

OPINION NO. 79-082

Syllabus:

Pursuant to R.C. 505.371, the members of a board of fire district trustees must include one representative from each board of township trustees and one representative from the legislative authority of each municipal corporation in the district. With respect to the total number of board members, the number of representatives from each constituent political subdivision and each constituent governing body, and their method of appointment so long as they are not popularly elected, the participating political subdivisions have substantial discretion.

To: John E. Shoop, Lake County Pros. Atty., Painesville, Ohio
By: William J. Brown, Attorney General, November 13, 1979

I have before me your request for my opinion which reads, in part, as follows:

The Madison Fire District is a joint fire district made up of Madison Village and Madison Township. The joint resolution establishing the fire district provides as follows:

"The governing body of said Joint Fire District shall be a Board of Fire District Trustees whose membership shall be comprised of three (3) Madison Township Trustees and three (3) members of the Madison Village Council as the latter are appointed by said Council from time to time."

Section 505.371 of the Ohio Revised Code provides in pertinent part:

"The governing body of the joint fire district shall be a board of fire district trustees, which shall include one representative from each board of township trustees and one representative from the legislative authority of each municipal corporation in the district."

Your opinion is hereby requested concerning the following questions:

(1) Whether the composition of the Board of Fire District Trustees as established by the joint resolution complies with Section 505.371 of the Ohio Revised Code.

(2) Whether Section 505.371 of the Ohio Revised Code requires that there be only one representative from each constituent political subdivision.

(3) Whether Section 505.371 of the Ohio Revised Code requires that there be only one representative from each constituent governing body.

(4) Whether, pursuant to Section 505.371 of the Ohio Revised Code, all members of a Board of Fire District Trustees must be either a township trustee, or members of the legislative authority of a

municipal corporation.

(5) Whether some or all of the trustees may be elected by popular vote.

(6) Whether some Trustees may be appointed by the legislative authority of the municipal corporation.

(7) Whether, pursuant to Section 505.371 of the Ohio Revised Code, each constituent political subdivision should have equal representation on a board of fire district trustees.

R.C. 505.371 provides that the boards of 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.

The provision of R.C. 505.371 which is quoted above as part of your letter provides that the board of fire district trustees shall be the governing body of the joint fire district. In addition, the statute provides the method by which a municipal corporation or township may join or withdraw from an existing joint fire district.

The language of R.C. 505.371 which pertains to the composition of a board of fire district trustees is clear. The board "shall include one representative from each board of township trustees and one representative from the legislative authority of each municipal corporation." However, there is no limitation upon the number of the members of the board of fire district trustees. There is no requirement that all members must be either township trustees or members of a city or village council, nor is there a requirement that there be only one member from each constituent governing body. The only requirement of the statutory provision is that one expressly stated, that the board "shall include" one representative from the board of trustees of a participating township and one from the legislative authority of each participating municipality.

It is well-established under Ohio law that where an officer or body is directed by a statute to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed. Absent specific statutory directions upon how to perform the duty, it may be exercised with intelligent discretion. See State ex rel Copeland v. State Medical Board, 107 Ohio St. 20 (1923); State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1 (1915); 1979 Op. Att'y Gen. No. 79-034; 1978 Op. Att'y Gen. No. 78-024. I am not unmindful that R.C. 505.371 does not require or command a board of township trustees and a legislative authority of a municipal corporation to create a joint fire district, but rather simply permits such action. Nevertheless, I believe these principles are equally applicable to the instant case. As such, in the absence of specific statutory guidelines concerning the formation of the board of fire district trustees, it is my conclusion that the bodies entering into the joint resolution creating the joint fire district have substantial discretion in determining the size and composition of such board, with the only limitation being that the board contain at least one member from each board of township trustees and one member from the legislative authority of each municipal corporation in the district.

Therefore, with regard to your first question, concerning the composition of the board of fire district trustees established by the joint resolution you recite, it is my opinion that the composition of the board of fire district trustees as established by such joint resolution is in compliance with the requirements of R.C. 505.371.

In light of the above discussion, questions two through four of your request require a negative reply. Question six is answered in the affirmative. Concerning your last question, again, there is nothing in R.C. 505.371 which requires equal representation from constituent political subdivisions. Therefore, your final question must be answered in the negative.

Your fifth question, concerning the popular election of the fire district trustees, raises a different issue. Election and appointment of public officers is dependent upon and regulated by either constitutional or statutory provisions. See Mullholand v. Batt, 164 Ohio St. 362 (1955). I am unable to locate either within R.C. 505.371, R.C. Chapter 35 (Ohio's election law), or the Ohio Constitution any provision which authorizes the election of fire district trustees by popular vote. (Compare R.C. 505.01 and R.C. 305.01 which specifically authorize the election and term of office of township trustees, and county commissioners respectively.) In the absence of such authorization, I must conclude that the fire district trustees may not be elected by popular vote.

It is my opinion, therefore, and you are advised, that pursuant to R.C. 505.371, the members of a board of fire district trustees must include one representative from each board of township trustees and one representative from the legislative authority of each municipal corporation in the district. With respect to the total number of board members, the number of representatives from each constituent political subdivision and each constituent governing body, and their method of appointment so long as they are not popularly elected, the participating political subdivisions have substantial discretion.