude that when R.C. 505.24 refers to a "budget" it refers to the amount of money which the township is authorized to appropriate, under R.C. 5705.36, pursuant to the county budget commission's certificate of estimated resources and amendments thereto.

It is my understanding that the Bureau of Supervision and Inspection of Public Offices has adopted a similar policy on this matter. They will allow a trustee to receive compensation under R.C. 505.24 based upon appropriation measures as determined by the budget commission's certificate of resources and any amendments so certified. If, during a fiscal year, appropriations increase sufficiently to bring a township into a higher budget classification under R.C. 505.24, the bureau will allow the trustees to receive the higher per diem rate for the balance of the fiscal year. However, the increase is not retroactively applied to days already served. While the bureau's policy is not specifically mandated by any section of the Revised Code, it is a reasonable interpretation of the term "budget" as used in R.C. 505.24.

An issue related to your questions, and to the practice of the Bureau of Supervision and Inspection of Public Offices outlined above, is whether an increase in per diem compensation during a fiscal year violates Ohio Const., Art II, §20. That section of the State Constitution provides:

The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of officers, but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.

It could be argued that an increase in per diem compensation for township trustee during a fiscal year contravenes this provision. In 1977 Op. Att'y Gen. No. 77-083, I had occasion to discuss this issue in greater detail. The syllabus to that opinion stated in part:

Pursuant to R.C. 505.24, a township trustee is permitted to receive an increase in per diem compensation as the township budget increases . . .

My conclusion in the opinion was based, in part, upon State, ex rel. Mack v. Guckenberger, 139 Ohio St. 273 (1942) and State, ex rel. Edgecomb v. Rosen, 29 Ohio St. 2d 114 (1972). It is unnecessary to restate that opinion here, except to say that allowing an increase in per diem compensation to township trustee during the course of a fiscal year does not, in my opinion, violate Ohio Const., Art. II, §20.

Accordingly, it is my opinion, and you are advised that:

The term "budget" as used in R.C. 505.24 refers to appropriations and supplemental appropriations, adopted by a board of township trustees pursuant to R.C. 5705.38 and based upon the certificate of estimated resources, and any amended certificates, received from the county budget commission. If, during a current

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