

January 24, 2018

The Honorable Daniel R. Lutz
Wayne County Prosecuting Attorney
115 W. Liberty Street
Wooster, Ohio 44691

SYLLABUS:

2018-002

1. A township tax in excess of the ten-mill limitation that was approved by the electors of a village prior to the detachment of the village from the township pursuant to R.C. 503.07 may be levied upon real property located in the village for the limited purpose of paying legal or just claims that were contracted by the township prior to the change in the township's boundaries and incurred by the township in anticipation of the receipt of revenue from the tax levy. (1962 Op. Att'y Gen. No. 3170, p. 601, overruled, in part, on the basis of legislative amendment.)
2. The township fiscal officer shall conduct an accounting to determine what amount of tax revenue is necessary to pay the claims against the township that were contracted by the township prior to the village's detachment and what proportion of that revenue shall be paid from real property taxes imposed in the village. After detachment, the real property located in the village may only be assessed an amount of tax that is necessary to generate sufficient tax revenue to pay the village's share of the legal or just claims against the township that were contracted by the township prior to the change in the township's boundaries.



January 24, 2018

OPINION NO. 2018-002

The Honorable Daniel R. Lutz
Wayne County Prosecuting Attorney
115 W. Liberty Street
Wooster, Ohio 44691

Dear Prosecutor Lutz:

You have requested an opinion about the levy of taxes in excess of the ten-mill limitation upon property within the territorial limits of a village that has detached from a township pursuant to R.C. 503.07. You have explained that the Village of Dalton has filed a petition pursuant to R.C. 503.07 asking to change the boundary lines of Sugar Creek Township in Wayne County, Ohio. The Village of Dalton is located wholly within Sugar Creek Township. On November 8, 2016, electors of the township approved the renewal of a tax levy in excess of the ten-mill limitation for the benefit of Sugar Creek Township for road and bridge improvement and maintenance (“road and bridge levy”). In addition, a levy for the purpose of providing and maintaining fire and rescue equipment, buildings, and services (“fire levy”) appeared on the ballot for the benefit of Sugar Creek Township in the November 7, 2017 election and was approved.¹ You wish to know whether the township levies may be imposed upon real property in the village after the village’s petition for detachment from the township has been approved. If the township tax levies may be imposed on real property located in

¹ The full ballot language for the proposed fire levy for Sugar Creek Township provided:

An additional tax for the benefit of Sugar Creek Township for the purpose of providing and maintaining fire apparatus, mechanical resuscitators, underwater rescue and recovery equipment, or other fire equipment and appliances, buildings and sites therefor, or sources of water supply and materials therefor, for the establishment and maintenance of lines of fire-alarm communications, for the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under Section 145.48 or 742.34 of the Revised Code, for the purchase of ambulance equipment, for the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company, or for the payment of other related costs, at a rate not exceeding 1 mill for each one dollar of valuation, which amounts to \$0.10 for each one hundred dollars of valuation, for three years, commencing in 2017 and first due in calendar year 2018.

the village, you ask whether the tax levies may be imposed on the real property in the village as approved by the electors until the tax levies expire, or whether the real property in the village may only be assessed an amount of tax that is necessary to generate sufficient tax revenue to pay the claims against the township that were contracted by the township prior to the change in the township's boundaries.

R.C. 503.07 provides, in pertinent part:

When the limits of a municipal corporation do not comprise the whole of the township in which it is situated ..., the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation.

Thus, pursuant to R.C. 503.07, the board of county commissioners may detach a village from a township by redrawing the boundary lines of the existing township so that the territory of the village is excluded from the territory of the existing township and a new township is created out of the territory of the village. It is our understanding that the petition filed by the legislative authority of the Village of Dalton asks that the boundary lines of Sugar Creek Township be redrawn so that the territory of the Village of Dalton is removed from the territorial limits of Sugar Creek Township and a new township, encompassing solely the territory of the village, is created. That new township will be a "paper township" pursuant to R.C. 703.22.² We further understand that the Village of Dalton's petition to change the boundary lines of Sugar Creek Township did not arise from the village's annexation of township territory.³

² When the territorial boundaries of a township and a municipal corporation are identical, the township is said to be a "paper township" under R.C. 703.22. 2005 Op. Att'y Gen. No. 2005-024, at 2-240; 1990 Op. Att'y Gen. No. 90-071, at 2-302 (clarified, on other grounds, by 2002 Op. Att'y Gen. No. 2002-023) ("the term 'paper township' means a township that has limits that are identical to those of a municipal corporation so that the township offices are abolished pursuant to R.C. 703.22"); *see generally* R.C. 703.22 ("[w]hen the limits of a municipal corporation become identical with those of a township, all township offices shall be abolished, and the duties thereof shall be performed by the corresponding officers of the municipal corporation").

³ The annexation of territory by a municipal corporation prior to the filing of a petition under R.C. 503.07 may affect whether the township boundaries may ever be drawn so as to exclude the territory of the municipal corporation from the township. *See, e.g.*, R.C. 709.023(H) ("[n]otwithstanding anything to the contrary in [R.C. 503.07], unless otherwise provided in an annexation agreement entered into pursuant to [R.C. 709.192] or in a cooperative economic development agreement entered into pursuant to [R.C. 701.07], territory annexed into a municipal

It is well established that “[w]hen a township includes both territory that is incorporated into a city or village and territory that is unincorporated, the township is authorized to levy taxes on all of that territory, including the territory that is incorporated.” 2011 Op. Att’y Gen. No. 2011-002, at 2-11 (quoting 2003 Op. Att’y Gen. No. 2003-023, at 2-178); 1977 Op. Att’y Gen. No. 77-031, at 2-114 (“when township and municipal boundaries overlap, the inhabitants of the overlapping territory are considered residents of both the municipality and the township with all of the benefits and obligations attendant thereto”). Moreover, “unless the specific tax statute provides to the contrary, residents of territory located in both a township and a municipal corporation ‘are entitled to vote on levies that are submitted to the electors of either of such entities and are subject to taxes that are imposed by either of such entities.’” 2011 Op. Att’y Gen. No. 2011-002, at 2-11 (quoting 1990 Op. Att’y Gen. No. 90-048, at 2-203 (citations omitted)); 1988 Op. Att’y Gen. No. 88-036, at 2-176 (“where a municipal corporation is part of a township, residents of the municipal corporation are subject to township taxes and, as township residents, receive the benefits of township expenditures”); *see also Roderer v. Bd. of Trs.*, 14 Ohio App. 3d 155, 158, 470 N.E.2d 183 (Montgomery County 1983) (“[w]ithin the limits of its authority, the board of township trustees has authority to levy taxes on property within its boundaries, including the levy of taxes upon property within the corporate limits of a municipality ... that is geographically a part of the township”).

R.C. 503.17 states:

When a township is altered, diminished, or changed in any way by the formation of new townships, additions to other townships, or otherwise, *such original township and all portions thereof shall remain liable to the same extent on contracts, engagements, or liabilities contracted by such township prior to the change as if no such alteration, diminution, or change had taken place.* (Emphasis added.)

When a township has been divided or changed, but retains its original name, the board of township trustees shall procure a certified abstract from the county auditor to levy “a tax for the payment of any legal or just claims against such township contracted prior to the change[.]” R.C. 503.18. R.C. 503.19 states:

In making the assessment and levy for the payment of any indebtedness as provided by [R.C. 503.18 (a levy for the purpose of paying any legal or just claims against the township that were contracted prior to the change in the township’s boundaries)], or interest thereon, the board of township trustees *shall levy an amount, not exceeding that limited by [R.C. 5705.01-.47], for the payment of claims against townships, on the taxable property within the limits of such township as it was*

corporation pursuant to this section shall not at any time be excluded from the township under [R.C. 503.07] and, thus, remains subject to the township’s real property taxes”); R.C. 709.024(H) (same as previous parenthetical); R.C. 709.16(H) (“[t]erritory annexed under [R.C. 709.16] shall not be excluded from the township under [R.C. 503.07]”).

bounded before the change, and shall certify an abstract thereof to the county auditor of the proper county. (Emphasis added.)

The question of whether an existing township tax may be levied upon the real property of a municipal corporation after that municipal corporation has detached from the territory of the township was addressed in 1963 Op. Att’y Gen. No. 748, p. 670. In that opinion, the City of Eaton had detached from Washington Township in Preble County pursuant to R.C. 503.07. 1963 Op. Att’y Gen. No. 748, p. 670, at 670. Prior to detachment, the electors of the township, including electors of the City of Eaton, approved the renewal of two special levies. *Id.* at 670 to 671. The Attorney General concluded that detachment of a municipal corporation pursuant to R.C. 503.07 did not relieve the territory within the municipal corporation from liability for contracts entered or debts incurred prior to the detachment of the municipal corporation from the township. *Id.* at 671. The Attorney General explained that, as required by R.C. Chapter 5705, renewal of the special levies were deemed necessary by the board of township trustees and approved by the electors of the municipal corporation while that municipal corporation was part of the township. *Id.* at 673. In anticipation of receiving revenue from those special levies, the board of township trustees entered into contracts and incurred debts. *Id.* at 672 to 673. To the extent that those contracts and debts were claims against the township that were incurred in anticipation of receiving revenue from the tax levies before the detachment of the city from the township, the entire territory of the township as it existed prior to detachment remained liable to pay the contracts and debts incurred by the township. *Id.* Accordingly, the taxes were to be levied upon the real property of the township as it existed prior to detachment, which included the real property of the municipal corporation. *Id.* Thus, the Attorney General advised:

Where the electors of a township which included a municipal corporation have authorized a special tax levy outside the ten-mill limitation for specific township purposes and after such favorable vote by the electors a new township has been created to include only the limits of the municipal corporation as provided by [R.C. 503.07], the board of trustees of the township which has retained its original name may, pursuant to [R.C. 503.18 and R.C. 503.19], levy such special tax on all of the property formerly within the township, including the municipal corporation, for the payment of contracts, engagements, or liabilities contracted prior to the change in the township boundaries.

1963 Op. Att’y Gen. No. 748, p. 670 (syllabus, paragraph 1). The Attorney General further advised that the special levies could not be imposed in the territory of the municipal corporation for any contracts, engagements, or liabilities that were contracted after the change in the township’s boundaries.⁴ *Id.* (syllabus, paragraph 2).

⁴ In an earlier opinion, the Attorney General concluded that when a new township is erected under R.C 503.07 from a portion of an existing township comprising a city, title to a cemetery located within the city vests in the city and the proceeds of a cemetery tax levy on real property of the township, including territory within the city, should be apportioned between the original township and

Thus, pursuant to R.C. 503.17-19, in order to provide for the payment of contracts, engagements, or liabilities that were contracted by a township prior to a change in the township's boundaries, the board of township trustees of a township that retains its original name shall levy a tax on the taxable property within the boundaries of the township as those boundaries existed before the change. A township tax in excess of the ten-mill limitation that was approved by the electors of a village prior to the detachment of the village from the township pursuant to R.C. 503.07 may be levied upon real property located in the village after detachment for the limited purpose of paying legal or just claims that were contracted by the township prior to the change in the township's boundaries and that were incurred by the township in anticipation of the receipt of revenue from the tax levy. The township fiscal officer shall conduct an accounting to determine what amount of tax revenue is necessary to pay the claims against the township that were contracted by the township prior to the village's detachment and what proportion of that revenue shall be paid from real property taxes imposed in the village. After detachment, the real property located in the village may only be assessed an amount of tax that is necessary to generate sufficient tax revenue to pay the village's share of the

the new township. 1962 Op. Att'y Gen. No. 3170, p. 601 (syllabus, paragraphs 1 and 2). In that situation, because the boundaries of the new township were identical to the city, the new township's share of the revenue of the cemetery tax levy was required to be paid to the city under R.C. 703.22. 1962 Op. Att'y Gen. No. 3170, p. 601, at 608. The Attorney General further concluded that the revenue of the cemetery tax levy that was to be apportioned among the two townships included revenue already received and revenue that was to be collected in the future under the levy. *Id.*

In concluding that the cemetery tax levy revenue should be apportioned, the Attorney General relied upon the following language in former R.C. 503.03: “[i]n case of division or partition of a township, the funds in the treasury thereof shall be apportioned to the townships to which portions thereof are attached, or to the new townships established, to the extent they are collected from such territory.” 1962 Op. Att'y Gen. No. 3170, p. 601, at 606 (quoting R.C. 503.03). This language is no longer in R.C. 503.03 and now appears in R.C. 503.02(B), which states, in pertinent part: “[i]f a township is divided or partitioned *under this section*, the board of county commissioners shall apportion the funds in the township's treasury to the township to which portions of the divided or partitioned township are attached, or to the new townships established.” (Emphasis added.) The emphasized phrase (“under this section”) means that funds shall be apportioned only when a township is divided or partitioned under R.C. 503.02. A township is divided or partitioned under R.C. 503.02 when a board of county commissioners receives a petition signed by a majority of the electors residing within the boundaries of the townships affected by the division or partition that demonstrates that a partition or division of the township appears necessary or expedient. R.C. 503.02(A). When a board of county commissioners changes the boundaries of a township pursuant to R.C. 503.07, the board of county commissioners is acting in response to a request by the legislative authority of the municipal corporation and is not partitioning or dividing the township under R.C. 503.02. Thus, the conclusion stated in paragraph 2 of the syllabus of 1962 Op. Att'y Gen. No. 3170, p. 601 is overruled, on the basis of legislative amendment.

legal or just claims against the township that were contracted by the township prior to the change in the township's boundaries.⁵

This conclusion necessitates a discussion of the meaning of the phrase “any legal or just claims against such township contracted prior to the change” in R.C. 503.18. No statute or case law expressly defines that phrase; however, its meaning may be discerned by reading R.C. 503.18 *in pari materia* with R.C. 503.17 and R.C. 503.19. R.C. 503.19 authorizes a board of township trustees to levy a tax in the territory of the township as it existed prior to the change in boundaries to pay “any indebtedness as provided by [R.C. 503.18.]” R.C. 503.18 refers to “any legal or just claims against such township contracted prior to the change[.]” Thus, the indebtedness to be paid by a tax levied in accordance with R.C. 503.19 is “any legal or just claims” against the township that were contracted prior to the change in the township's boundaries. Because R.C. 503.17 requires that the original territory of the township “remain liable to the same extent on contracts, engagements, or liabilities contracted by such township prior to the change” in boundaries, the “claims” against the township that are included in R.C. 503.18 are the “contracts, engagements, or liabilities contracted by such township prior to the change” in the township's boundaries. *See generally Black's Law Dictionary* 389 (10th ed. 2014) (defining “contract” as “[a]n agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law ... [t]he writing that sets forth such an agreement”); *id.* at 646 (defining “engagement” as “[a] contract or agreement involving mutual promises”); *id.* at 1053 (defining “liability,” especially when used in its plural form, as “[a] financial or pecuniary obligation in a specified amount”); *id.* at 1242 (defining “obligation,” in part, as “[a] formal, binding agreement or acknowledgement of a liability to pay a certain amount or to do a certain thing for a particular person or set of persons; esp., a duty arising by contract”). Therefore, the “legal or just claims contracted by such township” are those contracts, engagements, and liabilities that were contracted by the board of township trustees prior to the change in the township's boundaries.

⁵ In reaching this conclusion, we have presumed that the statutes that were the legal basis for the township to impose the tax levies in excess of the ten-mill limitation authorized the board of township trustees to levy the taxes upon real property located within the incorporated and unincorporated territory of the township. *Compare, e.g.,* R.C. 505.39 (“[t]he board of township trustees may, in any year, levy a sufficient tax upon all taxable property *in the township or in a fire district*, to provide protection against fire, to provide fire and rescue services, to provide and maintain fire apparatus, mechanical resuscitators, underwater rescue and recovery equipment, and other fire equipment and appliances, buildings and sites therefor, sources of water supply and materials therefor, to establish and maintain lines of fire-alarm communications, and to pay permanent, part-time, or volunteer fire-fighting companies to operate such equipment” (emphasis added)), *and* R.C. 5705.19(I) (a board of township trustees may levy a tax in excess of the ten-mill limitation on the taxable property in the township for the purpose of providing fire equipment and services), *with* R.C. 5575.10 (a board of township trustees is authorized to levy a tax for the purpose of “creating a fund for dragging, maintenance, and repair of roads, upon all the taxable property of the township *outside of any municipal corporation or part thereof*” (emphasis added)).

Whether, for the purposes of R.C. 503.17-.19, Sugar Creek Township has legal or just claims against it that were contracted by the board of township trustees prior to the change in the township's boundaries and in anticipation of receiving revenue from the township's road and bridge levy or the township's fire levy is dependent upon questions of fact that are beyond the scope of an Attorney General opinion. Officials of Sugar Creek Township and the Village of Dalton are best suited to make those determinations as they have knowledge of the purposes of the tax levies and the existence of claims against the township that were contracted prior to the village's detachment.

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

1. A township tax in excess of the ten-mill limitation that was approved by the electors of a village prior to the detachment of the village from the township pursuant to R.C. 503.07 may be levied upon real property located in the village for the limited purpose of paying legal or just claims that were contracted by the township prior to the change in the township's boundaries and incurred by the township in anticipation of the receipt of revenue from the tax levy. (1962 Op. Att'y Gen. No. 3170, p. 601, overruled, in part, on the basis of legislative amendment.)
2. The township fiscal officer shall conduct an accounting to determine what amount of tax revenue is necessary to pay the claims against the township that were contracted by the township prior to the village's detachment and what proportion of that revenue shall be paid from real property taxes imposed in the village. After detachment, the real property located in the village may only be assessed an amount of tax that is necessary to generate sufficient tax revenue to pay the village's share of the legal or just claims against the township that were contracted by the township prior to the change in the township's boundaries.

Very respectfully yours,

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

MICHAEL DEWINE
Ohio Attorney General