

Note from the Attorney General's Office:

1989 Op. Att'y Gen. No. 89-021 was overruled in part by
2004 Op. Att'y Gen. No. 2004-032.

OPINION NO. 89-021

Syllabus:

1. Pursuant to R.C. 505.371, "[a]ny municipal corporation or township, or parts thereof, may join an existing joint fire district by the adoption of a resolution requesting such membership and upon approval of the board of fire district trustees."
2. There is no requirement that voters of territory proposed for addition to a joint fire district must approve an existing tax imposed by the district before the territory may be added to the district. (1982 Op. Att'y Gen. No. 82-063, approved and followed.)

To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio
 By: Anthony J. Celebrezze, Jr., Attorney General, April 5, 1989

I have before me your request for an opinion concerning the addition of territory to a joint fire district created under R.C. 505.371. By the enactment of Am. H.B. 432, 117th Gen. A. (1987) (eff. July 20, 1987), the General Assembly established procedures for expanding the territorial boundaries of a township fire district and provided that voters in the territory proposed for addition to the district must approve an existing tax imposed by the district before that territory may be added to the district. The language added to R.C. 505.37 by Am. H.B. 432 includes the following:

Additional unincorporated territory of the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition. A municipal corporation that is within or adjoining the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition and the municipal legislative authority's adoption of a resolution or ordinance requesting the addition of the municipal corporation to the fire district.

If the township fire district imposes a tax, additional unincorporated territory of the township or a municipal corporation that is within or adjoining the township shall become part of the fire district only after all of the following have occurred:

(1) Adoption by the board of township trustees of a resolution approving the expansion of the territorial limits of the district and, if the resolution proposes to add a municipal corporation, adoption by the municipal legislative authority of a resolution or ordinance requesting the addition of the municipal corporation to the district;

(2) Adoption by the board of township trustees of a resolution recommending the extension of the tax to the additional territory;

(3) *Approval of the tax by the electors of the territory proposed for addition to the district.* (Emphasis added.)

Your question is whether the requirement that voter approval be obtained before territory is added to the district applies also to a joint fire district created under R.C. 505.371.

Pursuant to R.C. 505.371, a joint fire district may be created by 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." A joint fire district is a legal entity separate from the political subdivisions that create it.¹ See R.C. 9.60; R.C.

¹ It has been established that a county prosecutor has no duty to advise a joint fire district or its board of trustees. See 1987 Op. Att'y Gen. No. 87-003; 1985 Op. Att'y Gen. No. 85-071. A county prosecutor is, however, legal adviser to township trustees and may advise them on matters relating to the activities of a joint fire district that arise from their position as

5705.01(A); *In re Termeer*, 52 Ohio Misc. 101, 369 N.E.2d 819 (C.P. Franklin County 1977); 1988 Op. Att'y Gen. No. 88-074; 1985 Op. Att'y Gen. No. 85-071. A joint fire district is governed by a board of fire district trustees, which includes representatives from the townships and municipal corporations whose territory is included in the district. R.C. 505.371. With respect to the powers of the board of fire district trustees, R.C. 505.371 states:

The board of fire district trustees may exercise the same powers as are granted to a board of township trustees in sections 505.37 to 505.45 of the Revised Code, including, but not limited to, the power to levy a tax upon all taxable property in the fire district as provided in section 505.39 of the Revised Code.

R.C. 505.371 contains the following language concerning the expansion of a joint fire district: "Any municipal corporation or township, or parts thereof, may join an existing joint fire district by the adoption of a resolution requesting such membership and upon approval of the board of fire district trustees." R.C. 505.371 does not contain language similar to that in R.C. 505.37 requiring the approval of voters before territory may be added to a fire district.

Your letter of request suggests that voters in the territory proposed for addition to a joint fire district should be required to approve any existing tax levy of the district before the territory may be added to the district because of: "(1) the language in [R.C. 505.371] granting the fire district board all of the powers of township trustees under [R.C. 505.37-.45] and (2) the similarities between a fire district and a joint fire district (or lack of differences sufficient to justify different treatment)." It is true that there are many similarities between township fire districts and joint fire districts. The fact that the governing bodies of both hold the same powers under R.C. 505.37-.45, *see* R.C. 505.371, is representative of this fact. There is, however, no requirement that the two types of districts be the same in all respects, and it appears that the General Assembly has—whether by design or by inadvertence—treated them differently in the matter about which you have inquired.

R.C. 505.37, as amended by Am. H.B. 432, expressly requires that the electors of territory proposed for addition to a township fire district approve any existing tax imposed by the district. It clearly applies that requirement to a "township fire district." In contrast, R.C. 505.371 contains no similar language. It states simply that "[a]ny municipal corporation or township, or parts thereof, may join an existing joint fire district by the adoption of a resolution requesting such membership and upon approval of the board of fire district trustees." No additional conditions are required for the expansion of a joint fire district.

The fact that the General Assembly has used different language in R.C. 505.37 and R.C. 505.371 indicates that it has created different procedures for expanding the boundaries of the two types of fire districts. *See, e.g., Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81, 83 (1927) ("[h]aving used certain language in the one instance and wholly different language in the other, it will...be presumed that different results were intended"). The language of R.C. 505.37 differs substantially from that of R.C. 505.371 with respect to the procedure to be followed in adding territory to a district. It must be concluded that the differences in language lead to correspondingly different results.

You have suggested that the fact that the board of fire district trustees is, by R.C. 505.371, granted authority to exercise the same powers that a board of township trustees may exercise under R.C. 505.37 operates to make joint fire districts subject to the condition that voters must approve a tax before territory may be added to the district. The condition of voter approval is not, however, a

township trustees. *See* 1988 Op. Att'y Gen. No. 88-074; Op. No. 85-071 (syllabus, paragraph 2). It is also appropriate for a county prosecutor to render advice to a township concerning the manner in which it may join a joint fire district. *See* R.C. 309.09; Op. No. 87-003. The question raised in your request is, accordingly, an appropriate subject for an opinion of the Attorney General. *See* R.C. 109.14; Op. No. 87-003.

power of the board of township trustees. An attempt to read that condition into R.C. 505.371 would constitute an alteration of the language enacted by the General Assembly, in violation of established principles of statutory construction. See generally, e.g., *Columbus-Suburban Coach Lines, Inc. v. Public Utilities Commission*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8, 9 (1969) ("[i]n determining legislative intent it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used"); *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph 5) ("[t]he court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged..."); *Morris Coal Company v. Donley*, 73 Ohio St. 298, 303, 76 N.E. 945, 946 (1906) ("[t]o introduce...an exception by construction would be an obvious attempt to avert the consequences of a supposed oversight on the part of the legislature; and the departure from safe rules of construction would not be excused by considerations leading to a clear conviction that the legislature did not deliberately intend to include the case presented within the provisions of the statute").

In 1982 Op. Att'y Gen. No. 82-063, my immediate predecessor concluded that, "[w]hen a township and a village join a joint fire district pursuant to R.C. 505.371, the taxable property in such township and village becomes subject to any taxes which may lawfully be levied by the board of fire district trustees and no additional voter approval is required for the levy of taxes in excess of the ten-mill limitation." Op. No. 82-063 (syllabus). Thus, once voters of a joint fire district have approved a tax outside the ten-mill limitation, the board of fire district trustees may levy that tax throughout the district, regardless of whether any particular territory within the district was part of the district when the vote occurred. Op. No. 82-063; see *Gigandet v. Brewer*, 134 Ohio St. 86, 15 N.E.2d 964 (1938); accord, *Kellenberger v. Board of Education*, 173 Ohio St. 201, 180 N.E.2d 834 (1962); 1956 Op. Att'y Gen. No. 6354, p. 185. I concur in the conclusions reached in that opinion, and I find nothing in current statutes to modify those conclusions.

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

1. Pursuant to R.C. 505.371, "[a]ny municipal corporation or township, or parts thereof, may join an existing joint fire district by the adoption of a resolution requesting such membership and upon approval of the board of fire district trustees."
2. There is no requirement that voters of territory proposed for addition to a joint fire district must approve an existing tax imposed by the district before the territory may be added to the district. (1982 Op. Att'y Gen. No. 82-063, approved and followed.)