

March 26, 2015

The Honorable Chip McConville  
Knox County Prosecuting Attorney  
117 East High Street, Suite 234  
Mount Vernon, Ohio 43050

SYLLABUS:

2015-010

In accordance with Article XII, Section 2 of the Ohio Constitution, political subdivisions that establish a joint fire district pursuant to R.C. 505.371 may not agree that the rate of millage of a tax levied by the joint fire district will be lower in one of the political subdivisions than the rate that applies in the other political subdivisions of the district. Any tax levied by a joint fire district must be levied uniformly throughout the joint fire district.



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OPINION NO. 2015-010

The Honorable Chip McConville  
Knox County Prosecuting Attorney  
117 East High Street, Suite 234  
Mount Vernon, Ohio 43050

Dear Prosecutor McConville:

You have requested an opinion concerning real property taxes levied by the Central Ohio Joint Fire District. You explain that during the 1990s Hilliar Township issued bonds to fund the construction of a township fire station. *See* R.C. 505.40. Township voters authorized a two-mill real property tax levy to pay off these bonds. A few years later, Hilliar Township joined with three other political subdivisions to create the Central Ohio Joint Fire District pursuant to R.C. 505.371. The Central Ohio Joint Fire District arranged to lease the fire station that had been constructed by Hilliar Township. Because real property in Hilliar Township remained subject to the two-mill real property tax levy associated with construction of the fire station, the four political subdivisions establishing the joint fire district entered into a “millage agreement.” Pursuant to the millage agreement, Hilliar Township was to receive a two-mill credit toward any tax levied for the benefit of the joint fire district. That is, Hilliar Township residents were to be taxed at a rate that was two mills lower than the rate that applied to other residents of the joint fire district. However, the Knox County Auditor was never notified of this agreement and when the Central Ohio Joint Fire District levied its tax for fire protection, Hilliar Township residents paid the same rate as other residents of the joint fire district. In light of these facts, you have asked the following questions:

1. May political subdivisions that establish a joint fire district pursuant to R.C. 505.371 agree that the rate of millage of the joint fire district tax levy will be lower in one of the political subdivisions than the rate that applies in the other political subdivisions of the district?
2. If the answer to question one is yes, what processes, if any, are available to rectify the failure of a county auditor to implement such an arrangement even though many years have passed since execution of the millage agreement?<sup>1</sup>

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<sup>1</sup> A county prosecutor is not required to act as legal adviser of a joint fire district. 2004 Op. Att’y Gen. No. 2004-032 (syllabus, paragraph 2). However, a county prosecutor may choose to act as

R.C. 505.371(A) authorizes the boards of township trustees of one or more townships and the legislative authorities of one or more municipal corporations to “create a joint fire district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon.” A joint fire district created pursuant to R.C. 505.371 is a legal entity separate from the political subdivisions of which it is formed. 1988 Op. Att’y Gen. No. 88-074, at 2-365 (overruled, in part, on other grounds by 2004 Op. Att’y Gen. No. 2004-032). It is, therefore, given a name that is separate and distinct from the name of any of its member political subdivisions. R.C. 505.371(A). A joint fire district is governed by a board of fire district trustees, which includes one representative from each participating board of township trustees and one representative from the legislative authority of each municipal corporation in the district. R.C. 505.371(B); 1992 Op. Att’y Gen. No. 92-002 (syllabus, paragraph 1). R.C. 505.371(B) grants a board of fire district trustees “the same powers as are granted to a board of township trustees in [R.C. 505.37-45], including, but not limited to, the power to levy a tax upon all taxable property in the fire district as provided in [R.C. 505.39].” R.C. 505.39, in turn, provides:

The 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 and maintain fire apparatus and appliances, buildings and sites for apparatus and appliances, sources of water supply, materials for such water supply, lines of fire-alarm telegraph, and to pay permanent, part-time, or volunteer fire-fighting companies to operate such equipment.

Thus, the board of trustees of a joint fire district is authorized to levy taxes throughout the district to fund various expenses related to fire protection. R.C. 505.371(B); *see also* R.C. 505.39. Additionally, the board of trustees of a joint fire district has authority pursuant to R.C. Chapter 5705, Ohio’s tax levy law, to levy taxes throughout the district. *See* R.C. 5705.01(A) (for purposes of R.C. Chapter 5705, “[s]ubdivision” includes a joint fire district); R.C. 5705.01(C) (the “[t]axing authority” of a joint fire district is the board of fire district trustees); R.C. 5705.19(I) (with voter approval, the taxing authority of a subdivision may levy a tax in excess of the ten-mill limitation to fund various expenses associated with fire protection); 1994 Op. Att’y Gen. No. 94-004, at 2-14. A joint fire district is, therefore, a taxing district that is separate from the political subdivisions of which it is formed. *See generally* 2005 Op. Att’y Gen. No. 2005-043, at 2-455 (“the term ‘taxing district’ is commonly used to refer to a subdivision or other unit of government that is authorized to levy taxes on territory within its boundaries”).

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legal adviser of a joint fire district created under R.C. 505.371 at no cost to the district or under contract with the district. R.C. 309.09(E); *see also* 2004 Op. Att’y Gen. No. 2004-032 (syllabus, paragraph 2). Further, a county prosecutor is legal adviser to the county auditor. *See* R.C. 309.09(A). Accordingly, the questions you have raised are an appropriate subject for an opinion of the Attorney General. *See* R.C. 109.14.

You have first asked whether political subdivisions that establish a joint fire district pursuant to R.C. 505.371 may agree that the rate of millage of a tax levied by the district will be lower in one of the political subdivisions than the rate that applies in the other political subdivisions that form the district. Article XII, Section 2 of the Ohio Constitution provides, in part, that “[l]and and improvements thereon shall be taxed by uniform rule according to value[.]”<sup>2</sup> The Ohio Constitution thus requires each tax levy to apply uniformly throughout the territory of the taxing district. *See Wasson v. Comm’rs of Wayne Cnty.*, 49 Ohio St. 622, 635, 32 N.E. 472 (1892) (a “tax must be uniform upon all the taxable property within the limits of the taxing district.... If a county, township, or city tax, it must be uniform throughout the limited territory to which it is applicable; if a state tax, it must be uniform all over the state”); *Bowles v. State*, 37 Ohio St. 35, 43 (1881) (“[a]ll property within [a] taxing district must be taxed by a uniform rule according to its true value in money”); 2005 Op. Att’y Gen. No. 2005-043, at 2-464 to 2-465 (“[a]ny tax authorized and levied by a taxing unit must be levied in a uniform amount throughout the territory upon which it is levied, unless otherwise provided by law. Thus, if a township tax levy must be reduced in one portion of the township so that the total inside millage comes within the ten-mill limitation, the levy must be correspondingly reduced in other areas of the township so that the tax is levied at a uniform rate throughout the township” (citations omitted)); 1993 Op. Att’y Gen. No. 93-019, at 2-103 (“[w]hen a taxing district is created, property throughout the district is subject to taxation by the taxing authority of the district at a uniform rate”); 1981 Op. Att’y Gen. No. 81-044, at 2-177 (the Ohio Constitution “requires that each tax levy apply uniformly throughout the taxing district”).

In accordance with this constitutional mandate, the Attorney General has advised that “any tax levied by a board of fire district trustees must be levied uniformly throughout the joint fire district.” 1982 Op. Att’y Gen. No. 82-063, at 2-178. In that opinion, the Attorney General considered whether real property within a township and village was subject to a joint fire district tax levy when the township and village had joined the joint fire district after the district’s voters had approved the levy. *Id.* at 2-177 to 2-178. The Attorney General advised that taxable property within the newly-added township and village was subject to the joint fire district tax levy, concluding that such a result was mandated by Article XII, Section 2 of the Ohio Constitution, which “requires that each tax levy apply uniformly throughout the district of a particular taxing authority.” *Id.* at 2-178. Because the Ohio Constitution requires taxes levied by a joint fire district to be levied uniformly throughout the district, the Attorney General advised that real property within the township and village was subject to the joint fire district tax levy “at the same millage levied in the remainder of the district.” *Id.* at 2-178. Here, because Article XII, Section 2 of the Ohio Constitution requires taxes levied by a joint fire district to be levied uniformly throughout the territory of the district, we are of the opinion that political subdivisions that establish a joint fire district pursuant to R.C. 505.371 may not agree that the rate of millage of a tax levied by the district will be lower in one of the political subdivisions than the

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<sup>2</sup> Article XII, Section 2 of the Ohio Constitution contains certain exceptions to this general rule. *See* Ohio Const. art. XII, § 2 (providing a homestead exemption for certain residents). These exceptions, however, are not relevant to your inquiry.

rate that applies in the other political subdivisions that form the district. Any such agreement would be in violation of Article XII, Section 2 of the Ohio Constitution and therefore void. *See generally* 2000 Op. Att’y Gen. No. 2000-048, at 2-294 (“[i]t has long been established that any contract made by a public entity that is in violation of statute or beyond the power of the entity to make is void and binding on neither party”).

We recognize that this conclusion causes Hilliar Township residents to be responsible for both Hilliar Township’s two-mill real property tax associated with construction of the fire station and the full rate of millage levied by the Central Ohio Joint Fire District. We are, however, constrained to apply the law as it stands. The township and the joint fire district are separate taxing districts, *see* R.C. 5705.01(A), (C); 1994 Op. Att’y Gen. No. 94-004, at 2-15, and creation of the Central Ohio Joint Fire District did not destroy or otherwise affect Hilliar Township’s authority to levy taxes related to fire protection services. *See* 1982 Op. Att’y Gen. No. 82-063, at 2-179 n.2 (“[a]ny authority to levy taxes which one taxing authority, such as a board of township trustees, has been granted is not per force destroyed by the creation of a power in a different taxing authority to tax for the same purpose. However, any authority to levy taxes exists only so far as a need can be shown”); *see also* 1993 Op. Att’y Gen. No. 93-019, at 2-103 (“[e]ach parcel of land in Ohio may be located in, and subject to taxation by, a variety of overlapping political subdivisions or other taxing units”). Because we have answered your first question in the negative, it is not necessary to address your second question.

Based on the foregoing, it is my opinion, and you are hereby advised that, in accordance with Article XII, Section 2 of the Ohio Constitution, political subdivisions that establish a joint fire district pursuant to R.C. 505.371 may not agree that the rate of millage of a tax levied by the joint fire district will be lower in one of the political subdivisions than the rate that applies in the other political subdivisions of the district. Any tax levied by a joint fire district must be levied uniformly throughout the joint fire district.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General