

**OPINION NO. 90-065****Syllabus:**

1. A township that has an emergency service levy under R.C. 5705.19 may also impose charges under R.C. 505.84 to cover the costs of providing ambulance services within the township.
2. Pursuant to R.C. 505.84 and subject to exceptions set forth therein, a township may charge nonresidents \$125 per run for ambulance services, and may charge residents a lesser fee, provided that the charges are reasonable and that the "authorized medicare reimbursement rate" established for the locality, as determined by the Medicare carrier, is equal to or less than \$125. The board of township trustees may at its discretion waive all or part of the charge for any resident.

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**To: Wilfrid G. Dues, Preble County Prosecuting Attorney, Eaton, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September 7, 1990**

I have before me your request for an opinion concerning the authority of a township to charge persons who make use of its ambulance services. You have asked specifically whether the township may bill nonresidents \$125 per run and residents a lesser fee when ambulance services are provided. You have stated that the township has an emergency service levy that was adopted when the township's cost per run was \$50; the cost is now \$125 per run and it is estimated that the money generated by the levy will cover services for only approximately five months. You have indicated that the township has never charged residents or nonresidents for ambulance services, and that the purpose of imposing charges now would be to cover the estimated shortfall in the levy funds. I assume that the ambulance services in question are provided by the township within its territory, and that they are made available to anyone who needs ambulance services while located within the township, regardless of whether such person is a resident of the township. *See generally, e.g., 1988 Op. Att'y Gen. No. 88-042.*

R.C. 505.84 authorizes a township to establish charges for the use of ambulance or emergency medical services, as follows:

As used in this section, "authorized medicare reimbursement rate" means such rate established for the locality under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended.

*A board of township trustees may establish reasonable charges for the use of ambulance or emergency medical services. The board may establish different charges for township residents and nonresidents, and may at its discretion waive all or part of the charge for any resident. The charge for nonresidents shall be an amount not less than the authorized medicare reimbursement rate, except that if prior to the effective date of this amendment the board had different charges for residents and nonresidents and the charge for nonresidents was less than the authorized medicare reimbursement rate, the board may charge nonresidents less than the authorized medicare reimbursement rate.*

Charges collected under this section shall be kept in a separate fund designated as "the ambulance and emergency medical services fund," and shall be appropriated and administered by the board. Such funds shall be used for the payment of the costs of the management, maintenance, and operation of ambulance and emergency medical services in the township. If the ambulance and emergency medical services are discontinued in the township, any balance remaining in the fund shall be paid into the general fund of the township. (Emphasis added.)

R.C. 505.84 thus authorizes a board of township trustees to establish different charges for township residents and nonresidents and to waive all or part of the

charge for any resident. The statute requires that the charge for nonresidents "be an amount not less than the authorized medicare reimbursement rate."<sup>1</sup> It requires that all charges be reasonable. *See generally* 1984 Op. Att'y Gen. No. 84-048; *see also* 1984 Op. Att'y Gen. No. 84-083. R.C. 505.84 has been construed as permitting the establishment of reasonable charges for ambulance services when a township provides those services by contract, as well as when it provides those services directly. *See* Op. No. 84-048; 1981 Op. Att'y Gen. No. 81-023; *see also* R.C. 505.44.

Provisions for the adoption of a tax levy for ambulance services appear in R.C. 5705.19(I) (fire services, or ambulance or emergency medical services operated by a fire department or fire-fighting company), R.C. 5705.19(J) (police services, or ambulance or emergency medical services operated by a police department), and R.C. 5705.19(U) (ambulance or emergency medical services). *See also* R.C. 5705.191 (permitting the levying of a tax for any of the purposes in R.C. 5705.19). Proceeds of a tax levied for such a purpose may be expended only for such purpose. *See* Ohio Const. art. XII, §5; R.C. 5705.09-10; *In re Petition for Transfer of Funds*, 52 Ohio App. 3d 1, \_\_\_ N.E.2d \_\_\_ (Montgomery County 1988). Authority to submit to the voters the question of adopting such a levy is conditioned upon a finding that "the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation" for the stated purpose. R.C. 5705.19; *see also* R.C. 5705.191. If collection of the amount of taxes authorized under R.C. 5705.09(I), (J), or (U) would result in more funds than necessary for its purpose, the amount levied may be reduced. *See* R.C. 5705.19 (permitting a levy for the purposes set forth in R.C. 5705.19(I), (J), or (U) to be reduced pursuant to R.C. 5705.261 (community college districts and school districts) or R.C. 5705.31 (county budget commission) or to "be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount"); *In re Petition for Transfer of Funds*.

You have described a situation in which the amount generated pursuant to a levy under R.C. 5705.19 is insufficient to pay in full the costs incurred in the provision of ambulance services, and you have asked whether the township may charge a fee for ambulance services even though the residents are already subject to a tax levy for ambulance services. The statutory scheme appears to permit a township to charge a fee in such circumstances.<sup>2</sup> R.C. 505.84 grants the authority to charge fees for ambulance services to all boards of township trustees, subject to the specified limitations on the amounts that may be charged. The language authorizing the township to charge fees contains no indication that the charging of fees is prohibited if a tax levy for ambulance services has been adopted. The statute does provide that amounts charged must be reasonable and, further, that charges collected must be kept in a separate fund designated as "the ambulance and emergency medical sources fund" and be used "for the payment of the costs of the management, maintenance, and operation of ambulance and emergency medical

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<sup>1</sup> An exception applies to a township in which, prior to September 9, 1988, the effective date of the pertinent amendment of R.C. 505.84, *see* 1987-1988 Ohio Laws, Part II, 3092 (Am. H.B. 256, eff. Sept. 9, 1988), "the board had different charges for residents and nonresidents and the charge for nonresidents was less than the authorized medicare reimbursement rate." This exception is not applicable to the situation with which you are concerned, since that township has not charged residents or nonresidents for ambulance services.

<sup>2</sup> This opinion addresses only the factual situation that you have described and does not consider whether fees may be charged in other circumstances.

services in the township."<sup>3</sup> The fact that R.C. 505.84 permits charges for residents to be lower than those for nonresidents and permits charges for residents to be waived appears to reflect an understanding that residents may be supporting the availability of ambulance services through the payment of taxes. *See, e.g.*, Op. No. 84-048 at 2-155 to 2-156; *see also* 1987 Op. Att'y Gen. No. 87-042; Op. No. 84-083. *But see generally* Op. No. 88-042 (syllabus, paragraph 4) ("[c]harges for ambulance and emergency medical services established by a board of township trustees under the authority of R.C. 505.84 may not be collected from an institution operated by the Ohio Department of Youth Services").

It should be noted that payments made under a tax levy for ambulance services and charges paid under R.C. 505.84 serve somewhat different purposes. A township tax levy for ambulance services makes those services generally available throughout the township, regardless of whether the person making the payment has actual need of those services in a given year. Charges under R.C. 505.84 are, in contrast, imposed upon an individual who has availed himself of the ambulance services. Adoption of the two means of funding ambulance services is, thus, not incompatible.

R.C. 505.84 defines the amounts that may be charged of nonresidents in terms of the "authorized medicare reimbursement rate." That term is defined to mean the "rate established for the locality under Title XVIII of the 'Social Security Act,' 49 Stat. 620 (1935), 42 U.S.C. 301, as amended." R.C. 505.84. The relevant rate is determined by the Medicare carrier which, pursuant to contract with the federal government, is responsible for administering Part B of the Medicare program. The Medicare carrier for the Preble County area is Nationwide Insurance, and questions concerning prevailing rates may be sent to the following address:

Nationwide Insurance  
Medicare Operations  
Division of Quality Assurance and Reimbursement  
P.O. Box 182195  
Columbus, Ohio 43218

A member of my staff contacted the Medicare carrier on your behalf and was informed that the "authorized medicare reimbursement rate," *see* R.C. 505.84, for a basic emergency run in the Dayton area (including Preble County) is currently less than \$125. My staff member was told that the current allowable rate is \$75 and Medicare pays eighty percent of that amount — *i.e.*, \$60. Under these facts, the amount that the township proposes to charge for nonresidents is permissible under R.C. 505.84. R.C. 505.84 permits any reasonable rate to be charged for township residents, and further permits all or any part of the charge for any resident to be waived.

It is, therefore, my opinion, and you are advised, as follows:

1. A township that has an emergency service levy under R.C. 5705.19 may also impose charges under R.C. 505.84 to cover the costs of providing ambulance services within the township.
2. Pursuant to R.C. 505.84 and subject to exceptions set forth therein, a township may charge nonresidents \$125 per run for ambulance services, and may charge residents a lesser fee, provided that the charges are reasonable and that the "authorized medicare reimbursement rate" established for the locality, as determined by the Medicare carrier, is equal to or less than \$125. The board of township trustees may at its discretion waive all or part of the charge for any resident.

<sup>3</sup> Only if ambulance and emergency medical services are discontinued in the township may the charges be used for any other purpose; in that case, remaining moneys shall be paid into the general fund of the township. R.C. 505.84. *See generally In re Transfer of Funds*, 52 Ohio App. 3d 1, \_\_ N.E.2d \_\_ (Montgomery County 1988).