

**OPINION NO. 80-019**

**Syllabus:**

If a township has a population of ten thousand or more persons residing outside of municipal corporations; has a fire department and a police department, each of which employs more than ten full-time paid employees; and has established a township civil service commission pursuant to R.C. 124.40(B), then R.C. 505.38(B) and R.C. 505.49(B) operate to preclude the township from excluding members of either department from the jurisdiction of the township civil service commission.

**To: J. Walter Dragelevich, Trumbull County Pros. Atty., Warren, Ohio**  
**By: William J. Brown, Attorney General, May 6, 1980**

I have before me your opinion request which raises the following question: "After establishment of a civil service township, pursuant to Section 124.40(B), Revised Code, may either the police or fire departments be excluded from civil service jurisdiction?" R.C. 124.40(B), to which your question refers, provides, in pertinent part, as follows:

(B) The board of trustees of a township with a population of ten thousand or more persons residing within the township and outside any municipal corporation and which has a police or fire department of ten or more full-time paid employees may appoint three persons who shall constitute the township civil service commission. . . .

. . . .

The jurisdiction of the civil service township civil service commission is limited to employees of the township fire or police department if the department has ten or more full-time paid employees and does not extend to any other township employees. (Emphasis added.)

As you indicate in your letter, the use of the words "fire or police department" (emphasis added) in the final sentence of R.C. 124.40(B) might lead to the conclusion that either department could be excluded at the option of the board of township trustees.

In your request you also refer to R.C. 505.38 and to R.C. 505.49. R.C. 505.38 provides, in pertinent part, as follows:

(A) In each township or fire district which has a fire department, the head of such department shall be a fire chief, appointed by the board of township trustees. . . .The board shall provide for the employment of such fire fighters as it considers best, and shall fix their compensation. . . . Such appointees shall continue in office until removed therefrom as provided by sections 733.35 to 733.39 of the Revised Code. . . .

. . . .

(B) Division (A) of this section shall not apply to any township having a population of ten thousand or more persons residing within the township and outside of any municipal corporation, which has its own fire department employing ten or more full-time paid employees, and which has a civil service commission established under division (B) of section 124.40 of the Revised Code. Such township shall comply with the procedures for the employment, promotion, and discharge of fire fighters provided by Chapter 124. of the Revised Code, except that the board of township trustees of the township may appoint the fire chief, and any person so appointed shall be in the unclassified service under section 124.11 of the Revised Code and shall serve at the pleasure of the board. . . . The board of township trustees shall determine the number of personnel required and establish salary schedules and conditions of employment not in conflict with Chapter 124. of the Revised Code. . . . Persons employed as fire fighters in such township on the date a civil service commission is appointed pursuant to division (B) of section 124.40 of the Revised Code shall, without being required to pass a competitive examination or a fire fighter training program, retain their employment and any rank previously granted them by action of the township trustees or otherwise, but such persons are eligible for promotion only by compliance with Chapter 124. of the Revised Code. (Emphasis added.)

R.C. 505.49 provides for the operation of a township police district and includes a provision governing the employment of township police officers which contains terms identical to those contained in R.C. 505.48(B) with respect to fire fighters. Both of the statutes were enacted subsequent to R.C. 124.40, and it is my opinion that they clearly require a negative answer to your question.

Under R.C. 124.40(B), a township civil service commission may be established only if the population of the township is ten thousand or more persons (exclusive of those residing within any municipal corporation), and if either the police or fire department has at least ten full-time paid employees. If these prerequisites are met, the board of township trustees may create a township civil service commission by appointing members to the commission. Once a township civil service commission has been created, its jurisdiction is limited to "employees of the township fire or police department if the department has ten or more full-time paid employees." R.C. 124.40(B).

R.C. Chapter 505, which pertains to township trustees, specifically provides in R.C. 505.38(B) that, when a township has a population of ten thousand or more persons (exclusive of those residing within any municipal corporation), has its own fire department of ten or more full-time paid employees, and has established a civil service commission pursuant to R.C. 124.40(B), then "[s]uch township shall comply with the procedures for the employment, promotion, and discharge. . . provided by Chapter 124. of the Revised Code. . . ." (Emphasis added.) The use of the word "shall" generally indicates that a statutory provision is mandatory. Indeed, the Supreme Court, in Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 102, 271 N.E. 2d 834, 835 (1971), stated, in the first syllabus of that opinion: "In statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage." A review of R.C. 505.38(B) reveals no "clear and unequivocal legislative intent" requiring a permissive construction of the word "shall." Since R.C. 505.38(B) is the more specific provision, it controls R.C. 124.40, a more general statute. State ex rel. Steller v. Zangerle, 100 Ohio St. 414, 126 N.E. 413 (1919); R.C. 1.51. "Where the legislature has used words of a plain and definite import, it would be very dangerous to put upon them a construction which would amount to holding that a legislature did not mean what is has expressed." State ex rel. Hamilton Gas v. City of Hamilton, 47 Ohio St. 52, 70, 23 N.E. 935, 937 (1890). I am, thus, compelled to conclude that R.C. 505.38(B) clearly requires that if a township has a population of ten thousand or more persons residing outside of municipal corporations, has a fire department with ten or more full-time paid

employees, and has established a civil service commission pursuant to R.C. 124.40(B), then the members of the fire department cannot be excluded from the jurisdiction of the township civil service commission. R.C. 505.49(B) compels a similar conclusion with respect to township police officers.

In answering your request, I have assumed that both the fire department and the police department have ten or more full-time paid employees. This opinion is limited, therefore, to those situations where that assumption is valid.

In light of the foregoing, it is my opinion, and you are advised, that if a township has a population of ten thousand or more persons residing outside of municipal corporations; has a fire department and a police department, each of which employs more than ten full-time paid employees; and has established a township civil service commission pursuant to R.C. 124.40(B), then R.C. 505.38(B) and R.C. 505.49(B) operate to preclude the township from excluding members of either department from the jurisdiction of the township civil service commission.