

OPINION NO. 87-089**Syllabus:**

R.C. 505.371 and 505.71 do not authorize a board of township trustees to participate in the creation of a single district responsible for the administration of both fire and ambulance services.

To: Dennis E. Barr, Hardin County Prosecuting Attorney, Kenton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 19, 1987

I have before me your request for my opinion concerning the creation of a single joint district to provide both fire and ambulance services. In particular, you note that the language contained in the statutory provisions which provide for the creation of joint fire districts and joint ambulance districts is very similar. Given these similarities, you ask whether one combined district may be created to provide both fire and ambulance services where the same townships and municipal corporations could separately form a joint fire district and a joint ambulance district.

Prior to addressing your question, I must caution that in 1985 Op. Att'y Gen. No. 85-071, I concluded that under R.C. 309.09, the county prosecutor is not the statutory legal advisor of a joint ambulance district formed pursuant to R.C. 505.71. Neither is the county prosecutor authorized to advise municipal corporations. See R.C. 309.08 and .09. However, prior to the formation of such a district, the county prosecuting attorney must render advice to the township trustees. See R.C. 309.09(A)("[t]he prosecuting attorney ...shall be the legal adviser for all township officers").

Turning to the specific question which you have raised, I note that it is a long-standing rule that township trustees have only that authority which has been conferred by statute or may be necessarily implied therefrom. Trustees of New London Township v. Miner, 26 Ohio St. 452 (1874)("[i]t is settled that...the [township] trustees can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted"). Pursuant to R.C. 505.71, the General Assembly has authorized boards of township trustees to take part in the creation of joint ambulance districts:

The boards of township trustees of one or more townships and the legislative authorities of any one or more municipal corporations within or adjoining such townships, or the boards of township trustees of two or more townships, or the legislative authority of two or more municipal corporations, may, by adoption of a joint resolution by a majority of the members of each board of township trustees and by a majority of the members of the legislative authority of each municipal corporation, create a joint ambulance district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon. A district so created shall be given a name different from the name of any participating township or municipal corporation.

Under this section, the boards of trustees of one or more townships along with the legislative authorities of one or more

municipal corporations may, by joint resolution, create a joint ambulance district. Similarly, the board of trustees of two or more townships, or the legislative authorities of two or more municipal corporations, may resolve to create a joint ambulance district.

Pursuant to R.C. 505.371, the General Assembly has also authorized boards of township trustees to take part in the creation of joint fire districts:

The boards of township trustees of one or more townships and the legislative authorities of any one or more municipal corporations within or adjoining such townships, or the boards of township trustees of two or more townships, may, by adoption of a joint resolution by a majority of the members of each board of township trustees and by a majority of the members of the legislative authority of each municipal corporation, create a joint fire district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon. A joint fire district so created shall be given a name different from the name of any participating township or municipal corporation.

Under this section, the boards of trustees of one or more townships and the legislative authorities of one or more municipal corporations may, by joint resolution, create a joint fire district. The board of trustees of two or more townships may, in addition, resolve to create a joint fire district without the participation of any municipal corporations. In this context, however, at least one township must be included in order for the fire district to be lawfully constituted.

These provisions do not, however, expressly provide for the creation of a single combined joint fire and ambulance district, even where the present participants in both districts are identical. Neither am I aware of any other statutory provision which authorizes a board of township trustees to take part in the creation of a combined joint fire and ambulance district. I also must conclude that the authority to create a combined joint fire and ambulance district may not be implied solely from the presence of R.C. 505.371 and 505.71. As noted above, the authority of township trustees is limited to those powers conferred by statute, "or such others as are necessarily to be implied from those granted." Trustees of New London Township v. Miner, 26 Ohio St. 452 (1874). While the creation of a combined joint fire and ambulance district may be expedient, the authority to do so is not an action which is a necessarily incident to the express authority extended to boards of township trustees and municipal corporations to separately create joint fire and ambulance districts under R.C. 505.371 and 505.71, respectively. See 1973 Op. Att'y Gen. No. 73-057 (a board has the implied authority to "do all things which must necessarily be done in order to accomplish that which it is expressly authorized and directed to do").

Therefore, it is my opinion and you are hereby advised that R.C. 505.371 and 505.71 do not authorize a board of township trustees to participate in the creation of a single district responsible for the administration of both fire and ambulance services.