

OPINION NO. 76-027**Syllabus:**

1. There is no inherent incompatibility between the offices of chief of police of a township police district and chief of police of a village;

2. A township police district may not obtain all police protection by contract with municipalities, other townships or county sheriffs, but may, pursuant to R.C. 505.50, obtain additional police protection under such a contract, after providing directly for basic police protection through the employment of a chief of police, necessary patrolmen and the acquisition of police equipment.

3. On the effective date of dissolution of a township police district pursuant to R.C. 505.55, the police district, its board of trustees and the authority to levy and collect taxes all cease to exist.

4. R.C. 505.441 authorizes a township, where a police district has not been formed or has been dissolved, to enter into contracts for police protection. The expenses of such protection are properly met from township general funds. R.C. 5705.19(J) does not authorize submission of a proposed tax levy where a police department is not in operation or in existence and a township - where a police district is not in existence and operation - may not properly submit a levy under

R.C. 5705.19(J) to meet the permanent expenses of providing police protection.

To: James R. Unger, Stark County Pros. Atty., Canton, Ohio
By: William J. Brown, Attorney General, April 28, 1976

I have before me your recent request for my opinion on the following four questions concerning the coordination of police services of a township and a village located within that township:

- (1) May the Chief of Police of the township police district serve as the paid Chief of Police of the village, assuming that he is physically capable of serving in both capacities at the same time?
- (2) If the township police district Chief of Police and other police officers become the employees of the village Police Department only, may the Board of Trustees contract with the village for police protection for the township police district with the funds derived from the police levy authorized by R.C. 505.51 and approved by the voters of the township under R.C. 5705.19(J)?
- (3) Should the township Board of Trustees dissolve the township police district to enter into the contract for police protection with the village as authorized by R.C. 505.441, would the collection of the tax for the district cease as of that date, or could the tax continue to be collected for the balance of the tax year?
- (4) Should the township Board of Trustees dissolve the township police district to enter into the contract for police protection with the village as authorized by R.C. 505.441, may the township levy a tax for police protection under R.C. 5705.19(J) and 5705.25 when approved by the voters upon all the property located within the township and, if so, may the property located within the incorporated limits of the village be excluded from such a levy?"

Before addressing your specific questions, an analysis of the methods available for providing township police protection is necessary. I had reason to consider several questions concerning township police protection in 1971 Op. Att'y. Gen. No. 71-045. As I noted in that opinion, Chapter 505, R.C., authorizes two alternative methods for the provision of township police protection.

As discussed in Opinion No. 71-045, R.C. 505.441 provides the first alternative for providing township police protection. In order to secure township police protection or to obtain additional police protection in times of emergency, any township may enter into a contract with one or more townships, municipal corporations, or county sheriffs. Such a contract

contemplates protection for the entire township and may be for services of police departments, use of police equipment or the interchange of the service of police departments or the use of police equipment. As discussed in Opinion No. 71-045, the expense of providing primary or additional police protection under R.C. 505.441 is appropriately covered by monies taken from the township general funds.

As an alternative, however, a township board of trustees may choose to create a police district pursuant to R.C. 505.48 to 505.55. Under R.C. 505.48, a township police district may include all or part of the territory of a township. As developed in Opinion No. 71-045, the expenses of a police district which includes all of the township territory may be met from the township general funds and/or by the levy authorized by R.C. 505.51. The expenses of a police district which does not include all township territory, however, must be met solely by the levy authorized by R.C. 505.51. 1964 Op. Att'y Gen. No. 1255. As discussed in Opinion No. 71-045, where a township police district has been created, the township trustees may, pursuant to R.C. 505.50, provide additional police protection through contracts with one or more townships, municipal corporations or county sheriffs. A township police district may not, however, obtain all police protection by contract, as R.C. 505.50 authorizes contracts for additional protection where, pursuant to R.C. 505.49, basic protection has been provided through the employment of a chief of police, necessary patrolmen and the acquisition of equipment.

With these general considerations and statutory provisions in mind, I turn to your specific questions.

You have first asked whether the chief of police of a township police district may concurrently serve as the chief of police of a village. I note that there are no specific statutory provisions which prevent a township police district chief of police from holding other public office. Indeed, R.C. 505.49, specifies that the township trustees shall determine the qualifications of the chief of police and shall adopt rules and regulations regarding salary and the operation of the district police force. The chief of police is to serve at the pleasure of the township trustees. The trustees, of course, as the result of their power to determine the qualifications of the chief of police, have the authority to specify that the chief hold no other office or employment. Similarly, while there are no statutory requirements that a village chief of police hold no other public office, the village charter or legislative authority in confirming a village chief of police, may so require.

I understand from your request, that your questions arise in the situation where neither the township nor the village involved is operating under such prohibitions. The question which must be addressed is whether either of the two offices is subordinate to or in any way a check upon the other. State, ex rel. Attorney General v. Gebert, 12 CCR (n.s.) 274, 275 (1909).

Under the provisions of R.C. 505.49 and 737.15, there does not appear to be any relationship between the office of chief of police of a township police district and that

of a village chief of police which would lead to the conclusion that either office is in any way subordinate to or a check upon the other. In the context of your total inquiry, however, it is worthy of mention that a contract between a township and a village for police protection, depending on its terms, may give rise to a relationship between these offices such that one is subordinate to or a check upon the other.

If, for example, a township which has created a township police district should decide to contract with a village to provide additional police protection to the township pursuant to R.C. 505.50, it is conceivable that the terms of the contract could place the chief of police of the township police district in a position which would require supervision of village police services and personnel. In this context, it may be that the village chief of police is subordinate to the chief of police of the township police district or that of the township district chief of police would be a check upon the village chief of police. Thus in a setting where one individual would serve in both capacities, the township is best advised to make alternate provision for supervision of the contract services. Such additional provision would also avoid any possibility that one individual holding office both as a village chief of police and as chief of police of a township police district may have an interest in the benefits of a public contract, deemed unlawful by R.C. 2921.42(A) 4, which that individual might otherwise be considered to have.

Your second question concerns whether a township police district may continue to operate and levy a tax as a district when all township police protection is provided through contracts with a municipality. This question was addressed in 1971 Op. Att'y Gen. No. 71-045. As noted earlier, while R.C. 505.441 authorizes provision of primary or additional police protection by contract, the township trustees may, alternatively, choose to create a township police district under R.C. 505.48. R.C. 505.48 to 505.55 govern the operation of a township police district so created and R.C. 505.51 authorizes a tax levy to meet the expenses of such a district. Once such a district is created, however it may not obtain all police protection through contract with other political subdivisions, as R.C. 505.50 authorizes contracts only for the provision of additional police protection. R.C. 505.49 requires provision of basic police protection through the employment of a chief of police, necessary patrolmen and acquisition of police equipment.

Your third question is whether, when a township police district is dissolved pursuant to R.C. 505.55, such a district's power to collect a tax levied under R.C. 505.51 is dissolved at the effective date of dissolution of the district or whether it continues throughout the tax year.

R.C. 505.55 provides for the dissolution of a township police district in the following terms:

"In the event that need for a township police district ceases to exist, the township trustees by a two-thirds vote of the board shall adopt a resolution specifying the date that the township police district shall cease to exist and provide for the disposal of all property belong-

ing to the district by public sale. . . . Any moneys remaining after the dissolution of the district or received from the public sale of property shall be paid into the treasury of the township and may be expended for any public purpose when duly authorized by the township board of trustees."

It is clear from these provisions that at the effective date set by resolution of the township trustees, the township police district created pursuant to R.C. 505.48 no longer exists.

One of my predecessors had reason to consider a situation where a school district - also a separate taxing entity - ceased to exist in 1957 Op. Att'y Gen. No. 1212 (p. 622). His conclusion was that where the legal existence of a school district is terminated prior to the date of an election on a proposed levy for consolidation of such school district with another to form a new local school district, the subsequent submission of such a proposal either to the electors of the constituent district or the consolidated district, is not authorized by law. This conclusion was based on the proposition that when a taxing authority ceases to exist, it no longer has authority by law to act. I approve and follow this reasoning and, therefore, conclude in this case that the provision under R.C. 505.51 that the board of trustees of a township police district may levy a tax is applicable only where a township police district has been created and continues to exist.

In response to your final question concerning a township levy under R.C. 5705.19 after the police district is dissolved, it must first be noted that R.C. 505.51 creates a separate taxing authority when a township police district is created. As discussed in Opinion No. 71-045, the expense of township police protection where a township police district has not been created is met through township general funds. See also R.C. 509.01, which provides that township trustees shall pay any designated police constables from township general funds.

R.C. 5705.19 specifies the purposes for which a tax in excess of the ten-mill limitation may be submitted to the voters of a political subdivision for approval. Pursuant to R.C. 505.51, the board of trustees of a township police district is empowered to submit a tax proposal pursuant to R.C. 5705.19(J) in accordance with R.C. 5705.25 which specifies procedures for submission, notice of election, form of ballot and procedures for certification.

R.C. 5705.19(J) provides that such a proposal may be submitted:

"For the purpose of providing and maintaining motor vehicles, communication, and other equipment, used directly in the operation of a police department, or the payment of salaries of permanent police personnel."

This provision, by its terms, contemplates the existence of a police department and the operation of a police department by the subdivision submitting the proposal. R.C. 5705.19(J) does not include any provision for raising funds for contracts for police services, nor does R.C. 505.441 - which authorizes

provision of township police protection by contract - provide any taxing authority to pay for such a contract.

It is well settled that taxing statutes are to be strictly construed. Watson v. Tax Commissioners, 135 Ohio St. 377 (1939); NcNally v. Evatt, 146 Ohio St. 443 (1946). R.C. 5705.19(J) does not authorize submission of a levy for the purpose of meeting the expenses of police protection where no police department exists and no such authority may be implied. Further, no other subsections of R.C. 5705.19 or other sections of Chapter 5705 authorize a submission of a levy for such a purpose in specific terms.

R.C. 5705.19(A), however, does authorize the submission of a proposed levy in excess of the ten-mill limitation for the purpose of meeting the current expenses of a subdivision. To the extent that township funds are inadequate to meet the expense of providing police protection to a township by contract after the dissolution of a township police district, R.C. 5705.19 would appear to authorize submission of a levy to the voters for meeting the current expenses involved even though it does not provide for long term financing of the contract.

Based upon the foregoing analysis it is, therefore, my opinion and you are so advised that:

1. There is no inherent incompatibility between the offices of chief of police of a township police district and chief of police of a village;
2. A township police district may not obtain all police protection by contract with municipalities, other townships or county sheriffs, but may, pursuant to R.C. 505.50, obtain additional police protection under such a contract, after providing directly for basic police protection through the employment of a chief of police, necessary patrolmen and the acquisition of police equipment.
3. On the effective date of dissolution of a township police district pursuant to R.C. 505.55, the police district, its board of trustees and the authority to levy and collect taxes all cease to exist.
4. R.C. 505.441 authorizes a township, where a police district has not been formed or has been dissolved, to enter into contracts for police protection. The expenses of such protection are properly met from township general funds. R.C. 5705.19(J) does not authorize submission of a proposed tax levy where a police department is not in operation or in existence and a township - where a police district is not in existence and operation - may not properly submit a levy under R.C. 5705.19(J) to meet the permanent expenses of providing police protection.