

OPINION NO. 87-106**Syllabus:**

1. Under R.C. 173.11 and R.C. 505.70(B), a township has authority to purchase a building to be used as a multipurpose senior center.
2. A township's purchase of a building to be used as a multipurpose senior center may be financed by a tax levy under R.C. 5705.19(F) or a tax levy under R.C. 5705.191. In appropriate circumstances, the procedure set forth in R.C. 505.263 may be followed.

To: David L. Landefeld, Fairfield County Prosecuting Attorney, Lancaster, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1987

I have before me your request for an opinion concerning the acquisition by a township of a building to be used as a multipurpose senior center. You have raised the following questions:

1. Does a township have authority under R.C. 505.70(B) to purchase a building (permanent improvement) to be used as a multipurpose senior center?
2. If so, may such permanent improvement be funded by a tax levy placed before the voters pursuant to the provisions of R.C. 5705.19(F)?
3. If the answer to the second question is in the negative, may the purchase be funded by a levy as authorized under R.C. 5705.191?

A board of township trustees is a creature of statute and, as such, has only the powers that it is granted by statute. See Hopple v. Trustees of Brown Township, 13 Ohio St. 311 (1862). R.C. 505.70(B) grants a board of township trustees certain authority with respect to the provision of social services for senior citizens, as follows:

The trustees [of any township] may participate in, give financial assistance to, and cooperate with public and nonprofit private agencies and organizations in establishing and operating programs to provide necessary social services to meet the needs of older persons, in addition to those agencies and organizations receiving federal funds for this purpose. The trustees may contract with one or more other townships to form a district, comprised of all the territory of the contracting townships, for the purpose of jointly financing the building or renovation of or the operation of a multipurpose

senior center as provided for in sections 173.11 and 173.12 of the Revised Code. For the purpose of this division, payments to the township under the "State and Local Fiscal Assistance Act of 1972," 86 Stat. 919, 31 U.S.C. 1221, as amended, shall be considered to be township general funds. If the trustees find that any agency or organization receiving funds pursuant to this division uses them for any purpose not clearly a public purpose authorized by this division and by the trustees or fails to comply with accounting and reporting requirements under Chapter 117. of the Revised Code, the trustees shall withhold further payments of such funds to such agency or organization.

The trustees of a township operating a multipurpose senior center and the trustees of townships that have contracted to form a district for the purpose of jointly financing the operation of a multipurpose senior center may use township general funds to pay for the operating expenses of the multipurpose senior center which may include, but need not be limited to, the purchase of food, supplies, and equipment. (Emphasis added.)

R.C. 505.70(B) thus authorizes boards of township trustees to form a district "for the purpose of jointly financing the building or renovation of or the operation of a multipurpose senior center." It also authorizes the trustees of a township operating a multipurpose senior center and the trustees of townships that have contracted to form a district for such purpose to use township general funds to pay for the operating expenses of the center. R.C. 505.70(B) does not, however, expressly authorize the board of trustees of a single township, without participating in the formation of a district, to purchase a building to be used as a multipurpose senior center.

The fact that R.C. 505.70(B) authorizes the "trustees of a township operating a multipurpose senior center" to use township general funds to pay for operating expenses indicates a legislative determination that the operation of such a center is a proper township purpose.¹ That determination is also reflected in R.C. 173.11, which states:

¹ I am aware of R.C. 505.102, which authorizes a board of township trustees, rather than holding a public auction under R.C. 505.10, to "sell, lease, or transfer any real property belonging to the township and not needed for public use to a nonprofit senior citizens' organization to be used for public purposes involving the provision of housing, health, social services, or recreational activities for the benefit of older persons." You have inquired about a situation in which a township seeks to purchase real property for the express purpose of using the property as a multipurpose senior center. The property is, thus, needed for public use as a senior center, and the provisions of R.C. 505.102 are not applicable in such circumstances. See generally R.C. 511.11; 1985 Op. Att'y Gen. No. 85-024; 1980 Op. Att'y Gen. No. 80-028. General authority for a township to lease its property in order to benefit the township appears in R.C. 505.11: "when, in its opinion, the township would be benefited, the board of township trustees may lease township real property to any person upon terms agreed upon by the board and the lessee."

The department of aging shall, as appropriate and feasible and to the extent federal, state, and local funding is available, develop a system of community multipurpose senior centers for the purposes of:

(A) Providing centralized, coordinated medical, social, supportive, and rehabilitative services to older adults;

(B) Encouraging older adults to maintain physical, social, and emotional well-being and to live dignified and reasonably independent lives in their own homes;

(C) Diminishing the rate of inappropriate entry and placement of older adults in nursing homes, sheltered housing for older adults, and related facilities.

The department shall, in accordance with Chapter 119. of the Revised Code, adopt rules under which counties, townships, municipal corporations, or local nonprofit organizations may make application to the department to operate a multipurpose senior center or to participate in a multipurpose senior center program.² Procedures shall be established for the maximum feasible participation by older adults and representatives of organizations of older adults in the planning of these programs. The area agency on aging, established under the "Older Americans Act of 1965," 79 Stat. 219, 42 U.S.C. 3001, as amended, shall be given the opportunity to review and comment on all applications for the establishment of a center or the expansion of the scope of services provided by a senior center operated as part of the social services system under the agency's area plan.

The department shall plan, coordinate, and monitor, and, to the extent feasible, provide funds for services for older adults under this section and section 173.12 of the Revised Code. In order to carry out the purposes of such sections, the department or the designated local entity may accept gifts and grants and enter into contracts for the purchase of services.

The multipurpose senior centers shall be centrally located and easily accessible to any public transportation available in such location. The centers may provide transportation for older adults who wish to utilize services available in the facility, but are unable to reach it because of the lack of financial resources or physical impairment. Centers shall be designed to provide ease of access

² Rules adopted pursuant to R.C. 173.11 appear in 1 Ohio Admin. Code Chapter 173:1-3. Rule 173:1-3-01 states: "No county, municipal corporation or local non-profit organization shall develop or create a multipurpose senior center for older persons using funds provided by the Ohio commission on aging or the appropriate area agency on aging without following the rules for application established by the Ohio commission on aging." This rule was enacted in 1979 under an earlier version of R.C. 173.11 that did not include a reference to townships. See 1979-1980 Ohio Laws, Part II, 3700 (Am. H.B. 827, eff. Aug. 7, 1980) (amending R.C. 173.11 to include reference to townships). The omission of townships from the rule does not, however, prevent townships from exercising their statutory authority to establish and operate multipurpose senior centers.

and use considering the infirmities of frail and handicapped older adults. Special safety features shall be provided as unobtrusively as possible. In establishing the location of multipurpose senior centers, the department shall, to the extent feasible, give precedence to the use of existing buildings and facilities, which may be renovated, over the construction of new buildings and facilities. (Emphasis and footnote added.)

See also R.C. 173.12.

It is clear under R.C. 173.11 and R.C. 505.70(B) that a township is authorized to operate a multipurpose senior center. Implicit in the authority to operate such a center is the authority to take necessary steps to acquire the facilities required for such operation. See Hopple v. Trustees of Brown Township, 13 Ohio St. at 324 (townships and township trustees "only possess the powers expressly conferred upon them...by the statute, and, perhaps, where the statute is silent upon the subject, the authority, by necessary implication, which is requisite to execute the duties so imposed upon them"). See also State ex rel. Kautzman v. Graves, 91 Ohio St. 113, 119, 110 N.E. 185, 187 (1914) ("in addition to powers expressly conferred by statute upon an officer he has impliedly such other powers as are necessary for the due and efficient exercise of those powers expressly granted"); Doyle v. Doyle, Jr., 50 Ohio St. 330, 34 N.E. 166 (1893) (syllabus, paragraph 1) ("[t]hat which is plainly implied in the language of a statute is as much a part of it as that which is expressed"); 1983 Op. Att'y Gen. No. 83-069 (power to contract may be implied from power to provide equipment or services); 1981 Op. Att'y Gen. No. 81-050; 1978 Op. Att'y Gen. No. 78-046; 1978 Op. Att'y Gen. No. 78-027 at 2-66 ("[t]he authority to purchase or lease motor vehicles is so integrally related to the duty to provide transportation that it is a necessarily implied power..."); 1928 Op. Att'y Gen. No. 2955, vol. IV, p. 2736 at 2740 ("[t]he delegation of a power to accomplish a certain end, necessarily carries with it the power to do all things necessary to consummate that purpose"). But cf. 1982 Op. Att'y Gen. No. 82-018 (concluding that the authority of a county board of mental retardation and developmental disabilities to enter into contracts to provide facilities did not imply the authority for the board to independently purchase real property and discussing the role of the board of county commissioners and methods by which real property could be obtained).

The authority to operate a multipurpose senior center necessarily implies the authority to acquire the facilities that are required for such operation. I conclude, therefore, in response to your first question that, under R.C. 173.11 and R.C. 505.70(B), a township has authority to purchase a building to be used as a multipurpose senior center. See generally R.C. 511.11 ("[t]he board of township trustees may acquire by purchase, appropriation, or otherwise, any private or public lands which it might deem necessary for its use..."); 1985 Op. Att'y Gen. No. 85-024.

Your second and third questions concern the manner in which the purchase of such a building is to be financed. R.C. 5705.19(F) authorizes the taxing authority of a subdivision - including, under R.C. 5705.01(A) and (C), a board of township trustees - to submit to the voters a tax levy "[f]or the construction or acquisition of any specific permanent

improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue." (Emphasis added.) See also R.C. 133.10 (a bond issue shall relate to only one purpose; "[o]ne purpose' includes...all expenditures...for any one...building, or other structure, or group of buildings or structures for the same general purpose..."). R.C. 5705.19(F) thus authorizes the adoption of a tax levy for the construction of any specific permanent improvement. See 1954 Op. Att'y Gen. No. 4178, p. 437 at 440 (when a structure is "classed as a 'permanent improvement,' the township may issue bonds to finance its construction"). See generally 1960 Op. Att'y Gen. No. 1697, p. 617. Your letter indicates that the building in question would constitute a permanent improvement. See R.C. 5705.01(E) (defining "permanent improvement"). I conclude, accordingly, that a tax levy under R.C. 5705.19(F) may be used to finance the purchase of the building.

R.C. 5705.19(Y) authorizes a tax levy "[f]or providing or maintaining senior citizens services or facilities as authorized by [R.C. 307.694 or 307.85]." R.C. 307.694 authorizes a board of county commissioners to "spend moneys for the support of senior citizens services or facilities" and R.C. 307.85 authorizes a board of county commissioners to "participate in, give financial assistance to, and cooperate with public and nonprofit private agencies and organizations in establishing and operating programs to provide necessary social services to meet the needs of older persons." It might be argued that, since R.C. 5705.19(Y) grants counties express authority to pass a levy for the support of senior citizens services or facilities, the absence of a similar provision relating to townships prevents a township from using a levy under R.C. 5705.19 to finance any senior citizen projects. The language of R.C. 5705.19(Y) is, however, different in focus from that of R.C. 5705.19(F). R.C. 5705.19(Y) permits the passage of a levy for the provision or maintenance of senior citizens services or facilities, including expenses involved in maintaining a program and providing services, as well as those required for the provision of facilities. In contrast, R.C. 5705.19(F) addresses the construction or acquisition of permanent improvements, whether they be used for senior citizen centers or other lawful purposes. The fact that a township is not authorized to adopt a levy for the purposes described in R.C. 5705.19(Y) does not mean that a township may not adopt a levy under R.C. 5705.19(F) for purposes authorized thereunder, even if the purposes authorized under R.C. 5705.19(F) overlap with those authorized under R.C. 5705.19(Y). See generally R.C. 307.02 (authorizing a board of county commissioners to purchase, lease, or obtain by various other means different types of facilities including "facilities for senior citizens"); 1982 Op. Att'y Gen. No. 82-037; 1979 Op. Att'y Gen. No. 79-072.

Your third question concerns a levy under R.C. 5705.191. By the terms of R.C. 5705.191, such a levy may be used, as necessary, "for any of the purposes in section 5705.19 of the Revised Code." A levy under R.C. 5705.191 may, accordingly, be used by a township to finance the purchase of a building to be used as a multipurpose senior center.

I note, further, that there is another statutory provision that may be relevant to a township's purchase of a building to be used as a multipurpose senior center. R.C. 505.263, recently enacted by Sub. H.B. 390, 117th Gen. A. (1987) (eff.

Oct. 20, 1987), sets forth a procedure for the purchase of a building by a township for any lawful township purpose, as follows:

(A) Notwithstanding division (D) of section 505.37 of the Revised Code [pertaining to the provision of equipment and buildings for providing fire protection and the issuance of notes therefor] or any other statute of this state, the board of township trustees of any township may, by unanimous vote, adopt a resolution allowing the township to contract for the purchase of equipment, buildings, and sites, or for the construction of buildings, for any lawful township purpose. The board may, by resolution adopted by unanimous vote, issue the notes of the township to finance purchases and construction made pursuant to this division. The notes shall be signed by the board and attested by the signature of the township clerk and shall be payable over a period not exceeding ten years. The notes shall bear interest not to exceed the rate provided in section 9.95 of the Revised Code, and shall not be subject to sections 133.01 to 133.65 of the Revised Code. The resolution authorizing the issuance of the notes shall provide for levying and collecting annually by taxation, amounts sufficient to pay the interest on and principal of the notes. Not less than one-tenth of the purchase price or construction cost shall be paid in cash at the time of purchase, as provided in the contract, and the remainder of the purchase price or construction cost shall be paid in annual installments of not less than one-tenth of the total purchase price or construction cost secured by notes of equal amounts. Notes in amounts greater than one-tenth of the total purchase price or construction cost may be issued. Notes may be issued for a period of ten years or less and, if for a period of less than ten years, the notes may be renewed from time to time, provided that any renewal shall be paid in full no later than ten years from the date when the initial notes were sold. The notes may contain a clause permitting prepayment at the option of the board. Notes shall be offered for sale on the open market or given to the vendor or contractor if no sale is made.

(B) No purchase or construction pursuant to division (A) of this section shall be undertaken unless the county auditor certifies that, if the purchase or construction is undertaken, the debt service charge for the purchase or construction in the first year, together with the debt service charge for that same year for any other purchase or construction already undertaken pursuant to division (A) of this section, does not exceed one-tenth of the township's total revenue from all sources. If the county auditor so certifies, in every year of the debt after the first year, the county budget commission shall include a debt charge in the township's annual tax budget submitted pursuant to sections 5705.01 to 5705.47 of the Revised Code sufficient to meet the annual debt incurred pursuant to division (A) of this section, if such debt charge is omitted from the budget. (Emphasis added.)

It is clear under R.C. 173.11 and R.C. 505.70(B) that the establishment of a multipurpose senior center is a "lawful

township purpose." It follows that, in appropriate circumstances, the procedure set forth in R.C. 505.263 may be followed by a township in purchasing a building for use as a multipurpose senior center.

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

1. Under R.C. 173.11 and R.C. 505.70(B), a township has authority to purchase a building to be used as a multipurpose senior center.
2. A township's purchase of a building to be used as a multipurpose senior center may be financed by a tax levy under R.C. 5705.19(F) or a tax levy under R.C. 5705.191. In appropriate circumstances, the procedure set forth in R.C. 505.263 may be followed.