

March 15, 2017

The Honorable Dennis Watkins  
Trumbull County Prosecuting Attorney  
4th Floor Administration Building  
160 High Street N.W.  
Warren, Ohio 44481-1092

SYLLABUS:

2017-008

1. A board of county commissioners and a board of township trustees may enter into an agreement pursuant to R.C. 9.482 or R.C. 307.15 whereby the county will repair and maintain driveways, parking areas, and structures owned by a township, and used by a non-profit recycling center.
2. A board of county commissioners may require a county engineer pursuant to R.C. 315.14 to maintain and repair driveways and parking areas owned by a township, but may not require a county engineer to maintain and repair township buildings used by a non-profit recycling center.
3. A board of county commissioners may use motor vehicle fuel excise and license tax revenues when a county engineer is required to repair and maintain a driveway and parking area on township property pursuant to an agreement under R.C. 9.482 or R.C. 307.15 between a board of county commissioners and a board of township trustees. (1990 Op. Att’y Gen. No. 90-097 (syllabus, paragraph 2), approved and followed, and 1976 Op. Att’y Gen. No. 76-074, approved and followed).



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OPINION NO. 2017-008

The Honorable Dennis Watkins  
Trumbull County Prosecuting Attorney  
4th Floor Administration Building  
160 High Street N.W.  
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

You have requested an opinion whether a board of county commissioners has the authority to require the county engineer to repair and maintain driveways, parking areas, and structures on township property as part of his “other duties” under R.C. 315.14. You have explained that a board of county commissioners and a board of township trustees would like to enter an agreement pursuant to R.C. 9.482 or R.C. 307.15 to have the county engineer repair and maintain driveways, parking areas, and structures owned by the township, and used by a non-profit recycling center. You ask the following specific questions:

1. May a board of county commissioners and a board of township trustees rely on R.C. 9.482 or R.C. 307.15 to enter an agreement whereby the county will repair and maintain driveways, parking areas, and structures<sup>1</sup> owned by a township, and used by a non-profit recycling center?
2. May a board of county commissioners require a county engineer to repair and maintain driveways, parking areas, and structures owned by a township pursuant to R.C. 315.14?

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<sup>1</sup> *Black’s Law Dictionary* 1424 (6th ed. 1990) defines a “structure” as “[a]ny construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner. That which is built or constructed; an edifice or building of any kind.” Based on your description of the township property, we presume that your use of the term “structures” refers to buildings on township real property.

3. If a county engineer may be required by a board of county commissioners to repair and maintain driveways, parking areas, and structures owned by a township, and the county engineer's office is funded by motor vehicle fuel excise and license tax revenues, is the board of county commissioners required to reimburse the cost of the services, equipment, and materials in order to comply with Section 5a of Article XII of the Ohio Constitution? (Footnote added.)

This is the third opinion we have issued to you in response to a single request posing 16 questions. This opinion answers questions 14, 15, and 16 in your letter. We have renumbered and reordered these questions for ease of organization and discussion. We addressed the other questions in your letter in 2016 Op. Att'y Gen. No. 2016-038 and 2017 Op. Att'y Gen. No. 2017-001.

**Authority of a Board of County Commissioners and a Board of Township Trustees to Enter into an Agreement Pursuant to R.C. 9.482 or R.C. 307.15 for the Repair and Maintenance of Driveways, Parking Areas, and Structures on Township Property**

R.C. 9.482 and R.C. 307.15 authorize a board of county commissioners and a board of township trustees to enter into a contract with each other with respect to the repair and maintenance of driveways, parking areas, and structures on township property. R.C. 9.482(B)(1) provides:

*When legally authorized to do so a political subdivision<sup>2</sup> may enter into an agreement with another political subdivision or a state agency whereby the contracting political subdivision or state agency agrees to exercise any power, perform any function, or render any service for the contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render. (Footnote and emphasis added.)*

Similarly, R.C. 307.15(A)(1) provides, in pertinent part, that

the board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, township, ... and such legislative authorities may enter into agreements with the board of county commissioners, whereby the board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, on behalf of the contracting subdivision or its legislative authority, that such subdivision or legislative authority may exercise, perform, or render; or whereby the legislative authority of any municipal corporation undertakes, and is authorized by the board of county

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<sup>2</sup> R.C. 9.482(A)(1) states that "political subdivision," as used in R.C. 9.482, has the meaning defined in R.C. 2744.01, which provides, in part, that a "political subdivision" is "a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state." R.C. 2744.01(F).

commissioners, to exercise any power, perform any function, or render any service, on behalf of the county or the board, that the county or the board may exercise, perform, or render.

Thus, pursuant to R.C. 9.482 and R.C. 307.15, a board of county commissioners and a board of township trustees may enter an agreement whereby the county agrees to maintain and repair driveways, parking areas, and structures on township property if the board of township trustees has the authority to repair and maintain driveways, parking areas, and structures on township property.<sup>3</sup> *Cf.* 1986 Op. Att’y Gen. No. 86-084, at 2-478 (overruled, in part, on other grounds by 2015 Op. Att’y Gen. No. 2015-007) (“R.C. 307.15 would merely permit one subdivision to assume the duties and powers of another subdivision conferred by [other] statutory provisions”); *see also* 2015 Op. Att’y Gen. No. 2015-007, at 2-84 (“[t]he authority conferred by R.C. 307.15(A) to enter into agreements to perform services or exercise powers on behalf of another subdivision or taxing district does not expand the authority that the contracting subdivision otherwise has”).

With respect to the authority of a board of township trustees to maintain and repair a township’s driveways, parking areas, and structures, we first consider the meaning of “maintain” and “repair.” 1994 Op. Att’y Gen. No. 94-025, at 2-110 recognized that

[t]he term “maintenance” is used throughout R.C. Title 55 (roads—highways—bridges). . . . However, “maintenance” is not specifically defined for purposes of R.C. Title 55. Where there is no specific definition for “maintenance,” it must be given its natural, literal, common, or ordinary meaning. The dictionary defines “maintenance” as “[t]he action of maintaining.... The work of keeping something in proper condition.” . . . “Maintenance” is often used in R.C. Title 55 in conjunction with the term “repair.” (Internal citations omitted.)

“Maintain” has also been defined as “acts of repairs and other acts to prevent a decline, lapse or cessation from existing state or condition; . . . keep in good order; keep in proper condition[.]” *Black’s Law Dictionary* 953 (6th ed. 1990). Thus, we use “repair” and “maintain” to mean keeping something in proper working order.

A board of township trustees is responsible for maintaining and repairing “all [public highways other than state or county roads] within its township.” R.C. 5535.01(C); *see also* R.C. 5535.08(A) (“[t]he state, county, and township shall each maintain its roads as designated in [R.C.

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<sup>3</sup> This conclusion is provided within the context of an agreement under R.C. 9.482 or R.C. 307.15 with respect to maintenance and repair of roads and buildings. When road repair and maintenance are at issue, a board of county commissioners and a board of township trustees may enter into an agreement under R.C. 5535.08. *See* R.C. 5535.08(A) (“the county or township, by agreement between the board of county commissioners and the board of township trustees, may contribute to the *repair and maintenance of the roads* under the control of the other”) (emphasis added).

5535.01]”). “[T]he roads upon which boards of township trustees are authorized to act are all *previously established* public roads and highways.” 1956 Op. Att’y Gen. No. 7136, p. 690, at 697 (emphasis in original). 1993 Op. Att’y Gen. No. 93-057, at 2-270 found that “if a proposed driveway and parking lot for a township hall are lawfully established as a public road or highway, then a township may expend motor vehicle fuel excise tax revenues upon their construction and maintenance.” *Cf.* 1940 Op. Att’y Gen. No. 2148, vol. I, p. 334 (syllabus) (“[c]ounty road funds may not properly be used to improve or maintain driveways located upon the grounds owned by the county, unless such driveways have been established or dedicated as public highways”). Absent establishment of a public road, a board of township trustees has no authority to repair and maintain the road. Further, no provision expressly permits a township to utilize township moneys to repair or maintain a road that has not been previously established as a public road. Therefore, the authority to repair and maintain driveways and parking areas is dependent upon a determination of whether these driveways and parking areas are public roads. Public roads may be established on a tract of land in a variety of ways. *See generally* 2015 Op. Att’y Gen. No. 2015-006, at 2-62 (“Ohio law recognizes four principal ways in which a highway can be established: (1) statutory dedication, (2) common law dedication, (3) prescription, and (4) statutory appropriation”); 1988 Op. Att’y Gen. No. 88-080, at 2-396 (statutory dedication is one of four methods in Ohio to establish a public road; the other methods are common law dedication, prescription, and statutory appropriation). For the purpose of this opinion, we will presume that the driveway and parking lot in your inquiry have been previously established as public roads.

R.C. 5571.01(A) also authorizes a board of township trustees to “construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction, or any county road, intercounty highway, or state highway within its township[,]” and “[t]he board of township trustees may widen, straighten, or change the direction of any part of a road in connection with the proceedings for its improvement.” Further, R.C. 5571.02 requires that the “board of township trustees shall have control of the township roads of its township and, ... shall keep them in good repair.” Hence, a board of township trustees has authority or power to maintain and repair a public road under its jurisdiction.

In addition, a board of township trustees has express authority to acquire and dispose of real and personal property, *see, e.g.*, R.C. 505.10; R.C. 505.26. Although there is no statute that expressly authorizes a board of township trustees to repair or maintain township property generally, there are a number of statutes that authorize a board of township trustees to improve or maintain particular township property. 1991 Op. Att’y Gen. No. 91-056, at 2-278; *see, e.g.*, R.C. 505.12 (provision and maintenance of solid waste facilities); R.C. 505.26 (construction and maintenance of buildings for township purposes); R.C. 505.261 (acquisition, improvement, and maintenance of a township hall, township park); and R.C. 511.03 (erection, improvement or enlargement of town hall, lodge, or recreational facility). For the purpose of this opinion, we presume that the township has authority to maintain the particular structure upon township property that is referred to in your letter. A board of township trustees that has the authority to maintain and repair township roads and structures may enter into an agreement pursuant to R.C. 9.482 or R.C. 307.15 with a board of county commissioners whereby the county will repair and maintain driveways, parking areas, and structures owned by a township and used by a non-profit recycling center.

**Authority of a Board of County Commissioners to Require a County Engineer to Repair or Maintain Driveways, Parking Areas, and Structures on Township Property**

Your next question asks whether a board of county commissioners may require a county engineer, pursuant to R.C. 315.14, to repair and maintain driveways, parking areas, and structures owned by a township when a county agrees to repair and maintain the driveways, parking areas, and structures of the township pursuant to R.C. 9.482 or R.C. 307.15. R.C. 315.14 provides, in part:

The county engineer shall be responsible for the inspection of all public improvements made under authority of the board of county commissioners. The engineer shall keep in suitable books a complete record of all estimates and summaries of bids received and contracts for the various improvements, together with the record of all estimates made for payments on that work. The engineer shall make all surveys required by law, shall perform all necessary services to be performed by a registered surveyor or registered professional engineer in connection with the construction, repair, or opening of all county roads or ditches constructed under the authority of the board, and shall perform other duties as the board requires, provided that the duties described in [R.C. 307.37-.38] and [Revised Code Chapters 343., 6103., and 6117.] shall be performed only pursuant to an agreement between the county engineer and the board.

You have asked us to explain what is meant by R.C. 315.14's directive that a county engineer shall perform "other duties as the board [of county commissioners] requires."<sup>4</sup> To answer your question, we must review the duties and powers of a county engineer as prescribed by statute.

A county engineer is a county officer<sup>5</sup> that has specific duties imposed upon him by statute. A "duty" is "[a]n obligation that one has by law or contract." *Black's Law Dictionary* 505 (6th ed. 1990). Further, as a creature of statute, a county engineer has only those powers explicitly granted to him by statute or as may be necessarily implied in order to accomplish the exercise of an express power. See *AFSCME, Local 1045 v. Polta*, 59 Ohio App. 2d 283, 284, 394 N.E.2d 310 (Erie County 1977).

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<sup>4</sup> A member of your staff has informed us you are not asking about county sanitary engineer duties despite the reference in your letter to 1994 Op. Att'y Gen. No. 94-025, which addresses that part of R.C. 315.14 that permits a county engineer and a board of county commissioners to enter into an agreement in which the county engineer agrees to perform the duties imposed upon a county sanitary engineer by R.C. Chapters 6103 and 6117.

<sup>5</sup> "A public officer is an individual who has been appointed or elected in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the public assigned to him by law." *State ex rel. Bricker v. Gessner*, 129 Ohio St. 290, 294, 195 N.E. 63 (1935) (quoting 23 American and English Encyclopaedia of Law (2d Ed.) 322).

The powers and duties of a county engineer are set forth in R.C. Chapter 315 and within R.C. Title 55, including R.C. Chapters 5543 (duties of county engineer), 5553 (county roads; establishment; alteration; vacation), 5555 (county road improvement), 5559 (platted territory road improvement), and 5571 and 5573 (board of township trustees; township road improvement). R.C. 315.08 declares that the county engineer

shall perform for the county all duties authorized or declared by law to be done by a registered professional engineer or registered surveyor, except those duties described in [R.C. 307.37-.38] and [Revised Code] Chapters 343., 6103., and 6117. The engineer shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of all bridges, culverts, roads, drains, ditches, roads on county fairgrounds, and other public improvements, except buildings, constructed under the authority of any board within and for the county. The engineer shall not be required to prepare plans, specifications, details, estimates of costs, or forms of contracts for emergency repairs authorized under [R.C 315.13], unless the engineer determines them necessary.

Thus, the primary responsibility of the county engineer is to supervise, undertake, or inspect the construction, reconstruction, improvement, maintenance, or repair of county roads and highways. *See generally* 1988 Op. Att’y Gen. No. 88-067, at 2-343; *see also* 1966 Op. Att’y Gen. No. 66-084, at 2-148 (R.C. 315.08 “devolves upon the county engineer, a county officer, duties concerning *county matters*”) (emphasis in original). R.C. 5543.01(A) provides that the county engineer shall have general charge of the following:

- (1) Construction, reconstruction, improvement, maintenance, and repair of all bridges and highways within the engineer’s county, under the jurisdiction of the board of county commissioners, except for those county roads the board places on nonmaintained status pursuant to [R.C.5541.05];
- (2) Construction, reconstruction, resurfacing, or improvement of roads by boards of township trustees under [R.C. 5571.01, R.C. 5571.06,-.07, R.C. 5571.15, 5573.01-.15, and R.C. 5575.02-.09];
- (3) Construction, reconstruction, resurfacing, or improvement of the roads of a road district under [R.C. 5573.21].

*See also* 1966 Op. Att’y Gen. No. 66-084, at 2-148 (certain provisions of law [R.C. 5573.06; R.C. Chapter 5543] require the county engineer to act on township matters, primarily in the area of township roads).

Additionally, the county engineer shall make emergency repairs on roads, bridges, and culverts in the county, R.C. 315.13, inspect public improvements, make surveys, and keep records of estimates, bids, and contracts for improvements, R.C. 315.14, and keep records of surveys, maps, plats, and related documents as well as indexes to these records, R.C. 315.25-.27; *see also* R.C. 315.31; R.C. 315.35. A county engineer is also assigned various responsibilities and duties with respect to ditch and drainage improvements under R.C. Chapters 6131 (single county ditches), 6133

(joint county ditches), 6135 (interstate county ditches), and 6137 (ditch maintenance fund). 2014 Op. Att’y Gen. No. 2014-019, at 2-153; *see also* 2013 Op. Att’y Gen. No. 2013-002, at 2-18 (powers, duties, and responsibilities of a county engineer); 1942 Op. Att’y Gen. No. 4728, p. 32, at 36 (“[t]he county engineer has numerous duties to perform. His duties include not only work on public roads and highways but, among other things, county ditch improvements”).

For the reasons that follow, we conclude that “other duties as the board requires,” as understood by R.C. 315.14, means, in part, assigned tasks that are similar in nature and character to the county engineer’s statutorily prescribed duties. First, we find that the canon of statutory construction, *ejusdem generis*, is applicable to this language. The Ohio Supreme Court has stated that,

[u]nder the rule of *ejusdem generis*, where in a statute terms are first used which are confined to a particular class of objects having well-known and definite features and characteristics, and then afterwards a term having perhaps a broader signification is conjoined, such latter term is, as indicative of legislative intent, to be considered as embracing only things of a similar character as those comprehended by the preceding limited and confined terms.

*State v. Aspell*, 10 Ohio St. 2d 1, 225 N.E.2d 226 (1967) (syllabus, paragraph two).

The terms utilized in the first and second parts of R.C. 315.14’s third sentence describe and relate to the duties that the General Assembly has enjoined upon the county engineer by express directive, *i.e.*, “make all surveys required by law” and “perform all necessary services to be performed by a registered surveyor or registered professional engineer in connection with the construction, repair, or opening of all county roads or ditches constructed under the authority of the board.” The third part of the third sentence utilizes the term “*other duties*,” which could be interpreted to be more expansive than that of the county engineer’s statutory duties when considering the possible definitions of *other* to include “different” or “additional.” For example, several statutes provide authority for the county engineer to maintain and repair certain public roads. The county engineer has authority that includes, but is not limited to, the following: R.C. 5543.01(A)(1) (county engineer has general charge of the construction, reconstruction, improvement, maintenance, and repair of all bridges and highways within the county); R.C. 5543.01(A)(2) (construction, reconstruction, improvement, maintenance, and repair of township roads under certain statutory provisions); R.C. 5543.01(C) (“the county engineer shall inspect any road designated by [the board of township trustees] and advise as to the best methods of repairing, maintaining, or dragging that road”); R.C. 5571.05 (“[i]n the maintenance and repair of roads, the board of township trustees ... shall be subject to the general supervision and direction of the county engineer. Such board of township trustees shall follow the direction of the engineer as to methods to be followed in making repairs”); R.C. 315.13 (“[t]he county engineer shall make all emergency repairs on all roads, bridges, and culverts in the county”). All of these statutes relate to maintenance and repair of roads, which are functions of the county engineer in specific circumstances. Under this rule of statutory construction, “other duties” that may be required of the county engineer pursuant to R.C. 315.14 means those assigned tasks that are similar in nature and character to the county engineer’s express statutory duties. “Other duties” does not encompass any and every request made regardless of its character or nature by a board of county commissioners. In considering these



“other duties as required by the board” as assigned tasks, these assigned tasks would usually be for a specific, prescribed task that is not defined within the county engineer’s statutory duties, but is reasonably related to or within the county engineer’s areas of expertise. *See generally Merriam-Webster’s Collegiate Dictionary* 1279 (11th ed. 2005) (defining “task” as “a usu[ally] assigned piece of work often to be finished within a certain time ... Task implies work imposed by a person in authority”). These assigned tasks would encompass the qualifications and expertise of the county engineer. In other words, a board of county commissioners may not ask the county engineer to perform a task that the county engineer is not qualified to do.

In the context of an agreement between a board of county commissioners and a board of township trustees for the performance of public road maintenance under R.C. 9.482 or R.C. 307.15, the repair and maintenance of a driveway and parking lot established as a public road is reasonably related to the duties that the county engineer is required to perform. Thus, if the “other duties” of R.C. 315.14 required of the county engineer by the board of county commissioners pursuant to an agreement under R.C. 9.482 or R.C. 307.15 are similar in character or reasonably related to the function of the county engineer’s statutorily enumerated duties, the county engineer may be required by the board of county commissioners to undertake those duties. Such duties may include the maintenance and repair of township driveways and parking areas.<sup>6</sup>

We find no authority for the board of county commissioners to require the county engineer to repair and maintain structures that are used for a non-profit recycling center. Repair and maintenance of such a building are not among the express statutory duties of the county engineer nor reasonably related to any of those duties. *See* R.C. 315.08 (“[t]he engineer shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of all bridges, culverts, roads, drains, ditches, roads on county fairgrounds, and other public improvements, *except buildings*, constructed under the authority of any board within and for the county”) (emphasis added). Therefore, a board of county commissioners may require a county engineer pursuant to R.C. 315.14 to maintain and repair driveways and parking areas owned by a township, but may not require a county engineer to maintain and repair township buildings used by a non-profit recycling center.

### **Constitutional and Statutory Limitations Upon the Expenditure of Motor Vehicle Fuel Excise and License Tax Revenues for Maintenance and Repair of a Township Driveway and Parking Area**

The final question asks whether a board of county commissioners is required to reimburse the cost of the services, equipment, and materials of the county engineer’s office to comply with Section

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<sup>6</sup> An agreement under R.C. 9.482 requires and is subject to the written consent of the county engineer. *See* R.C. 9.482(D). The information provided to us is that the county engineer has provided his consent.

5a of Article XII of the Ohio Constitution when a county engineer is required by a board of county commissioners to repair and maintain driveways and parking areas of a township.<sup>7</sup> You have informed us that the county engineer's office is fully funded<sup>8</sup> by motor vehicle fuel excise and license tax revenues.

Ohio Const. art. XII, § 5 provides that “[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.” Ohio Const. art. XII, § 5a, in turn, provides as follows with respect to revenues derived from motor vehicle fuel excise and license taxes:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, *maintenance and repair of public highways* and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways. (Emphasis added.)

“In accordance with this constitutional limitation, the General Assembly has enacted various statutes that authorize the levy of such taxes and further specify the purposes for which the revenues from those taxes may be used.” 1998 Op. Att’y Gen. No. 98-008, at 2-42; *see, e.g.*, R.C. 4503.02 (levy of annual motor vehicle license tax and purposes for which those revenues may be used); R.C. 5735.05 (levy of motor vehicle fuel excise tax); R.C. 5735.26 (crediting of additional motor vehicle fuel excise tax); R.C. 5735.27 (distribution and use of the motor vehicle fuel excise tax fund and highway operating fund).

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<sup>7</sup> We have explained that the county engineer may not repair or maintain buildings used by a non-profit recycling center. Since county engineer resources should not be expended for maintenance and repair of township buildings used by a non-profit recycling center, there is no need to consider reimbursement for that purpose.

<sup>8</sup> “Fully funded” means that the county engineer’s entire budget is funded by the county’s share of motor vehicle fuel excise and license tax revenues. *See also* R.C. 325.14 (county engineer’s salary “may be paid monthly out of the general county fund or out of the county’s share of the fund derived from the receipts from motor vehicle licenses, as distributed by [R.C. 4501.04], and the county’s share of the fund derived from the motor vehicle fuel tax, as distributed by [R.C. 5735.27], as the board of county commissioners directs, upon the warrant of the county auditor and shall be in lieu of all fees, costs, per diem or other allowances, and other perquisites, of whatever kind, which any engineer collects and receives”). *See note 9, infra.*

It is our understanding from your question that in the proposed agreement under R.C. 9.482 or R.C. 307.15 the county is not going to receive funds from the township for the repair and maintenance services pertaining to the driveway and parking area on township property. Rather, the county engineer will perform these services as a cost of operation<sup>9</sup> of his office pursuant to the terms of the agreement.

A county may contribute county moneys to assist in maintaining township roads. R.C. 5535.08 provides that “the county or township, by agreement between the board of county commissioners and the board of township trustees, may contribute to the repair and maintenance of the roads under the control of the other.” Because the county engineer is fully funded by the county’s motor vehicle fuel excise and license tax revenues, we must determine whether the provision of services and materials by a county engineer for the maintenance and repair of township roads is a permissible expenditure by the county within the specified purposes for which motor vehicle fuel excise and license tax revenues may be expended.

A county may expend motor vehicle license tax revenues for the “maintenance, repair, construction, and repaving of public streets,” R.C. 4501.04(A), and the maintenance and repair of public roads, highways, and streets, R.C. 4503.02. A county may also expend motor vehicle fuel excise tax revenues for the purposes of “maintaining [] and repairing the county system of public roads and highways within the county[,]” R.C. 5735.27(A)(3), and “maintaining, constructing, widening, and reconstructing the county system of public roads and highways[,]” R.C. 5735.27(A)(4).

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<sup>9</sup> R.C. 315.12 authorizes state motor vehicle fuel excise and license tax revenues to be used to fund a portion of the cost of the operation of the county engineer’s office, stating that

[t]wo thirds of the cost of operation of the office of county engineer, including the salaries of all of the employees and the cost of the maintenance of such office as provided by the annual appropriation made by the board of county commissioners for such purpose, shall be paid out of county’s share of the fund derived from the receipts from motor vehicle licenses, as distributed under [R.C. 4501.04], and from the county’s share of the fund derived from the motor vehicle fuel tax as distributed under [R.C. 5735.27].

*See also* 1994 Op. Att’y Gen. No. 94-025, at 2-117 (the General Assembly’s enactment of R.C. 315.12(A) established two-thirds cost of the operation of the county engineer’s office as one of the “statutory highway purposes” for which motor vehicle license and fuel excise tax revenues may be expended under Ohio Const. art. XII, § 5a); 1994 Op. Att’y Gen. No. 94-026, at 2-120 (advising that a county engineer, even if paid entirely from a county’s share of motor vehicle fuel tax revenues, has a duty to perform his statutory duties whether or not the statutory duties fall within the purposes for which the motor vehicle fuel excise and license tax revenues may be used).

This language referring to public roads is broad in scope and so includes township roads within the county.

Prior opinions of the Attorney General have acknowledged the authority of a board of county commissioners to expend the county's motor vehicle fuel excise and license tax revenues for the purpose of contributing to the maintenance and repair of township roads pursuant to R.C. 5535.08. *See* 1990 Op. Att'y Gen. No. 90-097 (syllabus, paragraph 2) (“[a] county that agrees to contribute to the repair and maintenance of the roads of a township within the county pursuant to R.C. 5535.08 may use for such purpose state motor vehicle license tax revenues distributed to the county under R.C. 4501.04 or county motor vehicle license tax revenues distributed to the county under R.C. 4504.05”); 1976 Op. Att'y Gen. No. 76-074, at 2-255 (“while primary responsibility for the repair of township roads remains with the township, the county may, pursuant to R.C. 5535.08 contribute to the repair of the township roads, utilizing funds available under R.C. Chapter 4504”). In this case, the authority of a county under R.C. 9.482 or R.C. 307.15 to enter into an agreement to maintain and repair township roads also relies upon the authority of the county to expend the county's motor vehicle fuel excise and license tax revenues on expenses incurred by the county in the performance of those agreements. The statutes addressing the permissible uses of the motor vehicle fuel excise and license tax revenues each authorize the county to expend those revenues for maintenance and repair of public roads. The expenditure for township road maintenance and repair by the board of county commissioners of these revenues complies with the purposes delineated in R.C. 4501.04(A), R.C. 4503.02, R.C. 5735.27(A)(3), and R.C. 5735.27(A)(4), and as mandated in Section 5a of Article XII of the Ohio Constitution. Thus, an expenditure of motor vehicle fuel excise and license tax revenues for services and materials provided by a county engineer in an agreement under R.C. 9.482 or R.C. 307.15 between a board of county commissioners and a board of township trustees for the purpose of road repair or maintenance is permitted. Accordingly, a board of county commissioners may use motor vehicle fuel excise and license tax revenues when a county engineer is required to repair and maintain a driveway and parking area on township property pursuant to an agreement under R.C. 9.482 or R.C. 307.15 between a board of county commissioners and a board of township trustees.

Alternatively, a township may contract with the county and negotiate a payment to reimburse the county using township motor vehicle fuel excise and license tax revenues for the maintenance and repair of township roads in the context of an agreement under R.C. 9.482 or R.C. 307.15. R.C. 5735.27(A)(5)(d) addresses motor vehicle fuel excise tax revenues that may be expended by townships, and states, in pertinent part:

The county treasurer shall pay to each township within the county its proportional share of the funds, which shall be expended by each township only for the purposes of planning, constructing, maintaining, widening, and reconstructing the public roads and highways within the township, paying principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133 or R.C. Chapter 505] or incurred pursuant to [R.C. 5531.09] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of township trustees may issue bonds

under those chapters, and paying costs apportioned to the township under [R.C. 4907.47].

No part of the funds designated for road and highway purposes shall be used for any purpose except to pay in whole or part the contract price of any such work done by contract, or to pay the cost of labor in planning, constructing, widening, and reconstructing such roads and highways, and the cost of materials forming a part of the improvement; ... and provided that all such improvement of roads shall be under supervision and direction of the county engineer as provided in [R.C. 5575.07]. No obligation against the funds shall be incurred unless plans and specifications for the improvement, approved by the county engineer, are on file in the office of the township fiscal officer, and all contracts for material and for work done by contract shall be approved by the county engineer before being signed by the board of township trustees. The board of township trustees of any township may pass a resolution permitting the board of county commissioners to expend the township's share of the funds, or any portion of it, for the improvement of the roads within the township as may be designated in the resolution.

R.C. 5735.27(A)(5) states that a township may expend such tax revenues to construct and maintain the public roads and highways within the township. The specific language of R.C. 5735.27(A)(5)(d) envisions the type of work, such as the repair and maintenance of a township driveway and parking lot, as a permissible expenditure of the township's share of motor vehicle fuel excise tax revenues. 1993 Op. Att'y Gen. No. 93-057, at 2-271 opined that "if the proposed driveway and parking lot are first established as a road or highway for use by the general public, then the township may expend motor vehicle fuel excise tax revenues paid to it pursuant to R.C. 5735.27(A)(5) to construct, improve or maintain such driveway and parking lot." *See also* 1940 Op. Att'y Gen. No. 2148, vol. I, p. 334 (syllabus).

The motor vehicle license tax statute, R.C. 4504.18, sets forth the purposes for which motor vehicle license tax revenues may be expended by townships. These purposes include

paying the costs and expenses of enforcing and administering the tax provided for in this section; for the construction, reconstruction, improvement, maintenance, and repair of township roads, bridges, and culverts; for purchasing, erecting, and maintaining traffic signs, markers, lights, and signals; for purchasing road machinery and equipment, and planning, constructing, and maintaining suitable buildings to house such equipment; for paying any costs apportioned to the township under [R.C. 4907.47][.]

The language of R.C. 4504.18 explicitly authorizes expenditure of motor vehicle license tax revenues for the purposes of maintenance and repair of township roads. Thus, a board of township trustees is permitted to utilize motor vehicle fuel excise and license tax revenues for the maintenance and repair of a parking lot and driveway on township real property. Accordingly, a township could negotiate with the county pursuant to an agreement under R.C. 9.482 or R.C. 307.15 whereby the township may reimburse the county with a portion of the share of the township's motor vehicle fuel excise and

license tax revenues for a permissible purpose such as maintenance and repair of township roads. *See also* 1994 Op. Att’y Gen. No. 94-025, at 2-114 (a county may perform work on behalf of a township pursuant to contract wherein the county is reimbursed for the work).

### **Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A board of county commissioners and a board of township trustees may enter into an agreement pursuant to R.C. 9.482 or R.C. 307.15 whereby the county will repair and maintain driveways, parking areas, and structures owned by a township, and used by a non-profit recycling center.
2. A board of county commissioners may require a county engineer pursuant to R.C. 315.14 to maintain and repair driveways and parking areas owned by a township, but may not require a county engineer to maintain and repair township buildings used by a non-profit recycling center.
3. A board of county commissioners may use motor vehicle fuel excise and license tax revenues when a county engineer is required to repair and maintain a driveway and parking area on township property pursuant to an agreement under R.C. 9.482 or R.C. 307.15 between a board of county commissioners and a board of township trustees. (1990 Op. Att’y Gen. No. 90-097 (syllabus, paragraph 2), approved and followed and 1976 Op. Att’y Gen. No. 76-074, approved and followed).

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General