

OPINION NO. 80-041

Syllabus:

1. By the authority of R.C. 1.51, the provisions of R.C. 325.21 pertaining to membership of county officials in associations

related to county affairs must be read as an exception to R.C. 9.65(A), since the latter statutes are in irreconcilable conflict, and since there is no manifest intent that R.C. 9.65(A) should prevail over R.C. 325.21. As a result, a board of county commissioners may authorize elected county officials to join an association related to county affairs, at county expense, within the limitations set forth in R.C. 325.21.

2. The provisions of R.C. 325.21 pertaining to membership of the county in an association or non-profit organization formed for the improvement of county government are not in conflict with R.C. 9.65(A). Pursuant to R.C. 325.21, a board of county commissioners may expend county funds for such membership.
3. By the authority of R.C. 1.51, R.C. 505.241 must be read as an exception to R.C. 9.65(A), since the latter statutes are in irreconcilable conflict, and since there is no manifest intent that R.C. 9.65(A) should prevail over R.C. 505.241. As a result, a board of township trustees may authorize its elected officers to join an association or non-profit organization formed for the improvement of township government, at township expense, within the limits set forth in R.C. 505.241.
4. R.C. 3313.87 and 9.65(A) are not in conflict. Pursuant to R.C. 3313.87, a board of education may, by a majority vote of its members, join a school boards' association as provided therein.

To: James R. Unger, Stark County Prosecuting Attorney, Canton, Ohio
By: William J. Brown, Attorney General, August 13, 1980

I have before me your request for an opinion regarding the interpretation of R.C. 9.65(A). Your question may be restated as follows:

Does the enactment of R.C. 9.65(A) impliedly repeal R.C. 325.21, 505.241, and 3313.87, which, respectively, allow counties, townships, and school boards to pay the membership fees of their elected officials in public organizations, in associations, or in nonprofit organizations for the improvement of county government, township government, or school administration?

R.C. 9.65, which became effective July 30, 1979, provides in part:

(A) No authority, board, bureau, commission, department, institution, or instrumentality of this state or of a political subdivision of this state and no state college or university shall use public funds to pay individual initiation fees or membership dues for any person to any association, club, society, or professional organization. (Emphasis added.)

R.C. 9.65(A) prohibits public bodies from using public funds to pay individual initiation fees or membership dues for any person to any association, club, society, or professional organization. "Individual" is ordinarily used to refer to a single person. It is defined in Webster's New World Dictionary 717 (2d college ed. 1976) as: "1. a single thing, being, or organism, esp. when regarded as a member of a class, species, group, etc. 2. a person." See also R.C. 1.59(C) (defining "person" to include "an individual, corporation, business trust, estate, trust, partnership, and association"). The emphasis in R.C. 9.65 is clearly upon prohibiting the payment of initiation fees or membership dues to benefit a single individual or person, as opposed to the payment of some sort of group or corporate fee. Included among the bodies to which the prohibition applies are boards of county commissioners, boards of township trustees, and school boards, for these entities are boards of

political subdivisions of the state. See Cook-Johnson Realty Co. v. Bertolini, 15 Ohio St. 2d 195, 199, 239 N.E. 2d 80, 83-84 (1968); State ex rel. Clarke v. Cook, 103 Ohio St. 465, 134 N.E. 655 (1921); Hunter v. Mercer County, 10 Ohio St. 515, 520 (1860).

The language of R.C. 9.65 is all-inclusive. It states that none of the governmental bodies named may pay any individual initiation fees or membership dues for any person. However, a longstanding rule of statutory interpretation pronounced in Ludlow v. Johnston, 3 Ohio 553 (1828), provides that prior legislation will not be impliedly repealed by the enactment of subsequent legislation unless the subsequent legislation clearly requires such repeal. Accord, State v. Frost, 57 Ohio St. 2d 121, 387 N.E. 2d 235 (1979); Cincinnati v. Thomas Soft Ice Cream, Inc., 52 Ohio St. 2d 76, 369 N.E. 2d 778 (1977); State ex rel. Myers v. Chiaramonte, 46 Ohio St. 2d 230, 348 N.E. 2d 323 (1976). In addition, "[a] special statute covering a particular subject matter must be read as an exception to a statute covering the same and other subjects in general terms." State ex rel. Steller v. Zangerle, 100 Ohio St. 414, 414, 126 N.E. 413, 413 (1919). (Emphasis added.) This rule of statutory interpretation was codified in 1972 in R.C. 1.51, which provides:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

1971-1972 Ohio Laws Part II 2108 (Am. H.B. 607, eff. Jan. 3, 1972).

R.C. 325.21, 505.241, and 3313.87 cover particular purposes and subject matters; thus, each must be considered a special statute. See, e.g., Leach v. Collins, 123 Ohio St. 530, 176 N.E. 77 (1931). R.C. 9.65, however, covers the same subject in general terms; thus, it must be considered a general statute. Therefore, to answer your request, it must be determined whether R.C. 9.65(A) conflicts with the pertinent provisions allowing the payment of membership fees by the mentioned political subdivisions for their elected officials, and if so, whether the manifest intent is that the general provision prevail over the specific statute.

R.C. 325.21, pertaining to county officials, provides:

A board of county commissioners may authorize the county to join an association or non-profit organization formed for the improvement of county government. Such board shall have the authority to appropriate from its general fund an amount sufficient to pay the dues, subscription costs, or membership charges of such association or non-profit organization.

The board may also authorize any elected county official to join an association related to county affairs, at county expense. The board shall have the authority to appropriate an amount sufficient to pay the dues, subscription costs, and membership charges of such association. Before such expenses may be paid, the official's office shall make application to the board in writing showing the probable costs. If the board approves the application, such expenses shall be paid from moneys appropriated to such office. The amount appropriated for such expenses shall not exceed five cents per person for the county's population as determined by the latest federal census. (Emphasis added.)

Since the first paragraph of this statute does not pertain to individual initiation fees or membership dues, but rather to dues for the county, it does not conflict with R.C. 9.65. Hence, both provisions may be read together and, pursuant to the first paragraph of R.C. 325.21, a board of county commissioners may expend funds for membership of the county in an association or non-profit organization formed

for the improvement of county government. However, under the second paragraph, the board of county commissioners is given the authority to pay, out of public funds, the dues, subscription costs, and membership charges of the county's elected officials in an association related to county affairs. Thus, the enabling language present in this statute and the restricting language in R.C. 9.65(A) are in irreconcilable conflict. While R.C. 325.21 grants the board of county commissioners permission to pay individual membership fees for its elected officials, within the limitations specified therein, R.C. 9.65(A) disallows this payment. Therefore, according to R.C. 1.51, unless the manifest intent is that R.C. 9.65(A) prevail over R.C. 325.21, the second paragraph of R.C. 325.21 must be read as an exception to the general restriction against the use of public funds for individual initiation fees or membership dues.

As stated in 1971 Op. Att'y Gen. No. 71-067, R.C. 325.21 was enacted because the General Assembly recognized the public purpose to be served through this type of use of public funds. The purpose of R.C. 325.21, as stated in the title of the bill enacting that section, 1969 Ohio Laws Book III 2376 (Am. Sub. H.B. 547, eff. Nov. 21, 1969), is "to authorize a county to join an association or non-profit organization for the purpose of improving county government and to permit county officials to join associations related to county affairs." (Emphasis added.) R.C. 9.65 was enacted as part of a general appropriations bill, Am. Sub. H.B. 204, 133th Gen. A. (1979) (eff. July 30, 1979); no specific purpose was stated for enacting R.C. 9.65, and the language of the statute does not indicate that it is to prevail over specific pre-existing provisions. I am unable to find any indication of an intent on the part of the General Assembly that the later, general provision, R.C. 9.65, prevail over the earlier, specific provision, R.C. 325.21. Further, the fact that R.C. 325.21 sets forth express limits on the amounts which may be appropriated for individual membership dues supports the conclusion that the General Assembly intended to allow this narrow exception to its general prohibition against expenditure of public funds for individual membership dues. I conclude, therefore, that, since the two statutes conflict, and since there is no manifest intent that the general provision prevail, the second paragraph of R.C. 325.21 must be read as an exception to R.C. 9.65(A).

R.C. 505.241, pertaining to township officials, provides:

A board of township trustees may authorize its elected officers to join an association or nonprofit organization formed for the improvement of township government. Such board may appropriate from its general fund an amount sufficient to pay the dues, subscription costs, or membership charges of such association or nonprofit organization.

The amount appropriated for membership expenses for an individual elected township official in any one year shall not exceed one hundred fifty per cent of the amount of compensation authorized for a township trustee per day as set forth in division (B)(6) of section 505.24 of the Revised Code. (Emphasis added.)

By this statute, the board of township trustees is given the authority to pay, out of public funds, the dues, subscription costs, or membership charges of the township's elected officials in an association or nonprofit organization formed for the improvement of township government. As in the analysis concerning R.C. 325.21, the enabling language of R.C. 505.241 is in irreconcilable conflict with R.C. 9.65(A). The purpose of R.C. 505.241, as stated in the title of Sub. H.B. 852, 112th Gen. A. (1978) (eff. Oct. 9, 1978), is "to permit township funds to be paid to an association of township trustees and clerks as membership dues for township officials." Again, the amount which may be appropriated for such purposes is limited by the language of the statute, and there is no evidence in the language of R.C. 9.65(A) that it is to prevail over specific pre-existing provisions. Therefore, I conclude that R.C. 505.241 must be read as an exception to R.C. 9.65(A).

R.C. 3313.87, pertaining to school boards, provides in pertinent part:

By a majority vote of its members a board of education may join a school boards' association. Such board shall have the authority to appropriate from its general fund an amount sufficient to pay the dues required by the association which dues shall not exceed the dues according to the following schedule:

School district average daily membership	Dues
Under 2,000	\$ 300
2,000- 3,999	450
4,000- 5,999	600
6,000- 7,999	750
8,000- 9,999	900
10,000- 14,999	1050
15,000- 19,999	1200
20,000- 49,999	1350
Over 50,000	1500

(Emphasis added.)

By this statute, a school board, by a majority vote of its members, is given the authority to join a school boards' association, and to use public funds to pay the dues required by the association. The language clearly grants permission to join associations only to school boards, and not to their individual members. Thus, since the restriction imposed by R.C. 9.65(A) is only on the payment of individual initiation fees or membership dues, there is no conflict between R.C. 3313.87 and R.C. 9.65(A).

In sum, since there is no manifest intent that the general restriction of R.C. 9.65(A) should prevail over the specific provisions of R.C. 325.21 and 505.241, and since R.C. 9.65(A) is in irreconcilable conflict with both the second paragraph of R.C. 325.21 and R.C. 505.241, the latter provisions must be read as exceptions to R.C. 9.65(A). Since R.C. 9.65(A) and 3313.87 are not in conflict, both can be read together. Therefore, counties and townships may pay the membership fees of their elected officials with public funds, provided that R.C. 325.21 and 505.241 are followed, and a board of education may pay from its general fund the membership fees required by an association it wishes to join, provided that R.C. 3313.87 is followed.

It is, therefore, my opinion, and you are advised, that:

1. By the authority of R.C. 1.51, the provisions of R.C. 325.21 pertaining to membership of county officials in associations related to county affairs must be read as an exception to R.C. 9.65(A), since the latter statutes are in irreconcilable conflict, and since there is no manifest intent that R.C. 9.65(A) should prevail over R.C. 325.21. As a result, a board of county commissioners may authorize elected county officials to join an association related to county affairs, at county expense, within the limitations set forth in R.C. 325.21.
2. The provisions of R.C. 325.21 pertaining to membership of the county in an association or non-profit organization formed for the improvement of county government are not in conflict with R.C. 9.65(A). Pursuant to R.C. 325.21, a board of county commissioners may expend county funds for such membership.
3. By the authority of R.C. 1.51, R.C. 505.241 must be read as an exception to R.C. 9.65(A), since the latter statutes are in irreconcilable conflict, and since there is no manifest intent that R.C. 9.65(A) should prevail over R.C. 505.241. As a result, a board of township trustees may authorize its elected officers to

join an association or non-profit organization formed for the improvement of township government, at township expense, within the limits set forth in R.C. 505.241.

4. R.C. 3313.87 and 9.65(A) are not in conflict. Pursuant to R.C. 3313.87, a board of education may, by a majority vote of its members, join a school boards' association as provided therein.