

OPINION NO. 2005-042**Syllabus:**

R.C. 504.09 does not authorize the board of trustees of a township that has not adopted a limited home rule government pursuant to R.C. Chapter 504 to designate a person to keep its journal and take the minutes of board meetings.

To: Dean Holman, Medina County Prosecuting Attorney, Medina, Ohio

By: Jim Petro, Attorney General, November 18, 2005

You have requested an opinion whether R.C. 504.09 authorizes the board of trustees of a township that has not adopted a limited home rule government pursuant to R.C. Chapter 504¹ to designate a person to keep its journal and take the

¹ R.C. 504.01 authorizes a township to adopt a limited home rule form of township government under which the township exercises a greater measure of authority, in a greater number of matters, than the authority granted to townships generally by the other provisions of R.C. Title 5. *See, e.g.*, R.C. 504.04(A) (a limited home rule township may, in accordance with R.C. Chapter 504, “exercise all powers of local self-government within the unincorporated area of the township, other than powers that are in conflict with general laws,” and “adopt and enforce within the unincorporated area of the township local police, sanitary, and other similar regulations that are not in conflict with general laws or otherwise prohibited by [R.C. 504.04(B)]”). *See generally* 2002 Op. Att’y Gen. No. 2002-032 at 2-212 (“[i]n addition to the powers granted generally to townships elsewhere in the

minutes of board meetings. Because R.C. 504.09 is applicable only when a township has adopted a limited home rule form of township government, this statute does not empower a board of trustees of a township that has not adopted such a form of government to designate a person to keep its journal and take the minutes of board meetings.

Let us begin by reviewing the manner in which the record of the proceedings of a board of township trustees is to be prepared. The proceedings of a board of township trustees are required to be recorded and maintained. *See* R.C. 121.22(C); R.C. 504.09; R.C. 507.04; *Thomas v. Bd. of Trustees of Liberty Twp.*, 5 Ohio App. 2d 265, 267, 215 N.E.2d 434 (Trumbull County 1966); 1986 Op. Att’y Gen. No. 86-057 at 2-312. The township clerk² is responsible for keeping “an accurate record of the proceedings of the board of township trustees at all of its meetings.” R.C. 507.04;³ *see State ex rel. Gudenas v. Put-In-Bay Twp. Trustees*, Ct. App. No. OT-97-055, 1998 Ohio App. LEXIS 2684, at *6 (Ottawa County June 19, 1998); *Thomas v. Bd. of Trustees of Liberty Twp.*, 5 Ohio App. 2d at 266, 215 N.E.2d 434; 1986 Op. Att’y Gen. No. 86-057 at 2-311; *see also* R.C. 507.05 (the board of township trustees provides the township clerk with books in which to record the proceedings of the board).

Under R.C. 504.09, a person, other than the township clerk, may be designated to keep the board of township trustees’ journal and take the minutes of board meetings:

A board of township trustees shall determine its own rules and order of business and keep a journal of its proceedings. *Notwithstanding [R.C. 507.04] and anything to the contrary in [R.C. 504.04⁴], the board may designate, by majority vote, any person to keep its journal and take*

Revised Code, R.C. 504.04 empowers a limited home rule township to adopt resolutions by which the township exercises powers of local self-government or police power”).

² On December 20, 2005, the township clerk will be known as the township fiscal officer. Sub. S.B. 107, 126th Gen. A. (2005) (eff. Dec. 20, 2005).

³ R.C. 507.04 applies to the clerk of a township that has adopted a limited home rule government pursuant to R.C. Chapter 504. *See* R.C. 504.09; *see also* R.C. 504.04(A)(1) (a limited home rule township may exercise all powers of local self-government, “other than powers that are in conflict with general laws, . . . except that no resolution adopted pursuant to [R.C. Chapter 504] shall encroach upon the . . . duties . . . of elected township officers”). *See generally* 2002 Op. Att’y Gen. No. 2002-032 (syllabus) (“[a] township that has adopted a zoning resolution pursuant to R.C. Chapter 519 and has adopted a limited home rule government pursuant to R.C. Chapter 504 may amend its zoning resolution solely under the authority and procedures of R.C. 519.12”).

⁴ R.C. 504.04(A)(1) states, in part, that a township that has adopted a limited home rule government pursuant to R.C. Chapter 504 may, by resolution, “[e]xercise all powers of local self-government within the unincorporated area of the township,

the minutes of board meetings. A majority of the members of the board constitutes a quorum. (Emphasis added.)

You assert in your letter that it is unclear whether R.C. 504.09 empowers a board of township trustees to designate a person to keep its journal and take the minutes of board meetings when the township has not adopted a limited home rule government pursuant to R.C. Chapter 504:

At issue is whether R.C. 504.09 stands on its own to apply to all Ohio townships, or whether it applies only to townships which have adopted limited home rule government. There are boards of township trustees who would rather engage individuals of the board's choosing to keep the board's journal and take minutes. R.C. 504.09 has been considered, at least arguably, to permit boards of township trustees to engage such individuals. However, R.C. 504.09 is placed in the middle of Chapter 504 of the Revised Code, with virtually all other sections in that Chapter expressly referencing townships that have adopted or are considering the home rule form of government.

Chapter 1 of the Ohio Revised Code, which includes the rules of construction for the Code, contributes to the confusion since R.C. 504.09 itself makes no reference whatsoever to a township that has adopted the limited home rule form of government. Chapter 504 has been titled by the Code publishers, "Limited Home Rule Government." However, R.C. 1.01 provides: "Title, Chapter[,] and [s]ection headings and marginal General Code section numbers do not constitute any part of the law as contained in the 'Revised Code.'"

If title headings of R.C. 504.09 do not constitute a part of the law stated in R.C. 504.09, it appears that R.C. 504.09 may stand on its own and may apply to all Ohio townships, whether home rule or not.

As additional support for the proposition that R.C. 504.09 authorizes a board of trustees of a township that has not adopted a limited home rule government pursuant to R.C. Chapter 504 to designate a person to keep its journal and take the minutes of board meetings, you offer the following:

Throughout R.C. Chapter 504, with the noted exception of R.C. 504.09, the statutes directly address or reference townships meeting the qualifications for a "limited home rule government." R.C. 504.09 makes no reference whatsoever to its provisions being limited solely to home rule townships. Only the Chapter title, presumably written by the publisher, makes such a reference.

A long recognized principle of statutory construction ("*expressio*

other than powers that are in conflict with general laws, . . . except that no resolution adopted pursuant to [R.C. Chapter 504] shall encroach upon the powers, duties, and privileges of elected township officers[.]"

unius est exclusio alterius”) considers that the express inclusion of items in a statute implies the intended exclusion of things omitted by the legislature. Under this principle, may we presume that the legislature intended for R.C. 504.09 to include all Ohio townships, since any reference to home rule townships is clearly excluded from the statute, thus authorizing any board of township trustees, not just the township trustees of home rule townships, to “designate by majority vote, a person to keep its journal and take the minutes of [board] meetings[.]” (Citation omitted.)

Your letter thus suggests that, under various rules of statutory construction, R.C. 504.09 may be interpreted as evincing a legislative intent to authorize the board of trustees of a township that has not adopted a limited home rule government pursuant to R.C. Chapter 504 to designate a person to keep its journal and take the minutes of board meetings. For the reasons that follow, we reject this construction of R.C. 504.09.

When addressing the meaning to be accorded to the provisions of R.C. 504.09, the preeminent consideration is legislative intent. *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, 811 N.E.2d 68, at ¶34 (2004); *State ex rel. Wolfe v. Delaware Cty. Bd. of Elections*, 88 Ohio St. 3d 182, 184, 724 N.E.2d 771 (2000); *Henry v. Cent. Nat’l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph one). Moreover, the rules of statutory construction “are only aids to the ascertainment of the legislative intent and must yield to such intent if the same be otherwise. They should never be followed to the extent of defeating or overriding the definite intent of the General Assembly.” *Henry v. Cent. Nat’l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (syllabus, paragraph three). See generally *Baltimore Ravens, Inc. v. Self-Insuring Emp. Evaluation Bd.*, 94 Ohio St. 3d 449, 455, 764 N.E.2d 418 (2002) (the Ohio Supreme Court “has long recognized that the canon ‘*expressio unius est exclusio alterius*’ is not an interpretive singularity but merely an aid to statutory construction, which must yield whenever a contrary legislative intent is apparent”); *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph three) (same). Thus, while R.C. 504.09 may be interpreted under various rules of statutory construction to authorize the board of trustees of a township that has not adopted a limited home rule government pursuant to R.C. Chapter 504 to designate a person to keep its journal and take the minutes of board meetings, such an interpretation must yield when there is a definite legislative intent to limit the application of R.C. 504.09 to boards of trustees of limited home rule townships.

A review of the legislative history of R.C. 504.09 discloses that the General Assembly intends to limit the application of this statute to boards of trustees of limited home rule townships. See generally R.C. 1.49 (if a statute is unclear, the legislative history of the statute may be considered to determine the intent of the General Assembly); 1990 Op. Att’y Gen. No. 90-051 at 2-213 (in order to determine the intention of the legislature, it is useful to examine legislative history). R.C. 504.09 was enacted in 1991 by the General Assembly as part of R.C. Chapter 504, and provided, in part, that, “[a] board of township trustees shall determine its own

rules and order of business and keep a journal of its proceedings.” 1991-1992 Ohio Laws, Part II, 2902, 2912 (Sub. H.B. 77, eff. Sept. 17, 1991).⁵ The purpose of R.C. Chapter 504, as stated in the preamble to Sub. H.B. 77, was “to authorize any township to adopt a limited self-government form of township government, under which it may exercise limited powers of local self-government and limited police powers.” In other words, Sub. H.B. 77 enacted R.C. Chapter 504 so as to grant additional powers to a board of trustees of a township that has adopted a limited home rule government pursuant to that chapter. *See* note one, *supra*.

In uncodified section three of Sub. H.B. 77, which is set forth in 1991-1992 Ohio Laws, Part II, 2902, 2940 (Sub. H.B. 77, eff. Sept. 17, 1991), the General Assembly declared that, “Chapter 504. of the Revised Code shall be known as ‘Optional Limited Self-Government.’” When the preamble and uncodified section three of Sub. H.B. 77 are read in conjunction with R.C. 504.09, it is apparent that the General Assembly intended that the provisions of R.C. 504.09 apply only when a township has adopted a limited home rule government pursuant to R.C. Chapter 504. *Cf. State ex rel. Quirke v. Patriarca*, 100 Ohio App. 3d 367, 370, 654 N.E.2d 136 (Lake County 1995) (“[i]t is apparent that R.C. 504.14 is not, by its own terms, limited to only ‘self-government’ townships; its individual language is not that restrictive. However, it is unlikely that the legislature intended R.C. 504.14 to apply to townships that have not adopted the self-government form, since the introductory paragraph of Sub. H.B. No. 77, when enacted as R.C. 504.01 to 504.17, declares that its purpose is ‘to authorize any township to adopt a limited self-government form of township government, under which it may exercise limited powers of local self-government’ and to place them in a new chapter of the code titled ‘Optional Limited Self-Government’ without any amendments to R.C. Chapter 519, ‘Township Zoning,’ at that time or since, despite clear conflicts in terms, if R.C. 504.14 were to apply to all townships”), *appeal not allowed*, 72 Ohio St. 3d 1529, 649 N.E.2d 838 (1995). *See generally Cogar v. Shupe Middle Sch.*, C.A. No. 90CA004910, 1991 Ohio App. LEXIS 2978, at *5 (Lorain County June 19, 1991) (“[a]lthough the preamble is not part of a statute, it may furnish the means by which a statute may be construed”); *Wilson v. Patton*, 66 Ohio App. 3d 46, 51, 583 N.E.2d 410 (Hocking County 1990) (guidance as to legislative intent can be gained from the preamble); 1987 Op. Att’y Gen. No. 87-012 at 2-79 n.6 (the preamble of an act may be indicative of legislative intent).

That this was the intent of the General Assembly when enacting R.C. 504.09 is buttressed by the Legislative Service Commission’s analyses of Sub. H.B. 77. The Ohio Legislative Service Commission’s final legislative analysis of Sub. H.B. 77 states that, “[a] board of township trustees *that adopts the limited self-*

⁵ The language of R.C. 504.09 authorizing a board of township trustees to designate a person to keep its journal and take the minutes of board meetings was not included in R.C. 504.09 as originally enacted in 1991. *See* 1991-1992 Ohio Laws, Part II, 2902, 2912 (Sub. H.B. 77, eff. Sept. 17, 1991). This language was added to R.C. 504.09 in 2003. *See* 2001-2002, Ohio Laws, Part V, 9376 (Am. H.B. 515, eff. Mar. 31, 2003).

government form of government must determine its own rules and order of business and keep a journal of its proceedings.” Ohio Legislative Service Comm’n, 119-HB77 LSC Analysis, at 5 (preliminary summary June 6, 1991) (emphasis added). In addition, prior legislative analyses of Sub. H.B. 77 prepared by the Legislative Service Commission and provided to members of the General Assembly during deliberations on Sub. H.B. 77 consistently stated that “[a] board of township trustees that has adopted the limited self-government form of government would have to determine its own rules and order of business and keep a journal of its proceedings.” Ohio Legislative Service Comm’n, 119-HB77 LSC Analysis, at 5 (as reported by S. State & Local Government & Veterans Affairs Committee); Ohio Legislative Service Comm’n, 119-HB77 LSC Analysis, at 5 (as passed by the House); Ohio Legislative Service Comm’n, 119-HB77 LSC Analysis, at 5 (as reported by H. Elections & Townships Committee); Ohio Legislative Service Comm’n, 119-HB77 LSC Analysis, at 5 (as Introduced). The Legislative Service Commission’s legislative analyses of Sub. H.B. 77 thus indicate that the General Assembly intended to limit the application of R.C. 504.09 to boards of trustees of limited home rule townships.

While legislative analyses prepared by the Legislative Service Commission are not determinative of legislative intent, the analyses may nevertheless be considered as an aspect of the circumstances under which R.C. 504.09 was originally enacted and provide useful insight into the legislature’s analysis when originally drafting R.C. 504.09. *See Meeks v. Papadopoulos*, 62 Ohio St. 2d 187, 191, 404 N.E.2d 159 (1980); *State ex rel. Consolidation Coal Co. v. Indus. Comm’n*, 62 Ohio St. 2d 147, 149, 404 N.E.2d 141 (1980); 2005 Op. Att’y Gen. No. 2005-020 at 2-196; 1985 Op. Att’y Gen. No. 85-049 at 2-179. Accordingly, the Legislative Service Commission’s analyses of Sub. H.B. 77 provide additional support for concluding that R.C. 504.09, as originally enacted in 1991, applies only when a township has adopted a limited home rule government pursuant to R.C. Chapter 504.

A further review of the legislative history of R.C. 504.09 also indicates that when the General Assembly inserted the language authorizing a board of township trustees to designate a person to keep its journal and take the minutes of board meetings, *see* 2001-2002, Ohio Laws, Part V, 9376 (Am. H.B. 515, eff. Mar. 31, 2003), it intended for this language to apply only when a township has adopted a limited home rule government pursuant to R.C. Chapter 504. The preamble of Am. H.B. 515 reads, in part, “[t]o amend sections 504.09 [and] 504.12 . . . of the Revised Code to make changes relating to the keeping of the board of township trustees’ journal, the taking of minutes of board meetings, and the publication of board resolutions *in a home rule township*[.]” (Emphasis added.) In addition, the Legislative Service Commission’s final legislative analysis of Am. H.B. 515 states:

Limited home rule townships

Journals

Continuing law requires the board of township trustees in a limited

home rule township to keep a journal of its proceedings (sec. 504.09). These townships can exercise all powers of local self-government within their unincorporated area, *other than* powers that are *in conflict* with *general laws*, except that they must comply with the requirements and prohibitions of the Limited Home Rule Township Law (sec. 504.04(A)(1)—not in the act).

Section 507.04 of the Revised Code (not in the act), a section that applies to all townships, requires the *township clerk* to keep an accurate record of the proceedings of the board of township trustees at all of its meetings. This, presumably, is a “general law” that, prior to the act, a limited home rule township had to follow. The act permits a board of township trustees of a limited home rule township, despite that general law requirement, to designate by a majority vote *any person* to keep its journal and to take the minutes of its board meetings. (Sec. 504.09.) (Emphasis in original.)

Ohio Legislative Service Comm’n, 124-HB515 LSC Analysis, at 2-3 (as passed by the General Assembly).

The legislative history of Am. H.B. 515, like the legislative history of Sub. H.B. 77, thus is indicative of a legislative intent to limit the application of R.C. 504.09 to boards of township trustees of limited home rule townships. *See Meeks v. Papadopulos*, 62 Ohio St. 2d at 191, 404 N.E.2d 159; *State ex rel. Consolidation Coal Co. v. Indus. Comm’n*, 62 Ohio St. 2d at 149, 404 N.E.2d 141; *Cogar v. Shupe Middle Sch.*, C.A. No. 90CA004910, 1991 Ohio App. LEXIS 2978, at *5; *Wilson v. Patton*, 66 Ohio App. 3d at 51, 583 N.E.2d 410; 2005 Op. Att’y Gen. No. 2005-020 at 2-196; 1987 Op. Att’y Gen. No. 87-012 at 2-79 n.6; 1985 Op. Att’y Gen. No. 85-049 at 2-179.

As reflected in the foregoing legislative history of R.C. 504.09, the intent of the General Assembly in enacting this statute was to authorize a board of township trustees to designate a person to keep its journal and take the minutes of board meetings only when the township has adopted a limited home rule government pursuant to R.C. Chapter 504. *Compare State ex rel. Quirke v. Patriarca* (the initiative and referendum provisions of R.C. 504.14 are not applicable to a township that has not adopted the limited self-government form of township government pursuant to R.C. Chapter 504), and 1996 Op. Att’y Gen. No. 96-006 at 2-25 n.2 (“only a township that has adopted the limited self-government form of township government may use the initiative and referendum provisions of R.C. 504.14 to submit to the township electorate the issue of designation of an exclusive provider of waste disposal services for the township”), with *State ex rel. Flood v. Bd. of Elections of Stark Cty.*, CA-9403, 1993 Ohio App. LEXIS 4188 (Stark County Aug. 13, 1993) (a township that has not adopted the limited self-government form of township government may use the referendum provisions of R.C. 504.14 to submit to the electors of the township for their approval or rejection by referendum a resolution

adopted by the board of township trustees).⁶ *See generally, e.g. State ex rel. Lockhart v. Boberek*, 45 Ohio St. 2d 292, 294, 345 N.E.2d 71 (1976) (“[t]he clear meaning of R.C. 705.91 is that the provisions of R.C. 705.92 go into effect only to the extent that they have been adopted by the voters of a municipal corporation as part of a home-rule charter. Thus, R.C. 705.92 can have no application to a non-chartered village’); 1989 Op. Att’y Gen. No. 89-050 (syllabus, paragraph two) (“[t]he procedure set forth in R.C. 705.91 for the adoption of the recall procedures of R.C. 705.92 applies only to cities exercising one of the optional statutory plans of government set forth in R.C. 705.41 to 705.86 and has no application to a charter municipality which chooses to incorporate statutory recall procedures into its charter pursuant to Ohio Const. art. XVIII, §§ 7, 8 and 9’). Consideration of the legislative history of R.C. 504.09, therefore, compels the conclusion that the General Assembly did not intend to authorize a board of township trustees to designate a person to keep its journal and take the minutes of board meetings when the township has not adopted a limited home rule government pursuant to R.C. Chapter 504.

In sum, it is my opinion, and you are hereby advised that R.C. 504.09 does not authorize the board of trustees of a township that has not adopted a limited home rule government pursuant to R.C. Chapter 504 to designate a person to keep its journal and take the minutes of board meetings.

⁶ In light of *State ex rel. Flood v. Bd. of Elections of Stark Cty.*, CA-9403, 1993 Ohio App. LEXIS 4188 (Stark County Aug. 13, 1993), the General Assembly amended R.C. 504.14 to clarify that R.C. 504.14 applies only when a township has adopted the limited self-government form of township government pursuant to R.C. Chapter 504. *See* 1993-1994 Ohio Laws, Part IV, 6529, 6529 (Sub. H.B. 580, eff. Dec. 9, 1994). *See generally Clark v. Scarpelli*, 91 Ohio St. 3d 271, 278, 744 N.E.2d 719 (2001) (the General Assembly is presumed to have in mind prior judicial constructions of a statute when it amends the statute). As currently written, R.C. 504.14 provides, in part, as follows:

In a township that adopts a limited home rule government, resolutions may be proposed by initiative petition by the electors in the unincorporated area of the township and adopted by election by these electors, and resolutions adopted by the board of township trustees may be submitted to these electors for their approval or rejection by referendum, under the same circumstances and in the same manner as provided by [R.C. 731.28-.40] for municipal corporations . . . (Emphasis added.)