

**OPINION NO. 74-024****Syllabus:**

1. Only a township rural zoning commission, and not a board of township trustees, has authority to enter into a contract for the services of a planning consultant, within the limits of the money appropriated by the board for the purpose, under R.C. 519.09.

2. A board of township trustees may employ counsel in addition to the prosecuting attorney, pursuant to R.C. 309.09, but such counsel may not act as the sole legal representative of the township and its officers.

3. A board of township trustees has authority under R.C. 309.09 to employ additional legal counsel to represent and advise other township officers when they deem such action advisable or necessary.

To: Jerry A. Petersen, Geauga County Pros. Atty., Chardon, Ohio  
 By: William J. Brown, Attorney General, March 28, 1974

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

"Chester Township has entered into a contract providing for a review of their zoning resolutions. It is our understanding that the contract provides for recommendations of revised zoning for the township. We have requested a copy of the contract but have not received same. The contract was entered into by the trustees. Enclosed is a copy of the resolution by the trustees for the \* \* \* contract. The zoning commission has questioned the authority of the township trustees to enter into such a contract. The zoning commission feels the trustees have usurped the powers and duties of the zoning commission.

\* \* \* \* \*

"The zoning commission and the zoning board of appeals of Chester Township have also questioned the authority of the trustees to hire exclusive replacement counsel. We have requested a copy of such resolution and the contract. Enclosed is a copy of the resolution adopted by the trustees.

\* \* \* \* \*

Therefore, we submit to you, the following questions:

"1. Is anyone other than the zoning commission authorized to enter into a contract, such as the \* \* \* contract referred to herein?

"2. May the township trustees, pursuant to Section 309.09 of the Ohio Revised Code, hire "additional legal counsel" to be the sole legal representative of all township officials at public expense in the absence of prosecutorial refusal to act or inability to act by virtue of a conflict of interest?

"3. Assuming the township trustees may hire "additional legal counsel" does said authority authorize the trustees to exclude the prosecutor's office from representing the township and their public officials and may the trustees impose such additional counsel on the township zoning commission and zoning board of appeals if said bodies prefer to use the services of the Geauga County Prosecutor's office?

"I have advised the township trustees that Section 309.09 of the Ohio Revised Code permits a township to have additional legal counsel but that said section does not permit a township to hire replacement counsel. I am enclosing a ruling of Judge Ford of our Common Pleas Court reflecting his ruling on the limitations of the trustees to hire legal counsel."

With respect to your first question, a township rural zoning commission has express authority to contract with planning consultants, within the limits of moneys appropriated by the board of township trustees. R.C. 519.05 so provides, as follows:

"The township rural zoning commission shall submit a plan, including both text and maps, representing the recommendations of the zoning commission for the carrying out by the board of township trustees of the powers, purposes, and provisions set forth in sections 519.01 to 519.99, inclusive, of the Revised Code, including additions to territory in which a township zoning plan is in effect.

"The zoning commission may, within the limits of the moneys appropriated by the board for the purpose, employ or contract with such planning consultants and executive and other assistants as it deems necessary. \* \* \*

"\* \* \* \* \*"

A board of township trustees has no such express authority. It does have authority to initiate amendments or supplements to its own zoning resolution, which presumably is based on the zoning commission's recommended plan. R.C. 519.12 grants such authority, as follows:

"Amendments or supplements to the zoning resolution may be initiated by motion of the township rural zoning commission, by the passage of a resolution therefor by the board of township trustees or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment or supplement with the township zoning commission. \* \* \*"

It can be argued that the power to initiate such amendments or supplements implies the power to employ a planning consultant to advise the board of trustees in formulating such proposals. However, the fact that the zoning commission has express authority to employ such a consultant implies that the Legislature did not intend to grant such authority to the board of township trustees. R.C. 519.05 and 519.12 are, of course, closely related, and must be read together and construed in pari materia. The mention of authority to do a certain thing with respect to one agency, together with the lack of such language with respect to the other, indicates that the second

agency has no such authority, under the rule of construction expressio unius est exclusio alterius. See Speeth v. Carney, 163 Ohio St. 159 (1955), and Kroger v. Bowers, 3 Ohio St. 2d 76 (1965).

Furthermore, it is well settled in Ohio law that boards of township trustees and other public officials have only such powers as are expressly granted by statute, or necessarily implied therefrom. Opinion No. 73-090, Opinions of the Attorney General for 1973. The formulating of proposed amendments to a zoning resolution does not necessarily require the advice of planning consultants. Such an activity must usually be far simpler than the creation of a comprehensive zoning plan for the entire unincorporated area of a township. Moreover, the trustees will have before them the zoning resolution, and the plan submitted by the zoning commission, for guidance. Consequently, I do not think that the mere power to initiate amendments or supplements to the zoning resolution confers upon the board of trustees the power to employ planning consultants.

Your second question is whether a board of township trustees may hire additional legal counsel to be the sole legal representative of the township and its officers. R.C. 309.09, which provides for the legal representation of township officers, reads, in part, as follows:

"Such prosecuting attorney shall be the legal adviser for all township officers. When the board of township trustees deems it advisable or necessary to have additional legal counsel it may employ an attorney other than the prosecuting attorney of the county, either for a particular matter or on an annual basis, to represent the township and its officers in their official capacities and to advise them on legal matters. No such counsel or attorney may be employed, except on the order of the board of township trustees, duly entered upon its journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund."

This Section authorizes a board of township trustees to employ additional legal counsel to represent the township and its officers when the board deems such action advisable or necessary. However, a court has ruled that while a board of township trustees may employ additional legal counsel pursuant to R.C. 309.09, they may not exclude the prosecuting attorney from representing them or other township officers. Mirisch v. Chester Township, Court of Common Pleas, Geauga County, Case No. 73-M-174 (July 19, 1973). Thus, I must conclude that an attorney employed by a board of township trustees to serve as additional legal counsel may not be the sole legal representative of the township and its officers.

The first part of your third question has been answered by the case of Mirisch v. Chester Township, supra, which held that a board of township trustees may not exclude the prosecuting attorney from representing them or other township officers.

The second part of your question can be answered on the basis of R.C. 309.09, which expressly confers upon a board of township trustees the authority to employ additional legal counsel to represent "the township and its officers" when the board deems such action "advisable or necessary." It is clear from this statute that a board of township trustees has the discretion to employ additional legal counsel to represent and advise township officials, including the members of the zoning commission and the board of zoning appeals, in their official capacities.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. Only a township rural zoning commission, and not a board of township trustees, has authority to enter into a contract for the services of a planning consultant, within the limits of the money appropriated by the board for the purpose, under R.C. 519.05.

2. A board of township trustees may employ counsel in addition to the prosecuting attorney, pursuant to R.C. 309.09, but such counsel may not act as the sole legal representative of the township and its officers.

3. A board of township trustees has authority under R.C. 309.09 to employ additional legal counsel to represent and advise other township officers when they deem such action advisable or necessary.