

**OPINION NO. 91-035****Syllabus:**

1. R.C. 5705.05(G), which permits a township to use proceeds of the general levy for current expenses in "the amounts necessary for the relief of the poor," impliedly authorizes a township to enter into a contract with a private nonprofit hospital to provide hospital services to indigents.
2. A township is not required to enter into a contract with a private nonprofit hospital in order to pay the hospital for services it renders to indigents unless entering into such contract is the only reasonable manner of procuring necessary hospital services for indigents.
3. A township may enter into a contract to pay the proceeds of a tax levied pursuant to R.C. 513.01 to a private nonprofit hospital association provided such hospital association maintains a public hospital that provides services free to indigents.
4. The tax levied pursuant to R.C. 513.01 is within the ten-mill limitation imposed by Ohio Const. art. XII, §2 and R.C. 5705.02.
5. R.C. 513.01 authorizes the annual levy of a tax for the purposes specified therein.

6. The proceeds of a levy for the purpose of supplementing the general fund for the support of general hospitals pursuant to R.C. 5705.191 may be paid to a hospital association which meets the requirements of R.C. 513.01 and R.C. 513.02. (1969 Op. Att'y Gen. No. 69-089, overruled.)
7. There must be a direct relationship between the amount of money paid by a township pursuant to R.C. 5705.05(G) to a hospital for services rendered to indigents and the services actually rendered to indigents by the hospital.
8. There need not be a direct relationship between the amount of levy proceeds paid by a township to a hospital association pursuant to R.C. 513.01 or R.C. 5705.191 and the services rendered to indigents by the hospital.

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**To: Robert P. DeSanto, Ashland County Prosecuting Attorney, Ashland, Ohio**  
**By: Lee Fisher, Attorney General, August 8, 1991**

I have before me your request for an opinion concerning the levying of a tax for hospital purposes. Specifically, your questions are as follows:<sup>1</sup>

1. Must a township contract with a private non-profit hospital, in order to pay that hospital for services it renders to indigent township residents?
2. Does a township have any express or implied authority under O.R.C. §513.01 or other code section, to make such a contract with a private non-profit hospital?
3. In the event a township is authorized and does make such a contract, may the township levy a one mill tax solely pursuant to O.R.C. §513.01 and pay the tax proceeds to the private non-profit hospital and is the tax levied under §513.01 inside or outside millage?
4. Is a levy under §513.01 limited to running for one year at a time, or can it run for a specific number of years or a continuing period of time?
5. In the event a township is authorized and does make the contract alluded to above, may the township levy a tax pursuant to O.R.C. §5705.191 for the purpose of supplementing the general fund for the support of general hospitals, and then pay the tax proceeds to the contracted private non-profit hospital?
6. Must there be a direct relationship between the amount a township pays a hospital and the services rendered by the hospital to indigent township residents?

**I. Townships Have The Implied Authority To Pay  
For Hospital Care For Indigents**

Generally, a board of township trustees, as a creature of statute, has only the powers expressly granted by statute or necessarily implied therefrom. *Board of Trustees v. Miner*, 26 Ohio St. 452 (1875). Although there is no statute which expressly grants the board of township trustees the authority to pay for hospital

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<sup>1</sup> Pursuant to a conversation between members of our respective staffs, a seventh question originally posed by you has been withdrawn.

services for indigents, such authority can be implied from other statutory grants of authority.

**A. Revised Code §5705.01 et seq.**

R.C. 5705.03 authorizes the taxing authority of each subdivision to "levy taxes annually, subject to the limitations of sections 5705.01 to 5705.47, inclusive, of the Revised Code, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision...." R.C. 5705.01(A) defines "subdivision" to include a township, and the "taxing authority" of a township is the board of township trustees, R.C. 5705.01(C). Thus, a board of township trustees may levy taxes annually for the purpose of paying the current operating expenses of the township.

Pursuant to R.C. 5705.05, "current operating expenses" include, with respect to townships, "amounts necessary for the relief of the poor." R.C. 5705.05(G). The specific authority granted to townships to levy a tax for the amounts necessary for the relief of the poor necessarily implies that the board of township trustees has the authority to use such funds for the relief of the poor. Although "relief of the poor" is not defined for purposes of R.C. 5705.05, it has been held that "[m]edical attention and hospital care is part of what is meant when the statutes deal with 'poor relief.'" *Mercy Hospital v. Menegay*, 32 Ohio N.P. (n.s.) 1, 5 (C.P. Stark County 1934). Thus, the board of township trustees has the authority, implied from R.C. 5705.03 and R.C. 5705.05, to pay for hospital services for the poor.

While I am aware that one of my predecessors held that township trustees have no *duty* to provide relief for the poor, I do not believe those prior opinions mandate the conclusion that township trustees may not choose to provide such relief. *See* 1940 Op. Att'y Gen. No. 2456, vol. I, p. 628; 1940 Op. Att'y Gen. No. 2394, vol. I, p. 570; 1939 Op. Att'y Gen. No. 1484, vol. III, p. 2189; 1939 Op. Att'y Gen. No. 1163, vol. II, p. 1693, 1694 (H.B. 675 "took from township trustees all of their duties with reference to poor relief under [G.C. 3476, 3478, 3480, 3480-1, 3481, 3482, 3483, 3484 and 3484-11]; 1939 Op. Att'y Gen. No. 1126, vol. II, p. 1653; 1939 Op. Att'y Gen. No. 948, vol. II, p. 1334. It was the opinion of the Attorney General at the time that H.B. 675, 1939 Ohio Laws 710 (93rd Gen. A., approved June 6, 1939), which provided for comprehensive administration of poor relief by counties and cities, superseded G.C. 3476, which mandated that township trustees, at the expense of the township, provide public support or relief to all persons within the township who are in a condition requiring it. 73 Ohio Laws 233 (62nd Gen. A., passed April 12, 1876) (codified as R.S. 1491 and published in Revised Statutes of Ohio (1880) pursuant to H.B. 1083, 63rd Gen. A. (1879), recodified as G.C. 3476 pursuant to S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in the General Code of State of Ohio, Commissioners of Public Printing 1911)). G.C. 3476 was not repealed until 1949 by Am. Sub. H.B. 277, 1949-1950 Ohio Laws 607 (98th Gen. A., approved July 21, 1949).

Those opinions, however, did not consider whether H.B. 675 nullified the *authority* of a township under G.C. 5625-5, 1927 Ohio Laws 391 (87th Gen. A., filed without signature of the Governor May 12, 1927, (now R.C. 5705.05) to use funds from the general levy for current expenses for relief of the poor. G.C. 5625-5 provided, in relevant part, that the general levy for current expenses includes "amounts certified to be necessary...in a township, for relief of the poor." 1927 Ohio Laws 393. G.C. 5625-5 was not repealed by H.B. 675, and the provisions concerning the authority of the township to use proceeds of the general levy for relief of the poor have never been changed, despite the fact that R.C. 5705.05 has been amended many times. *See, e.g.*, 1969-1970 Ohio Laws, Part II, 1701 (Am. H.B. 1, eff. March 13, 1969); 1971-1972 Ohio Laws, Part I, 647 (Am. Sub. S.B. 370, eff. Dec. 23, 1971) (which specifically amended paragraph (G) of R.C. 5705.05); Am. Sub. H.B. 569, 118th Gen. A. (1990) (eff. Aug. 13, 1990).

Thus, although township trustees no longer have a duty to provide comprehensive relief services to the poor, I believe they have retained the right and

authority to use proceeds of the general levy for current expenses in "the amounts necessary for the relief of the poor," including hospital care.<sup>2</sup>

#### B. Revised Code §513.01

R.C. 513.01 also permits a board of township trustees to

annually levy and collect a tax, not to exceed one mill on each dollar of the taxable property of the township, and pay it to a hospital association which maintains and furnishes a free public hospital for the benefit of the inhabitants of such township, or to a hospital association, which maintains a public hospital which is not free except to such inhabitants of the township as, in the opinion of the trustees of such hospital, are unable to pay or to a municipal corporation contracting to furnish hospital service to the inhabitants of such township.

Although R.C. 513.01 does not authorize the board of township trustees to provide hospital services directly to indigents, it effectively does the same thing by enabling the board of township trustees, *inter alia*, to pay the proceeds of a tax levy to a hospital association which maintains a "public hospital" which is free to those who are "unable to pay."

Although "public hospital" is not defined for purposes of R.C. 513.01, in *State ex rel. Fostoria Daily Review Co. v. Fostoria Hosp. Ass'n*, 40 Ohio St. 3d 10, 531 N.E.2d 313 (1988), the Ohio Supreme Court determined that a hospital, although operated by a private nonprofit corporation, was nevertheless a "public hospital." This determination was based, in part, on the fact that the private nonprofit corporation was operating the hospital under the authority of R.C. 749.35, which required it to "administer, maintain, and operate such hospital as a public general hospital, admitting patients without regard to race, creed, or color." You have characterized the hospital in question as a "private nonprofit hospital." However, the fact that a hospital is operated by a private nonprofit corporation or association does not preclude a determination that it is a public hospital entitled to the proceeds of the tax authorized by R.C. 513.01. Whether a hospital is public is an issue to be determined by the facts of each particular case.

Thus, depending upon the circumstances, R.C. 513.01 also provides a township with the authority to pay for the hospital needs of indigents through its authority to pay proceeds of a levy to an association organized for the purpose of maintaining a public hospital that is free to either all the inhabitants of the township or to those inhabitants who are unable to pay.

### II. A Township Need Not Enter Into A Written Contract In Order To Pay For Hospital Services For Indigents, But May Do So If Appropriate

#### A. Revised Code §5705.05

I have already determined that R.C. 5705.03 and R.C. 5705.05(G) authorize a board of township trustees to procure hospital services for indigents. R.C. 5705.05

<sup>2</sup> Although R.C. 5705.05(G) refers to "the poor," rather than to "indigents," the term "the poor" necessarily includes "indigents." In the absence of statutory definition, a word is to be accorded its natural, literal, common or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). The dictionary defines "poor," in part, as "[h]aving little or no wealth and few or no possessions." *The American Heritage Dictionary* 964 (2d college ed. 1985). "Indigent" is defined in part as "[l]acking the means of subsistence; impoverished." *Id.* at 655. It follows that one who is indigent is also poor. See generally 1990 Op. Att'y Gen. No. 90-088 (syllabus, paragraph one) ("[f]or purposes of R.C. 2925.03(L), the term 'indigent' encompasses individuals who are poor, needy, destitute or in poverty.").

does not, however, mandate the manner in which such services may be provided. Where the General Assembly authorizes a particular objective, but does not provide a procedure for the achievement of such objective, a presumption arises that it may be done in any reasonable manner. *Jewett v. Valley Railway Co.*, 34 Ohio St. 601 (1878). Thus, pursuant to R.C. 5705.05(G), the board of township trustees may procure necessary hospital services for indigents in any reasonable manner. If it is reasonable for township trustees to obtain such services from a nonprofit private hospital without entering into a written contract with the hospital, for example, by simply paying for such services as they are rendered, then it is not necessary for the township to enter into a contract in order to pay the hospital for those services. Whether any particular practice is reasonable is ultimately a question of fact which cannot be determined in a vacuum.

While it is not necessary for a township to enter into a written contract for such services, it is permissible for it to do so. An examination of various sections of R.C. Chapter 505 reveals that township trustees may enter into contracts to protect the safety and well-being of township residents. *See, e.g.*, R.C. 505.27 (contract for collection, transfer and disposal of solid waste); R.C. 505.43 (contract for police protection); R.C. 505.44 (contract for ambulance or emergency medical service). Although I am not aware of any express power of township trustees to enter into a contract with a private nonprofit hospital to obtain hospital services for indigents, R.C. 5705.05(G) by authorizing payments to hospitals, necessarily includes that power. *See* 1933 Op. Att'y Gen. No. 1028, vol. II, p. 1046 at 1048 ("[T]ownship trustees having the authority to expend public funds in the payment of hospital services rendered to indigent residents of the township, have the implied authority to contract with the hospital for such services"); *C.B. Transp. v. Butler County Bd. of Mental Retardation*, 60 Ohio Misc. 71, 79, 397 N.E.2d 781, 786 (C.P. Butler County 1979) (the authority to "provide" necessary transportation for mentally retarded persons includes the power to enter into contracts for such transportation with third persons because "it would be incongruous to hold the Board of Mental Retardation to a duty to 'provide' transportation while withholding the means of transportation"); *see also* 1980 Op. Att'y Gen. No. 80-089 (the authority of a board of health to remove a building found to be a public nuisance necessarily includes the power to contract for such services with a third person).

#### B. Revised Code §513.01

R.C. 513.01 also impliedly authorizes a board of township trustees to enter into a contract for the provision of hospital services to indigents. As noted, R.C. 513.01 authorizes a board of township trustees to levy a tax and pay it to a hospital association that maintains a hospital which is free to the inhabitants of the township or to those unable to pay. The authority of a board of trustees pursuant to R.C. 513.01 is, therefore, limited to paying the proceeds of the tax levy to a hospital association that maintains a public hospital that provides services that are at least free to indigents. This restriction on the payment of the proceeds of the tax levy, necessarily implies the authority of the board of trustees to enter into a written contract which obligates the hospital association to satisfy those restrictions as a condition of receipt of the tax proceeds.

A contract entered into with a hospital pursuant to R.C. 513.02 may not, however, limit the recipient hospital's use of the levy proceeds to the care of indigents. R.C. 513.02 provides that "[t]he payment to a hospital association...as provided by section 513.01 of the Revised Code, shall be made as compensation for the use and maintenance of such hospital." Thus, the tax levied and collected pursuant to R.C. 513.01 is not solely for, and may not be used solely for, the purpose of compensating a hospital for services it provides to indigents. Ohio Const. art. XII, §5 provides that "every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied." (Emphasis added.) Accordingly, the proceeds of the tax collected pursuant to R.C. 513.01 for the general purpose of "the use and maintenance" of a hospital may be transferred pursuant to a contract that requires the hospital to provide free services to indigents, but may not be transferred pursuant to a contract that purports to restrict the use of the funds to the care of indigents. *See generally* 1956 Op. Att'y Gen. No. 7001, p. 624.

**III. A Tax Levied Pursuant to R.C. 513.01 Is  
Within The Ten-Mill Limitation**

You have asked whether the tax levied under the authority of R.C. 513.01 is "inside" or "outside" millage. I assume that by "inside" or "outside" millage you mean a tax which is levied within the ten-mill limitation imposed by Ohio Const. art. XII, §2 and R.C. 5705.02, or outside such limit. See *Cambridge City School Dist. v. Guernsey County Budget Comm'n*, 11 Ohio App. 2d 77, 228 N.E.2d 874 (Guernsey County 1968), *aff'd*, 13 Ohio St. 2d 77, 234 N.E.2d 512 (1968) (a tax levied within the ten-mill limitation is referred to as "inside millage"). Ohio Const. art. XII, §2 provides, in relevant part, that "[n]o property, taxed according to value, shall be so taxed in excess of one percent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation...when approved by at least a majority of the electors of the taxing district voting on such proposition." See also R.C. 5705.02. Thus, in order for the township to levy a tax in excess of the ten-mill limitation, the township must have authority under a statute which authorizes such a tax when approved by a majority of the voters. See, e.g., 1976 Op. Att'y Gen. No. 76-021. Since R.C. 513.01 does not authorize a levy in excess of the ten-mill limitation, I conclude that a tax levied pursuant to R.C. 513.01 must be within the ten-mill limitation.

**IV. A Tax Levied Pursuant To R.C. 513.01 Shall  
Run For One Year At A Time**

Your fourth question asks whether a tax levied pursuant to R.C. 513.01 is limited to running for one year at a time or whether it may run for a specific number of years or a continuing period of time. R.C. 513.01 expressly provides that "[t]he board of township trustees may *annually* levy and collect a tax...." (Emphasis added.) Because the language of the statute is plain and definite, it requires no statutory analysis. See *State ex rel. Hamilton Gas & Coke Co. v. City of Hamilton*, 47 Ohio St. 52, 23 N.E. 935 (1890). By use of the term "annually," the General Assembly clearly manifested its intent that a tax levied pursuant to R.C. 513.01 shall run for one year at a time.

**V. Townships May Pay The Proceeds Of A Tax Levied  
Pursuant To R. C. 5705.191 To A General  
Hospital Which Provides Free Services  
To Indigents**

Your fifth question asks whether, in the event a township is authorized to and makes a contract with a private nonprofit hospital to provide hospital services to indigents, the township may levy a tax pursuant to R.C. 5705.191 for the purpose of supplementing the general fund to support general hospitals, and then pay the tax proceeds to such private nonprofit hospital. R.C. 5705.191 provides, in relevant part, that

[t]he taxing authority of any subdivision, other than the board of education of a school district or the taxing authority of a county school financing district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation...to supplement the general fund for the purpose of making appropriations for...support of general or tuberculosis hospitals...and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary, or special election to be held at a time therein specified. (Emphasis added.)

R.C. 5705.191 is a general statute, authorizing taxing authorities of subdivisions other than a county school financing district to levy a tax in excess of the ten-mill limitation for various purposes, including the support of general hospitals. This statute, however, does not by itself empower subdivisions to levy taxes for all the enumerated purposes. It would be unreasonable to assume, for example, that the

General Assembly, by enacting R.C. 5705.191 intended to permit the taxing authority of a joint recreation district to levy a tax for the support of general hospitals. See R.C. 5705.01(C) (taxing authority, for purposes of R.C. Chapter 5705, includes joint recreation district board); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985) (a statute should be construed to avoid unreasonable or absurd consequences). R.C. 5705.191 confers authority upon the taxing authority of a subdivision to submit to the electors of the subdivision the question of an additional tax levy in excess of the ten-mill limitation to supplement the general fund for the purpose of making appropriations for the support of general hospitals to the extent the subdivision otherwise possesses authority to support general hospitals.

"Support" is not defined for purposes of R.C. 5705.191 and, therefore, must be given its common, ordinary meaning. The dictionary defines "support" in part as "[t]o provide for or maintain, by supplying with money or necessities." *The American Heritage Dictionary* 1222 (2d college ed. 1985). As discussed, R.C. 513.01 authorizes a board of township trustees to levy a tax and pay it to a hospital association that maintains either a free public hospital for the benefit of township inhabitants or a public hospital that provides services free to indigents. Pursuant to R.C. 513.02, the payment of tax levy proceeds is "made as compensation for the use and maintenance of such hospital." Thus, a board of township trustees has the authority to support a public hospital to the extent permitted by R.C. 513.01 and R.C. 513.02.

R.C. 5705.191 authorizes an additional tax for the support of "general" hospitals. Although "general hospital" is not defined for purposes of R.C. 5705.191, the term is understood in the medical field as "a hospital equipped to take care of injuries and diseases of a wide variety." 1947 Op. Att'y Gen. No. 2070, p. 402 at 404. Since "general hospital" is a term that has acquired a particular meaning, it must be construed accordingly. R.C. 1.42; *Mose Cohen & Sons, Inc. v. Kuhr*, 13 Ohio Op. 2d 453, 171 N.E.2d 207 (C.P. Hamilton County 1959).<sup>3</sup>

R.C. 5705.191, therefore, authorizes a board of township trustees to submit to the electors of the township the issue of an additional tax levy in excess of the ten-mill limitation to supplement the general fund for the purpose of making appropriations for the support of general hospitals. This grant of power, however, is limited to the extent that the board of township trustees has the authority pursuant to R.C. 513.01 and R.C. 513.02 to support such hospitals. Thus, the board of township trustees may pay the proceeds of a tax levied pursuant to R.C. 5705.191 to a private nonprofit hospital association, which operates a general public hospital which is free to the inhabitants of the township or which provides services free to indigents.

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<sup>3</sup> I am aware that in 1969 Op. Att'y Gen. No. 69-089, one of my predecessors opined that, as used in R.C. 5705.191, the term "general hospital" referred to "a general hospital owned by a county or municipality or other governmental entity," and that, as a result, a township had no authority under R.C. 5705.191 to levy a tax "for the support of a general hospital run by a private not-for-profit corporation." Op. No. 69-089 at 2-192. That opinion, however, was based on a determination that the payment of the proceeds of a tax levy to a private corporation was in violation of art. VIII, §6 of the Ohio Constitution, which states in part that "[n]o laws shall be passed authorizing any township...by a vote of its citizens...to raise money for...any company, corporation or association." Op. No. 69-089 did not consider, however, the public purpose doctrine, which holds that it is appropriate to disburse public funds to a private entity if such disbursement serves a public purpose. See, e.g., R.C. 140.02 (the provision of hospital services is a public purpose); 1982 Op. Att'y Gen. No. 82-017; 1971 Op. Att'y Gen. No. 71-044. Since the disbursement of public funds according to the public purpose doctrine does not violate Ohio Const. art. VIII, §6, even where a non-public entity receives such funds, I conclude that the general hospital referred to in R.C. 5705.191 need not be a general hospital owned by a governmental entity. Accordingly, I hereby overrule Op. No. 69-089.

## VI. Relationship Between Benefit and Payment

You have asked, in your sixth question, whether there must be a direct relationship between the amount a township pays a hospital for the care of indigents and the services rendered to indigents by the hospital. I have determined that R.C. 5705.05(G) permits a township to use proceeds of the general levy for current expenses to provide hospital services for indigents. This necessarily implies a direct relationship between the money expended and the services thereby procured. If money spent does not correspond with the services procured, then the funds have not been applied to provide hospital services for indigents. Thus, where a township uses proceeds of the general levy for current expenses pursuant to R.C. 5705.05(G) to pay a hospital for services rendered to indigents, there must be a direct relationship between the money expended and the services provided.

However, the payment of the proceeds of the taxes levied under authority of R.C. 513.01 and R.C. 5705.191 is for the support of the hospital, not specifically for services rendered to indigents. Although pursuant to R.C. 513.01 the hospital is required to provide services free to those unable to pay, there is no requirement that the levy proceeds which a township pays to a hospital association pursuant to R.C. 513.01 or R.C. 5705.191 directly correspond to the services rendered specifically to indigents by the hospital. Indeed, as I have previously noted, no such requirement can be imposed on a recipient hospital.

## VII. Conclusion

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

1. R.C. 5705.05(G), which permits a township to use proceeds of the general levy for current expenses in "the amounts necessary for the relief of the poor," impliedly authorizes a township to enter into a contract with a private nonprofit hospital to provide hospital services to indigents.
2. A township is not required to enter into a contract with a private nonprofit hospital in order to pay the hospital for services it renders to indigents unless entering into such contract is the only reasonable manner of procuring necessary hospital services for indigents.
3. A township may enter into a contract to pay the proceeds of a tax levied pursuant to R.C. 513.01 to a private nonprofit hospital association provided such hospital association maintains a public hospital that provides services free to indigents.
4. The tax levied pursuant to R.C. 513.01 is within the ten-mill limitation imposed by Ohio Const. art. XII, §2 and R.C. 5705.02.
5. R.C. 513.01 authorizes the annual levy of a tax for the purposes specified therein.
6. The proceeds of a levy for the purpose of supplementing the general fund for the support of general hospitals pursuant to R.C. 5705.191 may be paid to a hospital association which meets the requirements of R.C. 513.01 and R.C. 513.02. (1969 Op. Att'y Gen. No. 69-089, overruled.)
7. There must be a direct relationship between the amount of money paid by a township pursuant to R.C. 5705.05(G) to a hospital for services rendered to indigents and the services actually rendered to indigents by the hospital.
8. There need not be a direct relationship between the amount of levy proceeds paid by a township to a hospital association pursuant to R.C. 513.01 or R.C. 5705.191 and the services rendered to indigents by the hospital.