OPINION NO. 73-102

Syllabus:

(1) A board of township trustees has no authority to use public funds to support the program of a federally funded private, nonprofit corporation which provides social services for senior citizens, styled a Council on Aging.

(2) A municipal corporation may use public funds to support

the program of a federally funded Council on Aging provided such contribution has sufficient restrictions to ensure that the funds will be used only for a public municipal purpose.

(3) A board of county commissioners may, under R.C. 307.85, use public funds to support the program of a federally funded Council on Aging, provided such contribution has sufficient restrictions to ensure that the funds will be used only for a public purpose.

(4) A unit of local government may not use federal revenue sharing funds to provide the local share of the funding required for the program of a federally funded Council on Aging. However, such funds may be used to match state funds, or to supplement state or local matching funds.

To: Bernard V. Fultz, Meigs County Pros. Atty., Pomeroy, Ohio
By: William J. Brown, Attorney General, October 17, 1973

I have before me your request for my opinion, the questions in which may be summarized as follows:

> 1. May any of the following--a board of township trustees, a municipal corporation, or a board of county commissioners--use public funds to support the program of the Meigs County Council on Aging, Inc., a nonprofit corporation which provides social services for senior citizens?
>
> 2. May a unit of local government use federal revenue sharing funds to provide the local share of the funding required for the program of the Meigs County Council on Aging, Inc., which is funded by a grant program from the State of Ohio whereby state funds are used to match local funds?

A board of township trustees possesses only those powers and privileges which are delegated to or conferred upon it by statute. The Supreme Court of Ohio, in State, ex rel. Schramm v. Ayres, 158 Ohio St. 30 (1952), stated at p. 33 as follows:

> Townships are creatures of the law and have only such authority as is conferred on them by law. Therefore, the question is not whether townships are prohibited from exercising such authority. Rather it is whether townships have such authority conferred on them by law.

See also Hopple v. Brown Township, 13 Ohio St. 311 (1862); State ex rel. Locher v. Fenning, 95 Ohio St. 97 (1916).

I have found no statutory provision which grants to a board of township trustees the authority to use public funds to support the program of a nonprofit corporation which provides services for senior citizens. Therefore I must conclude that a board of township trustees has no such authority.

A municipal corporation, like a board of township trustees, may not exceed the powers and authority vested in it bylaw. In Welch v. City of Lima, 89 Ohio App. 457, 464 (1950) the court said:

> It is the settled law of Ohio that a municipality has only such powers as are conferred by the Constitution, the statutes of the state, and by charter adopted pursuant to the Constitution and statutes of the state * * *.

However, under the Ohio Constitution a municipal corporation is given a much broader scope of authority than is a board of township trustees. Article XVIII, Sections 3 and 7, Ohio Constitution, which confer home-rule power on municipalities, provide as follows:

> Section 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.
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> Section 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of sections 3 of this article exercise thereunder all powers of local self-government.

The Ohio Supreme Court addressed itself to the powers of a charter municipality in Hazell v. Cincinnati, 13 Ohio St. 2d 63 (1968), and held as follows:

> By reason of Sections 3 and 7 of Article XVIII of the Ohio Constitution, a charter city has all powers of local self-government except to the extent that those powers are taken from it or limited by other provisions of the Constitution or by statutory limitations on the powers of the municipality which the Constitution has authorized the General Assembly to impose.

Noncharter cities may exercise the same powers of local self-government as charter cities, so long as the exercise of such powers is not inconsistent with the general laws of the state. Leavers v. City of Canton, 1 Ohio St. 2d 33 (1964). Since the action in question is not at variance with any statute, a noncharter as well as a charter municipality could undertake it.

However, the legislative authority of a municipality is limited in spending municipal funds to projects and proposals which serve a public municipal purpose. See Bazell v. Cincinnati, supra; State, ex rel. McIlroy v. Baron, 169 Ohio St. 439 (1959); State, ex rel. Leaverton v. Perns, 104 Ohio St. 550 (1922). Although such a limitation has been imposed upon municipalities, it is the legislative authority of a municipality which usually makes the determination of what constitutes a municipal purpose. In State, ex rel. Gordon v. Rhodes, 156 Ohio St. 81 (1951), the court held in the syllabus as follows:

> The determination of what constitutes a public municipal purpose is primarily a function of the legislative body of the municipality, subject to review by the courts, and such determination by the legislative body will not be overruled by the courts except in instances where that determination is manifestly arbitrary or unreasonable.

Thus a municipal corporation, through its legislative authority, may give financial support to a program for senior citizens if such program serves a public municipal purpose.

A further restriction on the types of programs which a municipal corporation may support is found in Article VIII, Section 6, Ohio Constitution, which reads, in part, as follows:

> Section 6. No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association.

This provision is pertinent here because the recipient of the public funds would be a private, nonprofit corporation. However, this provision has been interpreted so as not to preclude the use of public funds by a private organization, but rather to preclude the use of public funds for a private purpose. Bazell v. Cincinnati, supra; State ex rel. McIlroy v. Baron, supra; State ex rel. Gordon v. Rhodes, supra. Thus a municipal corporation may grant public funds to a private, nonprofit corporation so long as such funds are used for a public purpose.

However, there is another criterion necessary in addition to the requirement of a valid public purpose to justify the grant of public funds to a private, nonprofit corporation. In Opinion No. 71-044, Opinions of the Attorney General for 1971, I determined that although public funds may be granted to a private, nonprofit association, the grant must be clearly for a public purpose, and it must contain restrictions which insure that the funds will be expended for only that purpose. In the syllabus of that Opinion I held as follows:

> A municipality may not make an outright, unrestricted gift of funds to a nongovernmental organization, regardless of whether or not such

> organization may be generally engaged in performing a beneficial public purpose. (Emphasis added.)

See also Opinion No. 72-023, Opinions of the Attorney General for 1972.

From the information that you have provided it appears that the Meigs County Council on Aging, Inc., meets the public purpose requirement. However, the information that you have provided is not sufficient to determine whether the other criterion has been met. There must be some mechanism for monitoring the use of the funds to insure that they are being used only for that public purpose. As stated in Opinion No. 71-044, supra:

> Absent such limitation, the recipient could use the funds in some way not directly connected with the public purpose, e.g., as a bonus to the chief administrative employee. But in other terms, the existence of the limitation sets a standard. The standard may then be enforced by the donor by appropriate devices, such as reports, audits, etc.

Whether a municipal corporation may grant public funds to a Council on Aging, therefore, depends upon whether the contribution meets the criteria necessary to make public funds available to a private nonprofit corporation.

The final unit of local government to be considered is a board of county commissioners. As with a board of township trustees, the authority of a board of county commissioners is limited to that conferred upon the board by statute. See Opinion No. 71-022, Opinions of the Attorney General for 1971. Unlike a board of township trustees, however, a board of county commissioners is authorized to give financial assistance to any federal program. R.C. 307.85 provides as follows:

> The board of county commissioners of any county may participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted prior to or after August 23, 1965 by the Congress of the United States, and for such purpose may adopt any procedures and take any action not prohibited by the Constitution of Ohio nor in conflict with the laws of this state.

Since a board of county commissioners is limited to giving financial assistance to support federal programs, the program administered by the state must be a federal program in order to receive county assistance. The state program is administered by the Department of Mental Health and Mental Retardation, Division of Administration on Aging, under the Older Americans Act of 1965, 42 U.S.C. Section 3001 et seq., and its amendments, pursuant to R.C. 5119.75.

The objectives of the Act are set out in 42 U.S.C. Section 3001 as follows:

> The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States and of the several States and their political subdivisions to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives:
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> (1) An adequate income in retirement in accordance with the American standard of living.
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> (2) The best possible physical and mental health which science can make available and without regard to economic status.
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> (3) Suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford.
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> (4) Full restorative services for those who require institutional care.
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> (5) Opportunity for employment with no discriminatory personnel practices because of age.
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> (6) Retirement in health, honor, dignity--after years of contribution to the economy.
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> (7) Pursuit of meaningful activity within the widest range of civic, cultural, and recreational opportunities.
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> (8) Efficient community services which provide social assistance in a coordinated manner and which are readily available when needed.
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> (9) Immediate benefit from proven research knowledge which can sustain and improve health and happiness.
>
> (10) Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives.

Under the Older Americans Act federal funds are allocated to the state to enable the state to implement programs which accomplish these objectives, subject to the guidelines and limitations of the Act. 42 U.S.C. Section 3023.

The Older Americans Act established the Federal Administration on Aging, the functions of which include: to serve as a clearing house of information related to the problems of the aged, to administer the federal grants to the states, and to help the states to develop programs for the aged. 42 U.S.C. Sections 3011 and 3012. The responsibility of determining the specific content of the program and administering the program has been left to the individual states.

Since the Older Americans Act is a federal enactment designed to provide services and assistance to the aged, the program administered by the state is primarily funded with federal money, and such program must conform to the guidelines of the Older Americans Act, I must conclude that the program in question is a federal program within the scope of R.C. 307.85. Therefore, since the Meigs County Council on Aging, Inc., derives from, and is funded through, a federal act, the board of county commissioners may, under R.C. 307.85, give financial assistance to the program of such organization. However, restrictions similar to those discussed earlier with respect to municipal corporations would also be necessary here. In accordance with Article VIII, Section 6, Ohio Constitution, the grant of public funds to a private organization must have restrictions sufficient to insure that the funds are used only for a public purpose.

Your second question involves an examination of the grant of the federal revenue sharing funds and of the source of the state matching funds. Federal revenue sharing funds are distributed under the State and Local Fiscal Assistance Act of 1972, Pub. L. No. 92-512, 86 Stat. 919. Units of local government are limited in their use of such funds by Section 103 of the Act, which provides, in part, as follows:

> (a) Funds received by units of local government under this subtitle may be used only for priority expenditures. For purposes of this title, the term 'priority expenditures' means only--
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> (1) ordinary and necessary maintenance and operating expenses for--
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> (A) public safety (including law enforcement, fire protection, and building code enforcement),
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> (B) environmental protection (including sewage disposal, sanitation, and pollution abatement),
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> (C) public transportation (including transit systems and streets and roads),
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> (D) health
> (E) recreation,
> (F) libraries
> (G) social services for the poor or aged, and
> (H) financial administration; and
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> (2) ordinary and necessary capital expenditures authorized by law. (Emphasis added.)

From this language it appears that units of local government are authorized to use federal revenue sharing funds to provide social services for the aged. However, such authority is subject to the requirement of Section 123 (a)(4), Pub. L. No. 92-512, which provides that:

> A state government or unit of local government must establish * * * that it will provide for the expenditure of amounts received under subtitle A only in accordance with the laws and procedures applicable to the expenditure of its own revenues.

In addition to the requirement that the state government and units of local government may use federal revenue sharing funds only for purposes for which they may use their own funds, Section 104 (a), Pub. L. No. 92-512, places a further restriction on the use of such funds. Section 104 (a) reads as follows:

> No state government or unit of local government may use, directly or indirectly, any part of the funds it receives under this subtitle as a contribution for the purpose of obtaining Federal funds under any law of the United States which requires such government to make a contribution in order to receive Federal funds.

As stated previously, the state funds to be matched are available to the Meigs County Council on Aging, Inc., from the Division of Administration on Aging. It is my understanding that the state funds available to the Council derive from a model project in a five-county program which is supported by federal funds under the Older Americans Act. The federal funds provided for in the Older Americans Act are limited to a maximum of 75 percent of the cost of the state program. 42 U.S.C. Section 3022 (c) provides as follows:

> The allotment of any State under subsection (a) of this section for any fiscal year shall be available for grants to pay part of the cost of projects in such States described in section 3021 of this title and approved by such State (in accordance with its State plan approved under section 3023 of this title) prior to the end of such year or, in the case of allotments for the fiscal year ending June 30, 1966, prior to July 1, 1967. To the extent permitted by the State's allotment under this section such payments with respect to any project shall equal such percentage of the cost of any project as the State agency (designated or established pursuant to section 3023(a)(1) of this title) may provide but not in excess of 75 per centum of the cost of such project for the first year of the duration of such project, 60 per centum of such cost for the second year of such project, and 50 per centum of such cost for the third year and any subsequent year of such project.

Federal funding for model projects is authorized by 42 U.S.C. Section 3024 a (a), which provides, in part, as follows:

> The Secretary is authorized, upon such terms as he may deem appropriate, to make grants to or contracts with State agencies established or designated as provided in section 3023 (a)(1) of this title to pay not to exceed 75 per centum of the cost of the development and operation of statewide, regional, metropolitan area, county, city, or other areawide model projects for carrying out the purposes of this subchapter * * *.

Finally, 42 U.S.C. Section 3023 (a)(2) provides as follows:

> The Secretary shall approve a State plan for purposes of this subchapter which
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> * * * * * * * * *
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> (2) provides for such financial participation by the State or communities with respect to activities and projects under the plan as the Secretary may by regulation prescribe in order to assure continuation of desirable activities and projects.

Since these provisions are closely related, they must be read in pari materia. When so read, they appear to dictate that, of the total cost of the state or local project, the state or local unit of government must provide at least 25 percent of the cost, with a maximum of 75 percent to come from federal funds. Thus the restriction on the use of federal revenue sharing funds in Section 104 (a) of Pub. L. No. 92-512, would clearly prohibit a unit of local government from using federal revenue sharing funds to constitute the local share of the funding required for a program of a Council on Aging.

The question remains, however, whether federal revenue sharing funds may be used to match state funds when those funds derive solely from state sources. Section 104 (a), Pub. L. No. 92-512, prohibits only the use of federal revenue sharing funds to match directly or indirectly other federal funds which require a matching portion from the state or from a unit of local government. It does not prohibit the use of federal revenue sharing funds to match state funds. If it is determined that Section 104 (a) has been violated, Section 104 (b) would require the unit of local government to forfeit the federal revenue sharing funds and repay to the United States an amount equal to the funds misused. Looking to the legislative history of Pub. L. No. 92-512, it is noted in Senate Report No. 92-1050, 72 U.S. Code Cong. and Adm. News 3908, that:

> The Committee's amendment provides that States and local governments are not to use revenue sharing payments, either directly or indirectly, to obtain Federal matching grant funds. (However, this

provision of the bill is not to prevent the use of revenue sharing funds to supplement other Federal grant funds. For example, if a project costs more than the amount available from non-Federal funds plus matched Federal funds, the State or local government could use funds coming to it under this title to defray the excess cost, if the funds under this title are not being used to match other Federal funds.)

Thus I must conclude that a unit of local government may not use federal revenue sharing funds to provide the local share of the funding required for the program of a Council on Aging when the matching funds of the state are derived from a federal grant. However, I would suggest that the federal revenue sharing funds may be used to supplement the matching state funds, in accordance with Section 103 of Pub. L. No. 92-512, or to match state funds. Hence, federal sharing funds may be used to provide social services for the aged in accordance with Section 103 of the State and Local Fiscal Assistance Act as long as they are not used for matching funds in federal projects. Therefore, those funds may be used to supplement the matching funds, or to aid a separate and independent project, because providing social services for the aged is one of the purposes of the Federal Revenue Sharing Act.

In specific answer to your questions, it is my opinion and you are so advised, that

(1) A board of township trustees has no authority to use public funds to support the program of a federally funded private, nonprofit corporation which provides social services for senior citizens, styled a Council on Aging.

(2) A municipal corporation may use public funds to support the program of a federally funded Council on Aging provided such contribution has sufficient restrictions to ensure that the funds will be used only for a public municipal purpose.

(3) A board of county commissioners may, under R.C. 307.05, use public funds to support the program of a federally funded Council on Aging, provided such contribution has sufficient restrictions to ensure that the funds will be used only for a public purpose.

(4) A unit of local government may not use federal revenue sharing funds to provide the local share of the funding required for the program of a federally funded Council on Aging. However, such funds may be used to match state funds, or to supplement state or local matching funds.