

OPINION NO. 87-051

Syllabus:

1. R.C. 505.70 allows a board of township trustees to enter agreements with other government agencies, such as cities, in order to participate in a federal program studying water quality. R.C. 505.70 also allows the board of township trustees to appropriate the money needed for such participation.
2. R.C. 519.05 allows a township zoning commission to enter into agreements with consultants in order to obtain expert technical advice on water quality needed for development of a zoning plan, but only within the limits of the money appropriated for such a purpose by the board of township trustees. The commission may exercise its discretion in choosing a consultant, and may, if the choice is reasonable, obtain the expert technical advice from another governmental agency, such as a city or a federal agency.
3. A board of township trustees may, under R.C. 519.05, appropriate money to be used by the township zoning commission in contracting for a water quality study.

To: John J. Plough, Portage County Prosecuting Attorney, Ravenna, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 10, 1987

I have before me your request for my opinion regarding township participation in a water quality study. I have phrased your question as follows:

May townships enter into agreements with municipalities and appropriate money for the purpose of a water quality study or survey?

Your letter indicates that several townships are interested in entering into an agreement with the city of Akron for the purpose of studying groundwater quality. The city has entered into an agreement with the Water Resources Division of the United States Geological Survey in order to obtain a federal grant for the study. One of the conditions of this grant is that participating local political subdivisions must match the dollar amount of the grant. Also, you have informed a member of my staff that the townships are considering rezoning based on the results of the study.

Township participation is authorized under two statutes. The first is R.C. 505.70. Under that section, boards of township trustees are given broad authority to participate in federal programs. R.C. 505.70 reads, in part, as follows:

(A) The trustees of any township may participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted by the congress of the United States, and for such purpose may adopt any procedures and take any action not prohibited by the constitution

of Ohio and not in conflict with the laws of this state.

This section has never been interpreted by any reported case or by any opinion of the Attorney General. However, virtually identical language exists with respect to county commissioners in R.C. 307.85(A), which reads, in part, as follows:

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

This section has been the subject of several opinions of the Attorney General. See 1984 Op. Att'y Gen. No. 84-038; 1979 Op. Att'y Gen. No. 79-055; 1978 Op. Att'y Gen. No. 78-060. These opinions conclude that R.C. 307.85 authorizes county commissioners to perform acts not otherwise statutorily authorized where performance of these acts is reasonably related to participation in a federal program, provided that such acts are not in conflict with the constitution and laws of the state. Since the language in R.C. 307.85 and R.C. 505.70 is virtually identical I conclude that this rule applies to boards of township trustees seeking to participate in federal programs.

The first step in applying this rule is to examine the federal program involved. The federal groundwater testing program in which the townships wish to participate is authorized by 42 U.S.C. §10304 and is established in 30 C.F.R. Part 402 (1986). Both the statute and the regulations allow participation by agencies of local government. However, the statute and the regulations require that any agency which chooses to participate must match any grant received from the federal government. I must therefore determine whether the actions to be taken are reasonably related to this federal program.

The federal water quality program requires local communities to match a federal grant. Thus, the township appropriations are directly related to involvement in the testing program. The federal program neither requires nor prohibits cooperation with other local communities. Since groundwater does not confine itself to the boundaries of a particular political subdivision, cooperative testing by several communities appears to be appropriate, and such cooperation appears to be reasonably related to township participation in the program. Also, such cooperative involvement in federal programs is specifically authorized by R.C. 505.70 unless participation conflicts with the Ohio constitution or the laws of the state. I find no such conflict. In fact, not only does there not appear to be a conflict, but R.C. 519.05, discussed below, independently authorizes the board of township trustees to appropriate money to participate in such a program. Therefore, I conclude that both the agreement and the appropriation are authorized under R.C. 505.70.

Townships may also participate in the water quality survey under the authority of R.C. 519.05. That section allows the

township zoning commission to obtain expert assistance in formulating zoning plans. It reads, in part, as follows:

The township rural zoning commission shall submit a plan, including both text and maps, representing the recommendations of the zoning commission for the carrying out by the board of township trustees of the powers, purposes, and provisions set forth in sections 519.01 to 519.99, inclusive, of the Revised Code, including additions to territory in which a township zoning plan is in effect.

The zoning commission may, within the limits of the moneys appropriated by the board for the purpose, employ or contract with such planning consultants and executive and other assistants as it deems necessary. The zoning commission shall organize, adopt rules for the transaction of its business, and keep a record of its actions and determinations. Members of the zoning commission may be allowed their expenses, or such compensation, or both, as the board may approve and provide. No township trustee shall be employed by the zoning commission of his township. (Emphasis added.)

Under R.C. 519.05 the township zoning commission may enter into contracts with planning consultants. The statute thus presents the issue of whether a contract for a groundwater survey may be characterized as a contract with a planning consultant. The term "planning consultant" is not defined by statute. Absent a statutory definition, words are to be given their common meaning. Baker v. Powhatan Mining Co., 146 Ohio St. 600, 67 N.E.2d 714 (1946). Webster's New World Dictionary, 305 (2nd college ed. 1984), defines "consultant" as "an expert who is called upon for professional or technical advice or opinions." Thus, the township zoning commission may retain an expert for the purpose of obtaining professional or technical advice or opinions related to planning. Where a zoning commission intends to develop a zoning plan which affects or is limited by groundwater resources, it is reasonable for the commission to enter a contract for the services of an expert who can provide needed technical data and advice regarding groundwater. Such data and advice can reasonably be said to be the type normally gained only through consultation with an expert. I conclude, therefore, that a township zoning commission may, under R.C. 519.05, enter into a contract for a water quality survey in order to receive the necessary technical advice related to planning.

The General Assembly has placed no restrictions on who may be retained as a planning consultant. "Where authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner." Jewett v. Valley Ry. Co., 34 Ohio St. 601, 608 (1878). Thus a commission may exercise its discretion in choosing a consultant, and, if such a choice is reasonable, obtain these services from another governmental agency, such as a city or a federal agency.¹

¹ My authority to issue opinions, R.C. 109.14, does not include authority to pass upon issues of reasonableness of particular contracts or agreements. See 1983 Op. Att'y Gen. No. 83-087. The reasonableness of agreements or contracts inevitably rests on issues of fact which I am not authorized to resolve by way of an opinion.

Under R.C. 519.05, the only limit on the commission's authority is that expenditures under the contract must be within the limits of the moneys appropriated by the township trustees. Township trustees are, of course, limited to those powers expressly granted by statute or necessarily implied therefrom. Trustees of New London Twp. v. Miner, 26 Ohio St. 452 (1875). R.C. 519.05 expressly authorizes the trustees to appropriate money to the zoning commission for the retention of a consultant. Thus, the township trustees may appropriate money to be used by the zoning commission in contracting for the water quality survey.

It is, therefore, my opinion that:

1. R.C. 505.70 allows a board of township trustees to enter agreements with other government agencies, such as cities, in order to participate in a federal program studying water quality. R.C. 505.70 also allows the board of township trustees to appropriate the money needed for such participation.
2. R.C. 519.05 allows a township zoning commission to enter into agreements with consultants in order to obtain expert technical advice on water quality needed for development of a zoning plan, but only within the limits of the money appropriated for such a purpose by the board of township trustees. The commission may exercise its discretion in choosing a consultant, and may, if the choice is reasonable, obtain the expert technical advice from another governmental agency, such as a city or a federal agency.
3. A board of township trustees may, under R.C. 519.05, appropriate money to be used by the township zoning commission in contracting for a water quality study.