

OPINION NO. 91-066**Syllabus:**

When, pursuant to R.C. 5709.73, a board of township trustees grants, by resolution, an exemption from real property taxation for "further improvements" to parcels of land benefited by a public improvement, the exemption applies to any increase in the true value of those parcels of land after the effective date of the resolution, including any increase attributable to the building of homes on the parcels.

To: James A. Philomena, Mahoning County Prosecuting Attorney, Youngstown, Ohio

By: Lee Fisher, Attorney General, December 31, 1991

You have requested an opinion regarding the application of the tax exemption available under "tax increment financing" pursuant to R.C. 5709.73-.75. Specifically, you ask whether "further improvements to a parcel of land" may include homes built thereon and thus be exempted from taxation as the parcels of land themselves may be."

I. Financing Public Improvements Within a Township

The provisions of R.C. 5709.73-.75 create a financing mechanism that a

township may use to pay for public improvements necessary for the development of land in the unincorporated area of the township. R.C. 5709.73 states, in part:

A board of township trustees may, by unanimous vote, adopt a resolution that declares to be a public purpose for any number of years not to exceed thirty any public improvements made that are necessary for the development of certain parcels of land located in the unincorporated area of the township. *Such resolution may exempt from real property taxation further improvements to a parcel of land which benefited from such public improvements.* The board of township trustees shall not take formal action to adopt a resolution that grants an exemption until section 5709.83 of the Revised Code has been complied with.¹ The exemption commences on the effective date of the resolution and ends on the date specified in the resolution as the date the improvement ceases to be a public purpose, or ends on the date on which such improvements are paid in full from the township public improvement tax increment equivalent fund established under section 5709.75 of the Revised Code, whichever occurs first. (Footnote and emphasis added.)

Pursuant to R.C. 5709.74, the township may then require the owner of benefited property to make annual service payments in lieu of taxes. The service payments are deposited in a township tax increment equivalent fund, which is then used by the township to pay for the public improvement. R.C. 5709.75

As stated in 1989 Op. Att'y Gen. No. 89-079 at 2-367, the term "any public improvement," as used in R.C. 5709.73-.75, is a broad one, and may encompass any change or addition that favorably affects the people or community as a whole. Thus, once a board of township trustees determines by unanimous resolution that the change or addition serves a public purpose, and is necessary to the development of land in the unincorporated area of the township, the board may provide a real property tax exemption for "further improvements" to a parcel of land that benefits from the public improvement embodied in the resolution.

II. Definition Of "Further Improvements"

R.C. 5709.73 states that, "[a]s used in this section and section 5709.74 of the Revised Code, 'further improvement' means the increase in the true value of the parcel of property in the unincorporated territory of the township after the effective date of the resolution." Thus, the exemption of R.C. 5709.73 pertains to the increase in true value of a parcel of land or property that benefits from the public improvement. As used in R.C. Title 57 (taxation), the terms "real property" and "land" include, *inter alia*, "land itself...and, unless otherwise specified, all buildings, structures, improvements, and fixtures of whatever kind on the land." R.C. 5701.02(A). *See generally Shutter Bug, Inc. v. Kosydar*, 40 Ohio St. 2d 99, 321 N.E.2d 239 (1974) (syllabus) ("[e]ven if a structure or building located on land is personal property, such structure or building will, for purposes of taxation, be included within the definition of 'real property' as that term is defined in R.C. 5701.02, unless the General Assembly has otherwise specified") (citation omitted). Thus, for purposes of real property taxation, the true value of a parcel of land or property reasonably means the value of both the land itself and any buildings, structures, improvements, and fixtures located on the land. It follows that, as used in R.C. 5709.73 and R.C. 5709.74, the tax exemption for "further improvements" is not limited to increases in true value attributable to the land alone, but also includes any increase in true value attributable to buildings, structures, improvements, and fixtures located on the benefited land.

This conclusion is entirely consistent with the purposes of R.C. 5709.73-.75. This legislative scheme was enacted "to permit townships to engage in providing needed public improvements and tax increment financing for the improvements." 1987-1988 Ohio Laws, Part II, 3539 (Sub. H.B. 390, eff. Oct. 20, 1987) (preamble).

¹ R.C. 5709.83 provides that, prior to taking certain formal actions regarding a tax exemption for property, the board of township trustees must provide the board of education in the school district where the property is located with notice and an opportunity to comment.

R.C. 5709.73 provides that the public improvement that serves as the basis for granting a real property tax exemption must be necessary for the development of the benefited parcels. The development that results from providing the public improvement will ordinarily result in an increase in the true value of those parcels. The provisions of R.C. 5709.73-.75, in essence, permit a township to anticipate this increase for purposes of funding the public improvement, and then, by way of annual service payments in lieu of taxes, to divert the resulting increased revenue from the tax rolls to the tax increment equivalent fund. *See State ex rel. Credit Life Ins. Co. v. City of Springfield*, 49 Ohio St. 3d 270, 273, 551 N.E.2d 1252, 1256 (1990) (interpreting a similar tax increment financing scheme available to municipalities under R.C. 5709.41-.43, and noting that the effect of an annual service payment in lieu of taxes is to transfer the tax receipts from the ordinary governmental recipients to the municipality alone). The township is thereby able to provide public improvements that it might not otherwise be able to fund. The success of this scheme thus depends on the increase in true value resulting from *development* of the land, a concept that includes more than increases in the value of the land alone.

III. Conclusion

It is, therefore, my opinion, and you are hereby advised that when, pursuant to R.C. 5709.73, a board of township trustees grants, by resolution, an exemption from real property taxation for "further improvements" to parcels of land benefited by a public improvement, the exemption applies to any increase in the true value of those parcels of land after the effective date of the resolution, including any increase attributable to the building of homes on the parcels.