

July 15, 2016

The Honorable Gregg Marx
Fairfield County Prosecuting Attorney
239 West Main Street, Suite 101
Lancaster, Ohio 43130

SYLLABUS:

2016-023

1. An emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by Violet Township may provide medical services in nonemergency situations pursuant to R.C. 4765.361, so long as the medical services are performed under the direction of the emergency medical technician's medical director or cooperating physician advisory board, are within the scope of practice of the emergency medical technician, and do not conflict with the emergency medical services described in R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted by the State Board of Emergency Medical, Fire, and Transportation Services.
2. An emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by a township is immune from civil liability for injury, death, or loss to person or property resulting from the provision of medical services in a nonemergency situation unless the services are provided in a manner that constitutes wanton or willful misconduct, the services are manifestly outside the scope of the emergency medical technician's employment, or the services are performed with malicious purpose, in bad faith, or in a wanton or reckless manner.
3. An emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by a township may not provide medical services on a routine, day-to-day basis outside the boundaries of the township when revenue from a township tax levy pays the emergency medical technician's compensation, unless the township has entered into a contract with another political subdivision pursuant to R.C. 9.60 or R.C. 505.44, or the township

provides the medical services to the territory of another township or municipal corporation as a member of a joint fire district pursuant to R.C. 505.371, a fire and ambulance district pursuant to R.C. 505.375, or a joint ambulance district pursuant to R.C. 505.71.

4. A board of township trustees may establish reasonable charges for the use of medical services that are provided by an emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by the township in nonemergency situations and may collect those charges from a private hospital system that agrees to pay those charges on behalf of the recipient of the medical services.
5. A board of township trustees may contract with a private hospital system to provide medical services in nonemergency situations by an emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by the township to patients of the hospital who are residents and nonresidents of the township, so long as the private hospital system is a nonprofit corporation and the medical services are performed within the territory of the township.
6. A contract between the Violet Township Board of Trustees and a private hospital system for the provision of medical services in nonemergency situations may provide that the private hospital system will pay the township a sum of money for each visit performed by an emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic pursuant to the contract and that emergency medical technicians will provide medical services in nonemergency situations during the emergency medical technicians' regular work hours.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

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OPINION NO. 2016-023

The Honorable Gregg Marx
Fairfield County Prosecuting Attorney
239 West Main Street, Suite 101
Lancaster, Ohio 43130

Dear Prosecutor Marx:

You have requested an opinion about the authority of a board of township trustees to enter into a contract with a private hospital system for the provision of medical services in a nonemergency situation by emergency medical technicians (EMTs)¹ of the township fire department to residents and nonresidents of the township.²

You have explained that the Violet Township Board of Trustees would like to enter into a contract with a private hospital system. Under the contract, an EMT, who is employed on a full-time basis by Violet Township, would provide medical services to specific patients in their homes in nonemergency situations. The patients may or may not be residents of Violet Township. The medical services contemplated in the proposed contract include checking a patient's home for dangers that could cause falls, providing health coaching, communicating with other health care providers, scheduling appointments with medical providers, arranging transportation to appointments, and assisting in goal setting. An EMT would provide the medical services during the EMT's regular working hours and the hospital will pay the Violet Township Fire Department \$153.85 for each visit an EMT makes to a patient's home. You also explain that the Violet Township Fire Department receives revenues from seven continuing fire

¹ You ask about the provision of medical services in nonemergency situations by an emergency medical technician-basic (EMT-basic), an emergency medical technician-intermediate (EMT-I), and an emergency medical technician-paramedic (EMT-paramedic). For the purpose of this opinion, we use "emergency medical technician" (EMT) to refer collectively to an EMT-basic, EMT-I, and an EMT-paramedic. For the purpose of this opinion, EMT does not include a first responder.

² For the purpose of this opinion, we understand "nonemergency situations" to mean those situations that do not constitute emergencies. An "emergency" is a situation where there is "an urgent need for assistance or relief[.]" *Merriam-Webster's Collegiate Dictionary* 407 (11th ed. 2005). Thus, a "nonemergency situation" is a situation in which there is a need for assistance from an EMT, but it is not needed on an urgent basis.

and emergency medical services tax levies in excess of the ten-mill limitation. When each levy was presented to the electorate, the ballot stated that the levy was “for the benefit of Violet Township[.]”

You ask the following specific questions:

1. Whether, pursuant to Revised Code Section 4765.361 an EMT may, in nonemergency situations, perform services other than those delineated in Revised Code Sections 4765.35, 4765.37, 4765.38, and 4765.39?³
2. Whether, in the performance of nonemergency services pursuant to Revised Code Section 4765.361, an EMT is covered by the immunity afforded pursuant to Revised Code Section 4765.49 or any other immunity granted to township employees pursuant to the Ohio Revised Code?
3. Whether, pursuant to Revised Code Section 4765.361, an EMT-employee of a township may provide nonemergency services outside the geographic confines of that township where that EMT is compensated through levies passed by the residents of that township?
4. Whether, pursuant to Revised Code Section 4765.361, an EMT may provide nonemergency services for compensation with a private third party hospital or medical provider?
5. Whether, pursuant to Revised Code Section 4765.361, a township fire department or an EMT during her regular work hours may provide nonemergency services to nonresidents of the township where such services are provided pursuant to a contract with a private third party hospital or medical provider for compensation?
6. Whether, pursuant to Revised Code Section 4765.361, a township fire department or an EMT during her regular work hours may provide nonemergency services to residents of the township where such services are provided pursuant to a contract with a private third party hospital or medical provider for compensation?

³ R.C. 4765.35 sets forth the emergency medical services that a first responder may perform. Because your questions ask about the medical services that an EMT-basic, EMT-intermediate, and an EMT-paramedic may perform when providing medical services in nonemergency situations, we focus our analysis on R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39, the statutes governing the services that an EMT-basic, EMT-intermediate, and an EMT-paramedic, respectively, may perform.

R.C. 4765.361: Authority to Perform Medical Services in Nonemergency Situations

R.C. 4765.361 provides:

An emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic may perform *medical services* that the technician is authorized by law to perform *in nonemergency situations* if the services are performed under the direction of the technician's medical director or cooperating physician advisory board. In nonemergency situations, no medical director or cooperating physician advisory board shall delegate, instruct, or otherwise authorize a technician to perform any medical service that the technician is not authorized by law to perform. (Emphasis added.)

R.C. Chapter 4765 does not expressly define the medical services that an EMT is authorized to perform in nonemergency situations. We conclude, however, that "medical services" in R.C. 4765.361 means the services that an EMT is authorized to perform, as appropriate, pursuant to R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 and the administrative rules adopted under R.C. Chapter 4765.

R.C. 4765.35 and 11B Ohio Admin. Code 4765-12-04 (2015-2016 Supplement) set forth the services that a first responder may perform.⁴ R.C. 4765.37 and 11B Ohio Admin. Code 4765-15-04 (2015-2016 Supplement) delineate the services that an EMT-basic may perform. The services that an EMT-intermediate may perform are set forth in R.C. 4765.38 and 11B Ohio Admin. Code 4765-16-04 (2015-2016 Supplement). The services that an EMT-paramedic may perform are set forth in R.C. 4765.39 and 11B Ohio Admin. Code 4765-17-03 (2015-2016 Supplement). Pursuant to R.C. 4765.11(A)(18), the State Board of Emergency Medical, Fire, and Transportation Services may authorize EMTs to perform emergency medical services in addition to those identified in R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the corresponding regulations. *See* R.C. 4765.37(C); R.C. 4765.38(B)(6); R.C. 4765.39(B)(7); 11B Ohio Admin. Code 4765-6-01.

The purpose of requiring a person to obtain a license or certificate to practice a profession or occupation is to protect the health and safety of the public by ensuring that the person is qualified to competently and safely perform a service. *See State ex rel. Copeland v. State Med. Bd.*, 107 Ohio St. 20, 28, 140 N.E. 660 (1923) ("[t]he underlying purpose of conferring upon the [State Medical Board] the power to issue licenses to practice medicine and surgery is protection

⁴ Reference to the statute and administrative rule regarding the scope of practice of first responders is made because 11B Ohio Admin. Code 4765-15-04 (2015-2016 Supplement), 11B Ohio Admin. Code 4765-16-04 (2015-2016 Supplement), and 11B Ohio Admin. Code 4765-17-03 (2015-2016 Supplement), which set forth the scope of practice of EMT-basics, EMT-intermediates, and EMT-paramedics, incorporate the services that a first responder may perform.

against inexperience and incompetency”); 1995 Op. Att’y Gen. No. 95-045, at 2-247 (“[t]he ultimate goal, or intent, of such regulation by the state is the preservation of the health, safety, and general welfare of every person who is served by a practitioner of the profession in question”). An EMT is permitted by statute, rule, or the written or verbal authorization of a medical director or physician advisory board to perform certain services because the General Assembly, the State Board of Emergency Medical, Fire, and Transportation Services, and the medical director or physician advisory board have determined that the education, training, and certification received by an EMT has prepared the EMT to safely perform those services. *See, e.g.*, 11B Ohio Admin. Code 4765-6-02(A) (“[a]n EMS training program for a certificate to practice as an emergency medical responder, emergency medical technician, advanced emergency medical technician and paramedic shall meet all knowledge and skill standards set forth in rules 4765-12-05, 4765-15-05, 4765-16-06, and 4765-17-04 of the Administrative Code”); rule 4765-15-04(D) (“[a]n emergency medical technician shall not perform emergency medical services within this rule unless the emergency medical technician has received training as part of an initial certification course or through subsequent training approved by the board”); 11B Ohio Admin. Code 4765-15-05(B) (“[t]he EMS training program [for a certificate to practice as an EMT] shall be conducted in accordance with ... the scope of practice set forth in rule 4765-15-04 of the Administrative Code”).

Insofar as the General Assembly and the State Board of Emergency Medical, Fire, and Transportation Services have determined that R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the corresponding Ohio Administrative Code provisions delineate the services that an EMT is qualified to safely perform, those services are the medical services that an EMT is legally authorized to perform in emergency and nonemergency situations.⁵ Accordingly, the “medical services” that an EMT may perform in nonemergency situations pursuant to R.C. 4765.361 are the services that R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted by the State Board of Emergency Medical, Fire, and Transportation Services authorize an EMT to perform. Essentially, R.C. 4765.361 authorizes an EMT to perform “emergency medical services” as defined in R.C. 4765.01(G) in nonemergency situations.

“Emergency medical service” is defined for the purpose of R.C. Chapter 4765 as “any of the services described in [R.C. 4765.35 (first responders), R.C. 4765.37 (EMT-basic), R.C. 4765.38 (EMT-I), and R.C. 4765.39 (EMT-paramedic)] that are performed by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and

⁵ In this opinion, we use the term “medical services,” rather than “emergency medical services,” to refer to the services that an EMT may perform in nonemergency situations pursuant to R.C. 4765.361. We do this because R.C. 4765.361 refers to those services as “medical services.” Even though the medical services authorized by R.C. 4765.361 are the same services included in the definition of “emergency medical services” in R.C. 4765.01(G), it would be confusing to the reader to use “emergency medical services” to refer to the services an EMT is authorized to perform in nonemergency situations under R.C. 4765.361.

paramedics.” R.C. 4765.01(G). The second sentence of R.C. 4765.01(G) states that “[e]mergency medical service’ includes such services performed before or during any transport of a patient, including transports between hospitals and transports to and from helicopters.” That the General Assembly used the word “includes” indicates that the provision of “emergency medical service” is not limited exclusively to services performed before or during transport of a patient to a hospital. *See State v. Colvin*, 19 Ohio St. 2d 86, 92, 249 N.E.2d 784 (1969) (when the General Assembly uses the word “includes,” it does not intend for the list that follows to be an exhaustive or exclusive list).

Additionally, although “medical service” is preceded by “emergency” in R.C. 4765.01(G), the statute’s definition of “emergency medical service” does not require that the medical service be performed in an emergency.⁶ Rather, “emergency medical service” is any service that the Revised Code authorizes an EMT to perform.

The legislative history of R.C. 4765.01(G) further supports our conclusion that “emergency medical service” is not necessarily limited to medical services that are performed in emergency situations. In 1992, R.C. 3303.08(G), a predecessor of R.C. 4765.01(G), was amended and renumbered. 1991-1992 Ohio Laws, Part I, 467 (Am. Sub. S.B. 98, eff. Nov. 12, 1992). Prior to the amendment, R.C. 3303.08(G) provided:

“Emergency medical service” means a public or private organization using EMT-A’s, ADV EMT-A’s, or paramedics, or a combination of EMT-A’s, ADV EMT-A’s, and paramedics, to provide *emergency medical care to victims of serious illness or injury* prior to the victims receiving professional medical care or hospitalization.

1985-1986 Ohio Laws, Part II, 3894 (Sub. H.B. 428, eff. Dec. 23, 1986) (emphasis added). The enactment of Am. Sub. S.B. 98 renumbered R.C. 3303.08(G) as R.C. 4765.01(F) and amended the definition of “emergency medical service” to read:

“Emergency medical service” means any of the services described in [R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39] that are performed outside a hospital by emergency medical technicians-ambulance, advanced emergency medical

⁶ We recognize that some of the delineated services are performed only in a situation constituting an emergency. *See, e.g.*, R.C. 4765.37(B) (“[i]n an emergency, an EMT-basic may determine the nature and extent of illness or injury and establish priority for required emergency medical services”); R.C. 4765.38(B)(4) (an EMT-intermediate may “[a]dminister epinephrine”). However, not all the services an EMT may perform are necessarily performed in a situation constituting an emergency. *See, e.g.*, R.C. 4765.37(B) (an EMT-basic may perform emergency medical services including “bandaging”); R.C. 4765.38(B)(2) (an EMT-intermediate may perform “cardiac monitoring”).

technicians-ambulance, and paramedics. “Emergency medical service” includes such services performed during any transport of a patient, including transports between hospitals and transports to and from helicopters.

Accordingly, the amendment changed the definition’s operative factor from the nature of the service performed or the situation in which the service is performed (“emergency medical care to victims of serious injury or illness”) to the identity of the actor performing the service (“any of the services described in [the statutes] that are performed ... by emergency medical technicians-ambulance, advanced emergency medical technicians-ambulance, and paramedics”). Therefore, a medical service performed by an EMT in a nonemergency situation that otherwise meets the definition of “emergency medical service” in R.C. 4765.01(G) constitutes an “emergency medical service.” In other words, medical services that are within the scope of practice of the EMT, whether performed in an emergency or not, constitute “emergency medical services” for the purpose of R.C. Chapter 4765.

Although interpreting “emergency medical service” to include medical services that are provided in nonemergency situations is, at first glance, counterintuitive, we believe that our interpretation is consistent with R.C. Chapter 4765. If the fact that “emergency” precedes “medical service” leads to the conclusion that “emergency medical services” shall be conducted in emergency situations only, then the fact that “emergency” precedes “medical technician” should also be construed to mean that an EMT is a person that acts only in emergency situations. However, the enactment of R.C. 4765.361 directly refutes that conclusion. The General Assembly has expressly authorized EMTs to perform medical services in nonemergency situations. R.C. 4765.361 repeatedly refers to the medical services that an EMT may perform in nonemergency situations as those services that the EMT is “authorized by law to perform.” The law authorizes an EMT to perform “emergency medical services,” which are those services that are within the scope of practice of an EMT.

If the General Assembly had intended R.C. 4765.361 to authorize an EMT to perform medical services in nonemergency situations that are different than the “emergency medical services” that an EMT is authorized by statute and rule to perform, it could have expressly provided a definition for “nonemergency medical services.” *See Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926). Alternatively, the State Board of Emergency Medical, Fire, and Transportation Services could have adopted a rule expanding an EMT’s scope of practice to include “nonemergency medical services,” as distinguished from “emergency medical services.” *See* rule 4765-6-01(A) (“[t]he board shall evaluate whether emergency medical responders, emergency medical technicians, advanced emergency medical technicians, and paramedics may perform additional services beyond those contained in [R.C. Chapter 4765] and Chapters 4765-12, 4765-15, 4765-16, and 4765-17 of the Administrative Code”). That neither alternative has occurred is further support for the conclusion that “medical services” in R.C. 4765.361 means the emergency medical services that an EMT is authorized to

perform pursuant to R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted by the State Board of Emergency Medical, Fire, and Transportation Services.⁷

Authority of a Board of Trustees of a Home Rule Township to Adopt a Resolution Authorizing an Emergency Medical Technician to Provide Medical Services that Differ from the Services Specified in R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39

Violet Township has adopted a limited home rule government pursuant to R.C. Chapter 504. We shall determine whether the Violet Township Board of Trustees may exercise the township's home rule powers to authorize an EMT employed by the Violet Township Fire Department to perform in nonemergency situations medical services that differ from those services delineated in R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39.

The board of township trustees of a limited home rule township may, by resolution, exercise in the unincorporated area of the township limited powers of local self-government that are not in conflict with general laws. R.C. 504.04(A)(1). The board of township trustees may also "[a]dopt and enforce within the unincorporated area of the township local police, sanitary,

⁷ We have concluded that "medical services" in R.C. 4765.361 means the emergency medical services that an EMT is authorized to perform by R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted by the State Board of Emergency Medical, Fire, and Transportation Services. R.C. 4765.11 provides, in pertinent part:

(A) The state board of emergency medical, fire, and transportation services shall adopt ... rules ... that establish all of the following:

...

(2) Standards for the performance of emergency medical services by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic;

...

(18) Procedures for approving the additional emergency medical services first responders are authorized by [R.C. 4765.35(C)] to perform, EMTs-basic are authorized by [R.C. 4765.37(C)] to perform, EMTs-I are authorized by [R.C. 4765.38(B)(5)] to perform, and paramedics are authorized by [R.C. 4765.39(B)(6)] to perform;

....

(B) The board may adopt ...

(4) Any other rules necessary to implement [R.C. Chapter 4765].

Thus, pursuant to its general rule-making authority, R.C. 4765.11, the State Board of Emergency Medical, Fire, and Transportation Services is authorized to adopt rules that define an EMT's scope of practice in nonemergency situations.

and other similar regulations that are not in conflict with general laws or otherwise prohibited by [R.C. 504.04(B)].” R.C. 504.04(A)(2).⁸ The adoption of a limited home rule government “grants a limited home rule township authority to exercise a greater measure of authority, in a greater number of matters, than the authority granted to townships generally by the other provisions of R.C. Title 5.” 2014 Op. Att’y Gen. No. 2014-041, at 2-362 (quoting 2002 Op. Att’y Gen. No. 2002-032, at 2-210 n.2).⁹

For the Violet Township Board of Trustees to adopt a resolution that authorizes an EMT employed by the Violet Township Fire Department to perform in nonemergency situations medical services that differ from those services specified in R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39, the resolution, whether an exercise of a power of local self-government or a local police regulation, shall not conflict with a general law. Thus, our first step is to determine whether R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 constitute general laws.

The Ohio Supreme Court has held that:

to constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

City of Canton v. State, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 21. When determining whether a statute is a general law, the statute shall not be examined in isolation, but in the context of the overall statutory scheme. *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255, at ¶ 27.

⁸ The board of township trustees of a limited home rule township may also adopt resolutions that govern the supply of water and sewer services, R.C. 504.04(A)(3), and regulate adult entertainment establishments and the residency of sex or child-victim offenders, R.C. 504.04(A)(4).

⁹ “The home rule authority granted to townships by R.C. 504.04(A) to exercise all powers of local self-government and to adopt and enforce police, sanitary, and similar regulations that do not conflict with general laws mirrors the home rule authority granted to municipalities by Ohio Const. art. XVIII, § 3.” 2014 Op. Att’y Gen. No. 2014-041, at 2-362. Insofar as the home rule authority of counties that have adopted a charter pursuant to Ohio Const. art. X, § 3 parallels municipal home rule authority, 1996 Op. Att’y Gen. No. 96-043, at 2-162, the home rule authority granted to townships is also similar to the home rule authority granted to counties. Accordingly, case law and opinions of the Attorney General that address the home rule powers of municipal corporations and counties are instructive when determining the scope of authority of a home rule township. See 2014 Op. Att’y Gen. No. 2014-041, at 2-363.

With respect to the first factor of the *Canton* test, R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 are part of a statewide and comprehensive legislative enactment. R.C. Chapter 4765 regulates emergency medical services and providers of those services on a statewide basis. In addition, insofar as R.C. Chapter 4765 addresses many aspects of the provision of emergency medical services by emergency medical services personnel, R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 are part of a comprehensive legislative enactment.

A single state agency, the State Board of Emergency Medical, Fire, and Transportation Services, is responsible for the administration and enforcement of R.C. Chapter 4765. R.C. 4765.10(A)(1); *see also* R.C. 4765.101(A) (“[t]he state board of emergency medical, fire, and transportation services shall investigate any allegation that a person has violated [R.C. Chapter 4765] or a rule adopted under it”); R.C. 4765.111 (disciplinary proceedings are conducted by the State Board of Emergency Medical, Fire, and Transportation Services). The State Board of Emergency Medical, Fire, and Transportation Services divides the state into prehospital emergency medical services regions, each of which is supervised by a regional director or a regional advisory board, for the purpose of “overseeing the delivery of adult and pediatric prehospital emergency medical services.”¹⁰ R.C. 4765.05(B). The Board makes “recommendations for the operation of ambulance service organizations, air medical organizations, and emergency medical service organizations[,]” R.C. 4765.09, and adopts guidelines for the care of trauma victims, R.C. 4765.12(A).¹¹ *See also* R.C. 4765.40 (establishment of written state protocols and approval of regional protocols for the triage of trauma victims). The Board is authorized to adopt rules establishing, *inter alia*, “[s]tandards for the performance of emergency medical services by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and emergency medical technicians-paramedic” and “[p]rocedures for approving the additional emergency medical services” that the various EMTs may perform. R.C. 4765.11(A)(2), (A)(18). Certificates to practice as a first responder, an EMT-basic, an EMT-intermediate, or an EMT-paramedic are issued by the State Board of Emergency Medical, Fire, and Transportation Services based upon whether an applicant satisfies statutory criteria. R.C. 4765.30. R.C. 4765.36 and R.C. 4765.361 set forth the circumstances in which emergency medical service personnel may provide emergency medical services in a hospital and in nonemergency situations. R.C. 4765.49 sets forth the immunity afforded emergency medical service personnel, political subdivisions, and other organizations that provide emergency medical services. Therefore, R.C. 4765.37, R.C.

¹⁰ “Prehospital emergency medical services” is defined as “an emergency medical services system that provides medical services to patients who require immediate assistance, because of illness or injury, prior to their arrival at an emergency medical facility.” R.C. 4765.05(A).

¹¹ An “emergency medical service organization” is “a public or private organization using first responders, EMTs-basic, EMTs-I, or paramedics, or a combination of first responders, EMTs-basic, EMTs-I, and paramedics, to provide emergency medical services.” R.C. 4765.01(H).

4765.38, and R.C. 4765.39 satisfy the first factor of the *Canton* test as they constitute statutes that are part of a comprehensive and statewide legislative enactment.

The second factor to consider is whether R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 “apply to all parts of the state alike and operate uniformly throughout the state[.]” *City of Canton v. State* at ¶ 21. The provisions of R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 apply to all EMT-basics, EMT-intermediates, and EMT-paramedics regardless of where the professional performs emergency medical services. Therefore, the second factor of the *Canton* test is satisfied.

The third factor of the *Canton* test considers whether the statutes at issue set forth police, sanitary, or similar regulations, rather than purport only to grant or limit local legislative power to set forth police, sanitary, or similar regulations. *City of Canton v. State* at ¶ 21. Regulation of a profession or occupation is an exercise of police power. *Bouquett v. Ohio State Med. Bd.*, 123 Ohio App. 3d 466, 475, 704 N.E.2d 583 (Franklin County 1997) (“a state may act pursuant to its police powers to regulate or prohibit a business or profession so long as its actions are necessary for the public welfare”); *Pierstorff v. Bd. of Embalmers and Funeral Dirs.*, 68 Ohio App. 453, 455, 41 N.E.2d 889 (Lucas County 1941) (“[t]he state has power to regulate a business, profession or occupation under its police power, in the interests of public health, morals or general welfare”); 2003 Op. Att’y Gen. No. 2003-011, at 2-86 (“[s]tate statutes establishing programs for licensing types of occupations or activities have been found to be police regulations”). Accordingly, R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 set forth police regulations and are not a grant or limitation of a township’s power to set forth police regulations.

The final factor of the *Canton* test requires us to determine whether R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 “prescribe a rule of conduct upon citizens generally.” *City of Canton v. State* at ¶ 21. The statutes satisfy this factor insofar as they establish the emergency medical services that any citizen who is an EMT-basic, an EMT-intermediate, or an EMT-paramedic may perform.

Having found that R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 satisfy each of the factors of the *Canton* test, we conclude that the statutes are general laws. Therefore, the board of trustees of a home rule township may not adopt a resolution, as either an exercise of a power of local self-government or the adoption or enforcement of a police, sanitary or other similar regulation, that conflicts with R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39.

A conflict exists between a general law and a township resolution when the resolution “permits or licenses that which the statute forbids and prohibits, and vice versa.” *Mendenhall v. Akron* at ¶ 29 (quoting *Am. Fin. Servs. Ass’n v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776, at ¶ 40 and *Cincinnati v. Baskin*, 112 Ohio St. 3d 279, 2006-Ohio-6422, 859 N.E.2d 514, at ¶ 19). If the township resolution and the state statute provide contradictory

guidance or if the resolution “declares something to be right which the state law declares to be wrong, or vice versa[,]” then a conflict exists. *Mendenhall v. Akron* at ¶ 29 (quoting *Struthers v. Sokol*, 108 Ohio St. 263, 268, 140 N.E. 519 (1923)). A township resolution may also conflict with a state statute by implication when the resolution “indirectly prohibit[s] what a state statute permits or vice versa.” *Mendenhall v. Akron* at ¶ 31; *see also Am. Fin. Servs. Ass’n v. Cleveland* at ¶ 46 (“any local ordinances that seek to prohibit conduct that the state has authorized are in conflict with the state statutes and are therefore unconstitutional”).

A township resolution authorizing an EMT to perform services that R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 do not, impermissibly conflicts with the statutes and exceeds the powers of a home rule township. Because the medical services referred to in R.C. 4765.361 are those services that an EMT is authorized to perform pursuant to R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted under R.C. Chapter 4765, an EMT may not, pursuant to R.C. 4765.361, perform services that conflict with those delineated in R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted by the State Board of Emergency Medical, Fire, and Transportation Services. Therefore, an EMT-basic, an EMT-intermediate, and an EMT-paramedic employed by the Violet Township Fire Department may provide medical services in nonemergency situations pursuant to R.C. 4765.361, so long as the medical services are within the scope of practice of the EMT and do not conflict with the emergency medical services described in R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted by the State Board of Emergency Medical, Fire, and Transportation Services.

Your letter provides the following examples of medical services that are contemplated by the proposed agreement between Violet Township and the private hospital system: checking a patient’s home for dangers that could cause falls, providing health coaching, communicating with other health care providers, scheduling appointments with medical providers, arranging transportation to appointments, and assisting in goal setting. Whether a township resolution that authorizes an EMT to provide those services in a nonemergency situation conflicts with R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39 hinges upon whether those services are encompassed within the services delineated in R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted by the State Board of Emergency Medical, Fire, and Transportation Services. A component of that analysis is whether the education and training of an EMT-basic, EMT-intermediate, and EMT-paramedic adequately prepares the EMT to safely and competently perform the service. For example, if health coaching involves providing recommendations regarding nutrition and exercise, then the provision of health coaching by an EMT likely conflicts with the services contemplated by R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39. Many of the services described in your letter seem to extend beyond the services that an EMT is certified to perform and the purpose for which an EMT is employed by a township. Determining whether a service is encompassed within the services authorized by R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39, and whether an EMT’s education and training are sufficient depends, in part, upon factual findings. Those determinations are best made by the State Board of Emergency Medical, Fire, and Transportation Services and the local officials involved.

Immunity when Providing Medical Services in Nonemergency Situations Pursuant to R.C. 4765.361

Your second question asks whether an EMT is immune from civil tort liability pursuant to R.C. 4765.49, or any other statute conferring immunity on a township employee, when the EMT provides medical services in nonemergency situations pursuant to R.C. 4765.361.

R.C. 2744.03(A)(6) provides, in pertinent part:

In addition to any immunity or defense referred to in [R.C. 2744.03(A)(7)¹²] and in circumstances not covered by that division or [R.C. 3314.07 (contracts for a community school) and R.C. 3746.24 (immunity from tort liability resulting from the release of a hazardous substance or petroleum)], the employee [of a political subdivision] is immune from liability unless one of the following applies:

- (a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;
- (b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;
- (c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. (Footnote added.)

R.C. 4765.49(A) expressly imposes civil liability on an EMT and provides, in pertinent part:

A first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the individual's administration of emergency medical services, unless the services are administered in a manner that constitutes willful or wanton misconduct.

Thus, an EMT may be liable in damages in a civil action for injury, death, or loss for the provision of emergency medical services when the services are manifestly outside the scope of the EMT's employment or official responsibilities, R.C. 2744.03(A)(6)(a), provided with

¹² R.C. 2744.03(A)(7) provides:

The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

malicious purpose, in bad faith, or in a wanton or reckless manner, R.C. 2744.03(A)(6)(b), or provided in a manner that constitutes wanton or willful misconduct, R.C. 4765.49(A). *See generally Herron v. Columbus*, 10th Dist. No. 14-AP-1063, 2016-Ohio-503, 2016 WL 561843, at ¶ 9 (defining “willful misconduct,” “wanton misconduct,” and “reckless conduct”); *Blair v. Columbus Div. of Fire*, 10th Dist. No. 10AP-575, 2011-Ohio-3648, 2011 WL 3073870, at ¶¶ 29-30 (defining “wanton misconduct” and “willful misconduct”).¹³

Additionally, a township that employs an EMT may be subject to civil liability in connection with the provision of emergency medical services by an EMT pursuant to R.C. 2744.02(B)(5). *See generally* R.C. 2744.01(F) (a township is a “political subdivision” for the purpose of R.C. Chapter 2744). Generally, political subdivisions are immune from civil liability for “injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.” R.C. 2744.02(A)(1). The provision of emergency medical services is a governmental function. R.C. 2744.01(C)(2)(a); *Riffle v. Physicians & Surgeons Ambulance Serv., Inc.*, 135 Ohio St. 3d 357, 2013-Ohio-989, 986 N.E.2d 983, at ¶ 2. Unless one of the defenses set forth in R.C. 2744.03 applies, a political subdivision may be liable for injury, death, or loss to person or property resulting from the provision of emergency medical services, if civil liability is expressly imposed upon a political subdivision by another statute. R.C. 2744.02(B)(5).¹⁴

R.C. 4765.49(B) expressly imposes civil liability on a political subdivision. *Riffle v. Physicians & Surgeons Ambulance Serv., Inc.* at ¶ 11 (“[b]ecause R.C. 4765.49(B) expressly imposes liability on a political subdivision when emergency medical services are provided in a manner that constitutes willful or wanton misconduct, the exception to immunity contained in R.C. 2744.02(B)(5) applies”). R.C. 4765.49(B) provides:

A political subdivision ... that provides emergency medical services ... is not liable in damages in a civil action for injury, death, or loss to person or property arising out of any actions taken by a first responder, EMT-basic, EMT-I, or paramedic working under the officer’s or employee’s jurisdiction, or for injury,

¹³ An EMT is protected by R.C. 2305.23, Ohio’s good samaritan statute. *See* 1993 Op. Att’y Gen. No. 93-062 (syllabus, paragraph 3). However, R.C. 2305.23 does not apply in nonemergency situations. *See* R.C. 2305.23 (“[n]o person shall be liable in civil damages for administering emergency care or treatment *at the scene of an emergency* outside of a hospital, doctor’s office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct” (emphasis added)).

¹⁴ If injury, death, or loss is caused by the negligent operation of a motor vehicle by a member of an emergency medical service owned or operated by a political subdivision, then R.C. 2744.02(B)(1)(c) applies to determine whether the political subdivision is immune from civil liability.

death or loss to person or property arising out of any actions of licensed medical personnel advising or assisting the first responder, EMT-basic, EMT-I, or paramedic, unless the services are provided in a manner that constitutes willful or wanton misconduct.

Accordingly, under R.C. 4765.49(B), a township in which an EMT provides emergency medical services may be liable in a civil action if the services are provided in a manner that constitutes wanton or willful misconduct.

As discussed above, the “medical services” that an EMT may provide in nonemergency situations pursuant to R.C. 4765.361 are the medical services that an EMT may provide pursuant to R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted by the State Board of Emergency Medical, Fire, and Transportation Services. *See generally* R.C. 4765.01(G) (defining “emergency medical service” as “any of the services described in [R.C. 4765.35, R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39] that are performed by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics”). In other words, “medical services” in R.C. 4765.361 are “emergency medical services” as defined in R.C. 4765.01(G). Thus, the immunity and liability provisions of R.C. 2744.02, R.C. 2744.03, and R.C. 4765.49 apply to the medical services that an EMT provides in nonemergency situations.¹⁵

In sum, an EMT employed by a township is immune from civil liability for injury, death, or loss to person or property resulting from the provision of medical services in a nonemergency situation unless the services are provided in a manner that constitutes wanton or willful misconduct, R.C. 4765.49(A), the services are manifestly outside the scope of the EMT’s employment, R.C. 2744.03(A)(6)(a), or the services are performed with malicious purpose, in bad faith, or in a wanton or reckless manner, R.C. 2744.03(A)(6)(b). A township in which medical services are provided by an EMT is immune from civil liability for injury, death, or loss to person or property resulting from the provision of medical services in a nonemergency situation, unless the services are provided in a manner that constitutes wanton or willful misconduct, R.C. 4765.49(B), and a defense set forth in R.C. 2744.02 or R.C. 2744.03 does not apply.

Provision of Medical Services in Nonemergency Situations outside the Boundaries of the Township

In your third question, you ask whether an EMT who is employed by a township and whose compensation is paid with revenue generated by township tax levies may provide medical

¹⁵ Even if “medical services” in R.C. 4765.361 did not mean “emergency medical services,” and R.C. 4765.49 does not apply, the provisions of R.C. 2744.02 and R.C. 2744.03 will apply to provide immunity to an EMT and a political subdivision when medical services are provided in a nonemergency situation by an EMT that is employed by a political subdivision.

services in a nonemergency situation outside the territory of the township. Violet Township may levy a tax against the real property located within the township to pay for emergency medical services provided by the Violet Township Fire Department pursuant to R.C. 5705.19(I) (“[f]or ... the payment of ... emergency medical service ... personnel ... or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company”) or R.C. 5705.19(U) (“[f]or providing ambulance service, emergency medical service, or both”).¹⁶

Generally, a political subdivision’s fire department is authorized to provide services within the boundaries of the political subdivision. *See* 2011 Op. Att’y Gen. No. 2011-016, at 2-151 (“a municipal fire department generally is authorized to serve the municipality within its territorial boundaries”); 2005 Op. Att’y Gen. No. 2005-036, at 2-371 (“[i]f the township does not establish a fire district, it may not deny services to any property located within the township If a township chooses to create one or more fire districts, it has no obligation to serve any part of the township not located within the fire district, but it may not deny service to any property located within the fire district”); 1997 Op. Att’y Gen. No. 97-060, at 2-369 (“[t]he duty of a township fire district to provide emergency medical and rescue services ... extends only to the boundaries of the district”). A political subdivision’s fire department may provide services outside the political subdivision’s boundaries, if the political subdivision has contracted with another political subdivision to provide services within the boundaries of the second political subdivision. 2011 Op. Att’y Gen. No. 2011-016, at 2-151; *see* 1997 Op. Att’y Gen. No. 97-060, at 2-369 (“pursuant to R.C. 9.60, a township fire district may provide emergency medical or rescue services to a state instrumentality located outside the territory of the fire district”).

With respect to the provision of emergency medical services by a fire department, R.C. 9.60(B) provides “[a]ny firefighting agency¹⁷ ... or emergency medical service organization¹⁸ may contract with any governmental entity in this state or another jurisdiction to provide ... emergency medical services[.]” (Footnotes added.) In addition, R.C. 505.44 provides, in pertinent part:

¹⁶ We presume that the fire and emergency medical services levies referenced in your letter were imposed pursuant to R.C. 5705.19(I) or (U).

¹⁷ A “firefighting agency” is “a municipal corporation, township, township fire district, joint ambulance district, joint emergency medical services district, or joint fire district and the office of the state fire marshal.” R.C. 9.60(A)(3).

¹⁸ An “emergency medical service organization” is “a public or private organization using first responders, EMTs-basic, EMTs-I, or paramedics, or a combination of first responders, EMTs-basic, EMTs-I, and paramedics, to provide emergency medical services.” R.C. 9.60(A)(1); R.C. 4765.01(H).

In order ... *to obtain* the services of emergency medical service organizations ... *a township may* enter into a contract with one or more state agencies, townships, municipal corporations, counties, nonprofit corporations, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners, regardless of whether such state agencies, townships, municipal corporations, counties, nonprofit corporations, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners are located within or outside the state, upon such terms as are agreed to by them, *to furnish or receive services* from ambulance or emergency medical service organizations ... or may enter into a contract for the interchange of services from ambulance or emergency medical service organizations ... *within the several territories of the contracting parties*, if the contract is first authorized by the respective boards of township trustees, the other legislative bodies, or the officer or body authorized to contract on behalf of the state agency. Such contracts shall not be entered into with a state agency or nonprofit corporation that receives more than half of its operating funds from governmental entities with the intention of directly competing with the operation of other ambulance, emergency medical, or nonemergency patient transport service organizations in the township unless the state agency or nonprofit corporation is awarded the contract after submitting the lowest and best bid to the board of township trustees. (Emphasis added.)

Pursuant to R.C. 505.44, a township may enter into a contract with one of the listed governmental entities to obtain, furnish, or receive services from an emergency medical services organization within the territories of the contracting entities. 1986 Op. Att’y Gen. No. 86-044, at 2-237; 1977 Op. Att’y Gen. No. 77-087, at 2-294 (“[t]he phrase ‘to furnish’ in R.C. 505.443 [(the predecessor of R.C. 505.44)], irrespective of the modifying words ‘to obtain’, enables a township to furnish ambulance and emergency services to other governmental units”). A township may also provide emergency medical services outside its boundaries if it provides those services as a member of a joint fire district pursuant to R.C. 505.371(A), a fire and ambulance district pursuant to R.C. 505.375, or a joint ambulance district pursuant to R.C. 505.71.¹⁹

¹⁹ A township fire department of a township that is a participant in the intrastate mutual aid compact pursuant to R.C. 5502.41 may provide services outside the township’s boundaries. Services may be provided “to another participating political subdivision that is impacted by an incident, disaster, exercise, training activity, planned event, or emergency” as authorized by R.C. 5502.41. R.C. 5502.41(F). Although R.C. 5502.41 authorizes a township fire department to provide services outside the township’s boundaries, those services are provided in exceptional or temporary circumstances. Accordingly, R.C. 5502.41 is not a source of authority for a township fire department to provide services in a nonemergency situation within the boundaries of another political subdivision on a day-to-day basis.

Article XII, section 5 of the Ohio Constitution provides: “[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.” *See also* R.C. 5705.10(C) (“[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made”); R.C. 5705.10(I) (“[m]oney paid into any fund shall be used only for the purposes for which such fund is established”); *Bd. of Rootstown Twp. Trs. v. Rootstown Water Serv. Co.*, 11th Dist. No. 2011-P-0084, 2012-Ohio-3888, 2012 WL 3645340, at ¶ 22. Additionally, “the contemplated uses of the proceeds of a levy can be no broader than the powers of the taxing authority of the subdivision levying the tax.” 1994 Op. Att’y Gen. No. 94-053, at 2-267.

When a township does not have a contract to provide services of the township fire department within the boundaries of another political subdivision, or the township does not participate in a joint fire district, a fire and ambulance district, or a joint ambulance district, the township fire department is authorized to provide services on a routine, day-to-day basis only within the boundaries of the township. Consequently, in the absence of a contract or participation in a joint fire district, a fire and ambulance district, or a joint ambulance district, the township’s EMTs that are compensated with revenue generated by township tax levies may not provide services in areas outside the boundaries of the township during the EMTs’ working hours on a routine, day-to-day basis. *See* 1994 Op. Att’y Gen. No. 94-053, at 2-266 (“because a township of which a city and village are part has no authority to maintain a cemetery owned by, and located within, a municipal corporation within the township, it may not use the proceeds of a tax levied upon the township under R.C. 5705.19(T) for the maintenance of such a cemetery” (footnote omitted)). Thus, a township fire department that provides emergency medical services may provide those services only within the township’s boundaries on a routine, day-to-day basis, unless the township has contracted with another political subdivision to provide services within the boundaries of the subdivision pursuant to R.C. 9.60(B) or R.C. 505.44, or the township is a member of a joint fire district pursuant to R.C. 505.371(A), a fire and ambulance district pursuant to R.C. 505.375, or a joint ambulance district pursuant to R.C. 505.71.

Violet Township’s home rule powers may not be exercised to authorize the township fire department to provide medical services outside the boundaries of the township on a routine, day-to-day basis when the township has not entered into a contract with another political subdivision or created a joint fire district, fire and ambulance district, or joint ambulance district. Providing medical services in nonemergency situations outside the boundaries of Violet Township is not a matter that is strictly local and, therefore, is not a matter within the home rule powers of the township. *See U.S. v. Bd. of Hamilton Cnty. Comm’rs*, No. 1:02-cv-107, 2014 WL 2918676, at *14 (S.D. Ohio June 26, 2014) (“[b]ecause the City is acting outside its territorial boundaries in managing and operating ... a county sewer district, neither its home-rule authority nor its power of local self-government is implicated in the bidding of contracts”); *Am. Fin. Servs. Ass’n v. Cleveland* at ¶ 30 (“the Home Rule Amendment was designed to give the ‘broadest possible powers of self-government in connection with all matters which are *strictly* local,” (quoting *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 212, 80 N.E.2d 769 (1948))); *Cleveland Taxpayers for Ohio Constitution v. Cleveland*, 8th Dist. No. 94327, 2010-Ohio-4685, 2010 WL 3816393, at ¶ 21 (“[i]f the result [of local legislation] affects only the municipality itself, with

no extra-territorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality” (quoting *Beachwood v. Cuyahoga Cnty. Bd. of Elections*, 167 Ohio St. 369, 371, 148 N.E.2d 921 (1958)); 1986 Op. Att’y Gen. No. 86-008, at 2-34 (“the powers of local self-government are limited to the territory within the municipality” (quoting 1985 Op. Att’y Gen. No. 85-034, at 2-119 to 2-120)).

Charging and Collecting a Fee for the Provision of Medical Services in Nonemergency Situations

Your fourth question asks whether an EMT may provide medical services in a nonemergency situation when a private hospital system pays for the services. Your fourth question describes the moneys that the private hospital system will pay as “compensation,” however, you have explained that the private hospital system will pay the township fire department for the medical services and none of the moneys will be paid directly to an individual EMT.

R.C. 505.84 provides, in pertinent part, “[a] board of township trustees may establish reasonable charges for the use of fire and rescue services, ambulance services, or emergency medical services.” Moneys collected as charges shall be paid into a separate fund called “the fire and rescue services, ambulance services, and emergency medical services fund.” *Id.* Moneys in that fund “shall be used for the payment of the costs of the management, maintenance, and operation of fire and rescue services, ambulance services, and emergency medical services *in the township.*” *Id.* (emphasis added). A board of township trustees administers and appropriates moneys from the fire and rescue services, ambulance services, and emergency medical services fund. *Id.* A board of township trustees may establish reasonable charges for the use of fire and rescue services, ambulance services, or emergency medical services provided directly by the township or pursuant to a contract. 2008 Op. Att’y Gen. No. 2008-001, at 2-3; 1990 Op. Att’y Gen. No. 90-065, at 2-274; 1984 Op. Att’y Gen. No. 84-048, at 2-152 (“under R.C. 505.84 township trustees may establish reasonable charges for the use of ambulance or emergency medical services which are provided through a contract pursuant to R.C. 505.44” (modified on other grounds by 2003 Op. Att’y Gen. No. 2003-017, at 2-131 n.6)). Thus, insofar as the medical services that an EMT provides in a nonemergency situation pursuant to R.C. 4765.361 are the emergency medical services defined in R.C. 4765.01(G), a board of township trustees may charge and collect reasonable charges for the use of medical services performed in nonemergency situations.

There is no requirement in R.C. 505.84 that the charges be collected directly from the person who receives the services. *See* 2014 Op. Att’y Gen. No. 2014-006, at 2-42 to 2-43 (“reasonable charges incurred by a township in the provision of fire and rescue services, ambulance services, or emergency medical services may be billed to township residents and nonresidents or to their respective insurance companies” (footnote omitted)); *cf.* 1988 Op. Att’y Gen. No. 88-042, at 2-203 (“R.C. 505.84 ... does not specify which persons may be ... charged” for the use of ambulance and emergency medical services, but a public entity may not be charged for those services because the statute does not expressly authorize charging a public entity

(overruled, in part, and expanded, in part, on other grounds by 2005 Op. Att’y Gen. No. 2005-036, at 2-373 n.4)). It reasonably follows that a private hospital system may pay the charges on behalf of the recipient. A private hospital system may not be required to pay the charges incurred when an EMT provides medical services in a nonemergency situation; however, an agreement between a private hospital system and a township may include a provision that the hospital system will pay those charges. Therefore, a board of township trustees may establish reasonable charges for the use of medical services that are provided in nonemergency situations by an EMT employed by the township and may collect those charges from a private hospital system that has agreed to pay those charges. Insofar as we have concluded that R.C. 505.84 permits a private hospital system to pay on behalf of the recipient the charges for the use of medical services provided by an EMT employed by a township in a nonemergency situation, it is unnecessary to consider this question in the context of Violet Township’s home rule powers.

Authority of the Board of Township Trustees to Contract with a Private Hospital System for the Delivery of Medical Services by an Emergency Medical Technician in Nonemergency Situations

We now determine whether the Violet Township Board of Trustees may contract with a private hospital system to provide medical services by EMTs employed by the township fire department in nonemergency situations for compensation. If the township is permitted to contract with a private hospital system, you ask whether an EMT who is employed by the township fire department may provide medical services in nonemergency situations to residents and nonresidents of the township during the EMT’s regular work hours.

As discussed above, R.C. 9.60 and R.C. 505.44 authorize a township to contract with another entity to provide emergency medical services or the services of an emergency medical services organization. There is no authority in R.C. 9.60 for a township to contract with a private hospital system. Therefore, we focus on R.C. 505.44, which provides, in pertinent part:

In order ... to obtain the services of emergency medical service organizations ... a township may enter into a contract *with* one or more state agencies, townships, municipal corporations, counties, *nonprofit corporations*, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners, regardless of whether such state agencies, townships, municipal corporations, counties, nonprofit corporations, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners are located within or outside the state, *upon such terms as are agreed to by them, to furnish or receive services* from ambulance or emergency medical service organizations ... or may enter into a contract for the interchange of services from ambulance or emergency medical service organizations ... *within the several territories of the contracting parties*, if the contract is first authorized by the respective boards of township trustees, the other legislative bodies, or the officer or body authorized to contract on behalf of the state agency. (Emphasis added.)

Attorneys General have concluded that R.C. 505.44 authorizes a township to contract to obtain or to furnish emergency medical services. 1986 Op. Att’y Gen. No. 86-044, at 2-237; 1977 Op. Att’y Gen. No. 77-087, at 2-294 (explaining the meaning of R.C. 505.443, the predecessor of R.C. 505.44). The parties may agree to compensation for the services provided pursuant to the contract. R.C. 505.44. Thus, pursuant to R.C. 505.44, a township may contract with “state agencies, townships, municipal corporations counties, nonprofit corporations, joint emergency medical services districts, fire and ambulance districts, or private ambulance owners” to furnish services from an emergency medical services organization within the territory of the township for compensation.

Applying R.C. 505.44 to your situation, the Violet Township Board of Trustees may contract with a private hospital system to furnish medical services in a nonemergency situation from the Violet Township Fire Department, which is an emergency medical services organization, to patients of the hospital for compensation, so long as the private hospital system is a nonprofit corporation and the services are provided within the territory of the township. It is our understanding that the private hospital system with which Violet Township would like to contract is a nonprofit corporation. Insofar as the Violet Township Board of Trustees may contract with a private hospital system, which is a nonprofit corporation, to provide medical services in nonemergency situations to patients of the hospital, EMTs employed by the township may provide those services during their regular work hours to residents and nonresidents of the township within the territory of the township.²⁰ Because the Violet Township Board of Trustees

²⁰ You have explained that the medical services would be provided to patients of the hospital in the homes of the patients and not in the hospital. Because R.C. 505.44 authorizes a township to contract to furnish, within the territory of the township, the services of an emergency medical services organization, the services provided pursuant to that contract may not be provided in homes that are not located within the boundaries of the township. Services may be provided to nonresidents of the township in a location that is within the boundaries of the township. *See* 1990 Op. Att’y Gen. No. 90-065, at 2-273 (“I assume that the ambulance services in question are provided by the township within its territory, and that they are made available to anyone who needs ambulance services while located within the township, regardless of whether such person is a resident of the township”).

The compensation the hospital system and township agree that the hospital system will pay pursuant to the contract may include a higher charge for services that are provided to nonresidents of the township. *See* R.C. 505.44 (“[t]he contract may provide for compensation upon such terms as the parties may agree”); R.C. 505.84 (“[a] board of township trustees may establish reasonable charges for the use of fire and rescue services, ambulance services, or emergency medical services. The board may establish different charges for township residents and nonresidents”); 1990 Op. Att’y Gen. No.

is authorized by R.C. 505.44 to contract with a private hospital system that is a nonprofit corporation to furnish medical services in a nonemergency situation, it is unnecessary for us to discuss this question in the context of Violet Township's home rule powers.²¹

Even though we have concluded that EMTs employed by Violet Township may provide by contract medical services in nonemergency situations to patients of a private hospital system that is a nonprofit corporation, we recommend the board of township trustees and the Violet Township Fire Department consider carefully the practical consequences of such a contract. The primary duty of an emergency medical services organization is to provide emergency medical services, which includes responding to 9-1-1 calls for medical services in an emergency. A fire department shall ensure that sufficient EMTs are available to adequately provide emergency response, as well as nonemergency response, in accordance with statutory and administrative requirements.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. An emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by Violet Township may provide medical services in nonemergency situations pursuant to R.C. 4765.361, so long as the medical services are performed under the direction of the emergency medical technician's medical director or cooperating physician advisory board, are within the scope of practice of the emergency medical technician, and do not conflict with the emergency medical services described in R.C. 4765.37, R.C. 4765.38, R.C. 4765.39, and the rules adopted by the State Board of Emergency Medical, Fire, and Transportation Services.

90-065, at 2-275 (“[t]he fact that R.C. 505.84 permits charges for residents to be lower than those for nonresidents and permits charges for residents to be waived appears to reflect an understanding that residents may be supporting the availability of ambulance services through the payment of taxes”).

²¹ Providing medical services outside the territory of the township is not a matter of local self-government. See *Am. Fin. Servs. Ass'n v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776, at ¶ 30; *Cleveland Taxpayers for Ohio Constitution v. Cleveland*, 8th Dist. No. 94327, 2010-Ohio-4685, 2010 WL 3816393, at ¶ 21. Consequently, Violet Township's home rule powers may not be exercised to authorize EMTs employed by the township to provide medical services outside the territory of the township.

2. An emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by a township is immune from civil liability for injury, death, or loss to person or property resulting from the provision of medical services in a nonemergency situation unless the services are provided in a manner that constitutes wanton or willful misconduct, the services are manifestly outside the scope of the emergency medical technician's employment, or the services are performed with malicious purpose, in bad faith, or in a wanton or reckless manner.
3. An emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by a township may not provide medical services on a routine, day-to-day basis outside the boundaries of the township when revenue from a township tax levy pays the emergency medical technician's compensation, unless the township has entered into a contract with another political subdivision pursuant to R.C. 9.60 or R.C. 505.44, or the township provides the medical services to the territory of another township or municipal corporation as a member of a joint fire district pursuant to R.C. 505.371, a fire and ambulance district pursuant to R.C. 505.375, or a joint ambulance district pursuant to R.C. 505.71.
4. A board of township trustees may establish reasonable charges for the use of medical services that are provided by an emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by the township in nonemergency situations and may collect those charges from a private hospital system that agrees to pay those charges on behalf of the recipient of the medical services.
5. A board of township trustees may contract with a private hospital system to provide medical services in nonemergency situations by an emergency medical technician-basic, an emergency medical technician-intermediate, and an emergency medical technician-paramedic employed by the township to patients of the hospital who are residents and nonresidents of the township, so long as the private hospital system is a nonprofit corporation and the medical services are performed within the territory of the township.
6. A contract between the Violet Township Board of Trustees and a private hospital system for the provision of medical services in nonemergency situations may provide that the private hospital system will pay the township a sum of money for each visit performed by an emergency medical technician-basic, an emergency medical technician-intermediate,

and an emergency medical technician-paramedic pursuant to the contract and that emergency medical technicians will provide medical services in nonemergency situations during the emergency medical technicians' regular work hours.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MICHAEL DEWINE
Ohio Attorney General