

OPINION NO. 78-021**Syllabus:**

Boards of township trustees are without authority to retain the services of a traffic consultant.

To: John F. Norton, Geauga County Pros. Atty., Chardon, Ohio

By: William J. Brown, Attorney General, April 18, 1978

I have before me your request for an opinion on the following question:

Do township trustees have authority to retain the services of a traffic consultant?

Before addressing your specific question, I must point out the long accepted doctrine that boards of township trustees enjoy only such powers as are specifically conferred upon them by the legislature, or which are necessarily implied therefrom. Yorkavitz v. Board of Township Trustees, 166 Ohio St. 346 (1957).

The authority of township trustees to procure the services of consultants is found in R.C. 9.36. That section provides:

The board of county commissioners of any county or the township trustees of any township may contract for the services of fiscal and management consultants to aid it in the execution of its powers and duties.

Although this statutory provision is relatively new (eff. 11-7-75), and the exact meaning of "fiscal and management" consultant is not yet clearly delineated, no reasonable construction of that phrase could include a traffic consultant. I am aware of no other statutory provision which could be said to expressly authorize the retention of such a consultant. Therefore, if authority exists for the retention of a traffic consultant, it must be implied from the duty and authority vested in the boards of township trustees relative to the regulation of traffic.

General authority to regulate the flow of traffic is not specifically granted to boards of township trustees by the Revised Code. The only general police powers over motor vehicles granted to them is found in R.C. 505.17. That section allows trustees to adopt parking regulations. Under R.C. 4511.11, township trustees, as local authorities, are required to "place and maintain traffic control devices in accordance with the department of transportation manual . . ." However, the authority granted to township trustees under this section has been very strictly construed. In 1955 Op. Att'y Gen. No. 5437, p. 310, a predecessor reached the following conclusions which respect to R.C. 4511.11:

1. A board of township trustees is included within the term "local authorities" as used in Section 4511.11, Revised Code.

2. Section 4511.11, Revised Code, merely authorizes local authorities, as to roads under their jurisdiction, to place and maintain traffic control devices (1) to guide traffic and (2) to warn highway users of dangerous road condition and of existing traffic regulations. This section does not purport to authorize local authorities to promulgate speed or other traffic regulations.

Thus, under R.C. 4511.11, boards of township trustees serve merely as an administrative body with respect to regulation of traffic, their only powers being limited to the placement and maintenance of traffic control devices.

The only other powers which such boards enjoy as "local authorities" under R.C. Chapter 451 are those set forth in R.C.4511.21 and R.C. 4511.65. R.C. 4511.21 establishes speed limits, and provides in pertinent part as follows:

Whenever local authorities determine upon the basis of an engineering and traffic investigation that the speed permitted by divisions (A) to (K) of this section, on any part of a highway under their jurisdiction is greater than is reasonable and safe under the conditions found to exist at such location, the local authorities may by resolution request the director [of transportation] to determine and declare and reasonable and safe prima facie speed limit.

R.C. 4511.65 deals with through highways and provides, in pertinent part, as follows:

All state routes . . . are hereby designated as through highways, provided that stop signs shall be erected at all intersections with such through highways, by the department of transportation as to highways under its jurisdiction, and by local authorities as to highways under their jurisdiction, except as otherwise provided by this section . . .

The department or local authorities having jurisdiction need not erect stop signs at intersections they find to be so constructed as to permit traffic to safely enter a through highway without coming to a stop . . .

The department with reference to state highways, and local authorities with reference to highways under their jurisdiction, may designate additional through highways and shall erect stop signs in all streets and highways intersecting such highways, . . .

The authority conferred upon boards of township trustees under these sections thus is essentially administrative, with little room given for the exercise of discretion.

Considering the limited statutory authority over traffic which township trustees possess, there is little doubt that their authority to retain a traffic consultant cannot be characterized as necessarily implied. While a consultant makes the trustee's job easier, his services are not absolutely required. In the analogous situation of the authority of county commissioners to hire experts, one court has concluded that no such authority exists even though the experts might allow a more efficient exercise of the commissioners' duties. *Gorman v. Heuck*, 41 Ohio App. 453 (1931). Cf. 1973 Op. Att'y Gen. No. 73-090 (concluding that the authority of township trustees to hire an insurance consultant could not be implied from the authority to purchase insurance.) Thus, I am constrained to conclude that the authority of the township trustees to retain a traffic consultant is not necessarily implied from their limited authority over traffic.

Accordingly, it is my opinion, and you are so advised that boards of township trustees are without authority to retain the services of a traffic consultant.