

OPINION NO. 92-002**Syllabus:**

1. Pursuant to R.C. 505.371, the board of fire district trustees of a joint fire district must include one representative from each participating board of township trustees and one representative from the legislative authority of each municipal corporation in the district. (1979 Op. Att'y Gen. No. 79-082, approved and followed.)
2. The political subdivisions participating in a joint fire district have substantial discretion in determining the total number of members of the board of fire district trustees and the number of representatives from each constituent political subdivision and each constituent governing body. (1979 Op. Att'y Gen. No. 79-082, approved and followed.)
3. The political subdivisions participating in a joint fire district may structure the board of fire district trustees in such a manner as to permit a board of township trustees to appoint more than one member to the board of fire district trustees, or to permit a resident of the district who holds no other public position to serve as a member of the board of fire district trustees.
4. Residents of a joint fire district are not precluded from serving on the board of fire district trustees of the joint fire district.

To: Frank Pierce, Belmont County Prosecuting Attorney, St. Clairsville, Ohio

By: Lee Fisher, Attorney General, March 18, 1992

You have requested an opinion concerning a joint fire district created pursuant to R.C. 505.371. The joint fire district in question encompasses a township and a city. It is governed by a board of fire district trustees. See R.C. 505.371. You have asked the following questions:

- (1) Can the Board of Township Trustees appoint more than one member to the Board of Fire District Trustees?

(2) May a resident of the fire district be appointed to the Board of Fire District Trustees?

R.C. 505.371 authorizes boards of township trustees and legislative authorities of municipal corporations to create joint fire districts encompassing territory of the participating subdivisions. With respect to the governance of a joint fire district, R.C. 505.371 states: "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."

"[I]nclude implies a containing as part of a whole." *Webster's New World Dictionary* 711 (2d college ed. 1978). Use of the word "include" in R.C. 505.371 thus indicates that the board of fire district trustees must have among its members at least one representative from each participating board of township trustees and at least one representative from the legislative authority of each municipal corporation in the district. The board is not precluded from having additional members.

One of my predecessors discussed the composition of the board of fire district trustees of a joint fire district, as follows:

The language of R.C. 505.371 which pertains to the composition of a board of fire district trustees is clear. The board "shall include one representative from each board of township trustees and one representative from the legislative authority of each municipal corporation." However, there is no limitation upon the number of the members of the board of fire district trustees. There is no requirement that all members must be either township trustees or members of a city or village council, nor is there a requirement that there be *only* one member from each constituent governing body. The only requirement of the statutory provision is that one expressly stated, that the board "shall include" one representative from the board of trustees of a participating township and one from the legislative authority of each participating municipality.

It is well-established under Ohio law that where an officer or body is directed by a statute to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed. Absent specific statutory directions upon how to perform the duty, it may be exercised with intelligent discretion. See *State ex rel. Copeland v. State Medical Board*, 107 Ohio St. 20 (1923); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1 (1915); 1979 Op. Att'y Gen. No. 79-034; 1978 Op. Att'y Gen. No. 78-024. I am not unmindful that R.C. 505.371 does not require or command a board of township trustees and a legislative authority of a municipal corporation to create a joint fire district, but rather simply permits such action. Nevertheless, I believe these principles are equally applicable to the instant case. As such, in the absence of specific statutory guidelines concerning the formation of the board of fire district trustees, it is my conclusion that *the bodies entering into the joint resolution creating the joint fire district have substantial discretion in determining the size and composition of such board, with the only limitation being that the board contain at least one member from each board of township trustees and one member from the legislative authority of each municipal corporation in the district.*

1979 Op. Att'y Gen. No. 79-082 at 2-263 (emphasis added).

Op. No. 79-082 stands for the proposition that the board of fire district trustees of a joint fire district must have at least one representative from each participating board of township trustees and one representative from the legislative authority of each municipal corporation in the district. Op. No. 79-082 goes on to conclude that members of a board of fire district trustees may not be elected by popular vote. Subject to those limitations, the participating political subdivisions have substantial discretion in determining the total number of board members and the number of representatives from each constituent political subdivision and each

constituent governing body. It follows that the political subdivisions participating in a joint fire district may structure the board of fire district trustees in such a manner as to permit a board of township trustees to appoint more than one member to the board of fire district trustees.

Your second question asks whether a resident of the fire district may be appointed to the board of fire district trustees. Nothing in the statute precludes a resident from holding such a position. It is possible that the question refers to an individual who is merely a resident, and not a township trustee or a member of the legislative authority of a municipal corporation. In that case, the question is again answered affirmatively. If the participating political subdivisions so choose, they may structure the board of fire district trustees so that a resident of the joint fire district who holds no other public position may serve as a member of the board of fire district trustees. See Op. No. 79-082.

It is, therefore, my opinion, and you are advised, as follows:

1. Pursuant to R.C. 505.371, the board of fire district trustees of a joint fire district must include one representative from each participating board of township trustees and one representative from the legislative authority of each municipal corporation in the district. (1979 Op. Att'y Gen. No. 79-082, approved and followed.)
2. The political subdivisions participating in a joint fire district have substantial discretion in determining the total number of members of the board of fire district trustees and the number of representatives from each constituent political subdivision and each constituent governing body. (1979 Op. Att'y Gen. No. 79-082, approved and followed.)
3. The political subdivisions participating in a joint fire district may structure the board of fire district trustees in such a manner as to permit a board of township trustees to appoint more than one member to the board of fire district trustees, or to permit a resident of the district who holds no other public position to serve as a member of the board of fire district trustees.
4. Residents of a joint fire district are not precluded from serving on the board of fire district trustees of the joint fire district.