

OPINION NO. 1255

Syllabus:

1. When a township police district is created by a board of trustees pursuant to Section 505.48, Revised Code, and such district does not include all of the township territory, no portion of the expenses of the district in providing police protection may be paid out of general funds of the township. However, those current expenses which the township trustees are authorized to incur by Sections 505.49, 505.50 and 505.54, Revised Code, may be incurred on behalf of the township as distinguished from on behalf of the police district alone, and if so incurred they may properly be considered expenses of the township rather than expenses of the police district.

2. When there is located within a township a municipality or part thereof, the portion of the township in which the municipality is located may not be included in the township police district.

3. When a township does not have located within it any municipality or portion thereof, the entire township may be created into a township police district under the provisions of Section 505.48, Revised Code. In such event, the authority to use the general funds of the township would be no different from that which exists when the police district consists of less than the entire unincorporated territory of the township.

To: Roger W. Tracy, Auditor of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, July 28, 1964

Your request for my opinion reads:

"Sections 505.48 through 505.55 of the Revised Code, were enacted effective September 24, 1963, to enable boards of township trustees to create police districts. Section 505.51 of the Revised Code provides that:

"The board of trustees of a township police district may levy a tax upon all of the taxable property in a township police district pursuant to sections 5705.19 and 5705.25 of the Revised Code to defray all or a portion of the expenses

of the district in providing police protection.'

"(1) If a township police district is created by the board of township trustees pursuant to Section 505.48, Revised Code, and the township police district does not include all of the township territory, in view of the holdings in 1940 OAG No. 2129, 1943 OAG No. 5798 and 1945 OAG No. 231, may any portion of the expense of the district in providing police protection, be paid out of the General Fund?

"(2) If there is located within the township a municipality, or part thereof, may the portion of the township in which the municipality is located be included in the township police district?

"(3) If the township does not have located within it any municipality or portion thereof, may the entire township be created into a township police district, and if so, may General Fund money be expended for any portion or all of the expense of a district so created?

"Your opinion on the above questions is respectfully requested."

After careful consideration it appears that in order to answer your inquiry I must first consider the meaning of the phrase "expenses of the district" as it appears in the statute and in your inquiry.

Section 505.48, Revised Code, authorizes the establishment of township police districts in the following language:

"The trustees of any township may, by resolution adopted by two-thirds of the members of the board, create a township police district comprised of all or a portion of the unincorporated territory of the township as the resolution may specify. If the township police district does not include all of the unincorporated territory of the township, the resolution creating the township police district shall contain a complete and accurate description of the territory of the district. The territorial limits of the township police district may be altered by a resolution adopted by a two-thirds vote of the board of trustees at any time one hundred twenty days after the district has been created and is operative. A township police district comprising only a part of the unincorporated territory of the township shall be given a separate and distinct name in the resolution authorizing its creation."

(Emphasis added.)

Section 505.49, Revised Code, provides for rules, regulations and the appointment of police officers as follows:

"The township trustees by a two-thirds vote of the board may adopt rules and regulations necessary for the operation of the township police district, including a determination of the qualifications of the chief of police, patrolmen, and others to serve as members of the district police force.

"The township trustees by a two-thirds vote of the board shall appoint a chief of police for the district, determine the number of patrolmen and other personnel required by the district, and establish salary schedules and other conditions of employment for the employees of the township police district. The chief of police of the district shall serve at the pleasure of the township trustees and shall appoint and remove patrolmen and such other personnel as the district may require, subject to the rules, regulations, and limits as to qualification, salary ranges, and numbers of personnel established by the township board of trustees. The township trustees may include in the township police district and under the direction and control of the chief of police, any constable appointed pursuant to section 509.01 of the Revised Code, or designate the chief of police or any patrolman appointed by him as a constable, as provided for in section 509.01 of the Revised Code, for the township police district."

Section 505.50, Revised Code, provides in part:

"The township trustees may purchase or otherwise acquire such police apparatus, equipment, including a public communications system, or materials as the township police district requires and may build, purchase, or lease such building or buildings and site thereof as are necessary for the operations of the district.

"The boards of trustees of any two or more contiguous townships, may, by joint agreement, unite in the joint purchase, maintenance, use, and operation of police equipment, for any other police purpose designated in sections 505.48 to 505.55, inclusive, of the Revised Code, and to prorate the expense of such joint action on such terms as are mutually agreed upon by the trustees in each affected township."

Section 505.54, Revised Code, provides:

"The board of trustees of the town-

ship may, upon nomination by the chief of police, send one or more of the officers, patrolmen, or other employees of the township police district to a school of instruction designed to provide additional training or skills related to the employees work assignment in the district. The trustees may make advance tuition payments for any employee so nominated and may defray all or a portion of the employee's expenses while receiving this instruction."

Section 509.01, Revised Code, to which Section 505.49, Revised Code, refers, reads:

"The board of township trustees may designate any qualified persons as police constables, and may provide such police constables, such automobiles, communication systems, uniforms, and police equipment as such board deems necessary. The board may pay each police constable, from the general funds of the township, such compensation as the board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing duties as a police constable. Such police constable shall not be paid fees in addition to the compensation allowed by the board for services rendered as a police constable. All constable fees provided for by section 509.15 of the Revised Code, where due for services rendered while the police constable performing such services is being compensated as a police constable for his performance, shall be paid into the general fund of the township."

And, lastly, Section 5705.01, Revised Code, contains the following:

"(A) 'Subdivision' means any county, municipal corporation, township, township police district, township fire district, township waste disposal district, or school district, except the county school district.

* * * * *

"(C) 'Taxing authority' or 'bond issuing authority' means, * * * in the case of a township, the board of township trustees; and in the case of a township police district, a township fire district, or a township waste disposal district, the board of township trustees of the township in which such district is located.

* * * * *

"(H) 'Taxing unit' means any subdivision

or other governmental district having authority to levy taxes on the property in such district, or issue bonds which constitute a charge against the property of such district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.!

"* * *

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* * *"

The provisions of Section 505.48, Revised Code, appear to contemplate only a single police district in a township which may or may not include all of the unincorporated territory of the township. However, that territory which is included within the police district takes on the status of a "Subdivision" and a "Taxing unit" and the board of township trustees becomes its "Taxing authority" as defined in Section 5705.01, Revised Code. It is this feature which creates much of the problem of interpretation, for if a township police district is a subdivision it must accordingly be an entity separate and apart from a township. As such it must, for example, establish the funds prescribed by Section 5705.09, Revised Code, which is a part of the Uniform Tax Levy Law for the purposes of which it is made a "Subdivision." It is also apparent that any levy enacted pursuant to the provisions of Sections 505.51, 5705.19 and 5705.25, Revised Code, can only apply to the property within the "accurate description of the territory of the district" as required by Section 505.48, Revised Code. This separation of entities, however, appears to be somewhat less than distinct in that apparently the members of the board of township trustees are to act also as trustees of the township police district. It may be argued from the first nine words of Section 505.51, Revised Code, that the board of township trustees is expected to function separately as a "board of trustees of a township police district." Otherwise, in view of the amendment to Section 5705.01, Revised Code, which was a part of Amended House Bill No. 744, said section might have been expected to have begun with the words "The taxing authority of a township police district may levy* * *." A similar distinction exists in other sections of this bill, i.e., Sections 505.51, 505.52 and 505.53, Revised Code, all employ the language "board of trustees of a township police district," whereas Sections 505.50 and 505.54, Revised Code, refer to "township trustees" and the "board of trustees of the township." Similarly it may now be noted that the authority given to township trustees in Section 505.49, Revised Code, relative to including township constables appointed pursuant to Section 509.01, Revised Code, in the township police district and to designating the chief of police of a township police district and any patrolman appointed by him as township police constables, is permissive, So also is the authority granted to township trustees by Sections 505.50 and 505.54, Revised Code, permissive. These sections are of interest because police constables appointed pursuant to Section 509.01, Revised Code, are specifically to be paid out of the township general fund. Also the expenditures authorized by Section 505.54, Revised Code, and those authorized by Section 505.50, Revised Code, to the extent that the latter are not for "improvements" or "permanent improvements" as defined in Section 5705.01 (E), Revised Code, or are within the purpose and intent of a general levy for current expenses as set forth in Section 5705.05, Revised Code, are current expenses and therefore payable

from the general fund. It may here be noted that the authorization of Section 505.50, Revised Code, is substantially similar to that of Section 509.01, Revised Code.

My conclusion from the foregoing is that the township trustees are permissibly authorized to assume certain expenses in connection with providing police protection for the township, which are payable from the township general fund. These are, specifically, the payment of constables appointed pursuant to Section 509.01, Revised Code, any current expense, which may be included in the authorization of Section 505.50, Revised Code, and the expenditure named in Section 505.54, Revised Code. The township trustees are, of course, not required to assume these expenses; however, it is my opinion that if they do in fact do so these specific expenses become, by virtue of the legislation discussed, township expenses and therefore cannot, after having been assumed by the township trustees, be deemed to be "expenses of the district."

With this view of "expenses of the district" in mind we may now examine Opinion No. 2129, Opinions of the Attorney General for 1940, to which you refer. That opinion dealt in part with whether a board of township trustees had authority to enter into a contract with a city for fire protection for a group of houses in that portion of a township adjacent to such city. The conclusion was that such a board could not enter into a contract which gave fire protection to a portion only of the township. The body of the opinion points up the inequitable situation that would exist if approval were given to an arrangement such as was inquired about. At page 327 appears the following:

"If a board of township trustees enters into a contract with a city for fire protection, the funds which the township would expend thereunder would necessarily be derived from taxation on all the taxable property in the township and the board of township trustees is certainly not authorized to use public funds obtained by taxation on all the property in the township to contract for fire protection for a portion only of the township, even though such portion may contain water mains and fire hydrants threaded to fit the fire fighting apparatus of the municipality with which the contract is made."

The 1943 and 1945 opinions to which you refer also involved situations as to fire districts and arose out of changes in the language of Section 3298-60, General Code, and related sections. However, the opinions were rendered prior to fire districts being specifically included within the meaning of "Subdivision" and "Taxing authority" in former Section 5705.01, Revised Code (see 122 Ohio Laws, 567).

My research has also included noting Opinion Nos. 2396 and 2692 of the Opinions of the Attorney General for 1950 in which the opinions to which you have called attention have been considered. Mention might also be made of Opinion No. 763 of the Opinions of the Attorney General for 1949 and Opinion No. 1101 of the Opinions of the Attorney General for 1952 which have some bearing on the situation.

By excluding those expenditures which the trustees are permitted to assume under Sections 505.49, 505.50 and 505.54, Revised Code, from "expenses of the district" no inequity results in the sense of the 1940 opinion, supra, for we have but excluded those things which the township trustees might otherwise provide for the township generally by the use of funds raised by taxes levied upon all of the property within the township, including that within the police district. Under this interpretation it is entirely conceivable that a township police district could exist without incurring any "expenses of the district," in which case, of course, the police protection afforded therein would be no different from the police protection afforded throughout the township generally, i.e., that afforded by constables appointed pursuant to Section 509.01, Revised Code.

Strictly speaking, no question of equity exists, for as has been pointed out the statute specifically permits the township trustees to pay certain expenses which have been discussed herein as township expenses. It may be concluded, without recourse to equity arguments, that having been authorized to do certain things the township trustees are not authorized to do others. Township trustees are, after all, creatures of statute and as such have only that authority specifically granted to them by statute, or necessarily implied from such grants. I find no basis for assuming that township trustees have any implied powers to use township general funds for any purpose relative to township police districts and therefore conclude that their power to do so is limited to that found in Sections 505.49, 505.50 and 505.54, Revised Code.

It would only be in a situation in which a police district is created and the township trustees do not assume the permissive expenses enumerated above, either from lack of available funds or lack of willingness of the electors of the township to approve the necessary levies, that such equitable argument could arise. In that situation the township trustees, acting as the board of trustees of the township police district, may levy a tax for these expenditures, or, for that matter, any other expenditures desired by the residents of the police district, and if such levy is approved by the electors of the district such expenditures would then be "expenses of the police district." The equitable principle stated in Opinion No. 2129, Opinions of the Attorney General for 1940, would then militate against the use of revenues derived from levies enacted pursuant to Section 505.51, Revised Code, for expenses of the township as distinguished from those of the police district and conversely, against the use of township general funds to pay "expenses of the district" which are properly payable from the proceeds of special levies.

The reasoning of Opinion No. 7010, Opinions of the Attorney General for 1956, provides what appears to be a proper guide. The syllabus of said opinion reads:

"Section 505.27, et seq., Revised Code, Section 3295-1, et seq., General Code, does not authorize a board of township trustees to expend general township funds for the purpose of providing and maintaining waste disposal service in a waste disposal district established as provided in Section 505.28, Revised Code, the board's expenditures for such pur-

pose being limited to funds raised by levying a sufficient tax therefor upon the taxable property in such district, or by charging rent as provided in Section 505.29, Revised Code."

In the text of said opinion this comment appears at page 650:

"It should be noted also that the funds of a waste disposal district are not the same as general township funds, but are, quite to the contrary, funds of a 'subdivision' and an independent 'taxing unit.' To allow township trustees to draw upon general township funds would be to enable them to create a method of supporting a waste disposal district that the legislature did not authorize."

I believe that the reasoning herein is consistent in that it permits the township trustees to draw upon the general township funds only to the extent authorized by the legislature, while at the same time it precludes the creation of a method of supporting a township police district which the legislature has not authorized.

It is arguable that the power contained in Section 505.51, Revised Code, to levy a tax to defray all or a portion of the expenses of the district for police protection reveals an intention to authorize some part of the expenses of the police district (in the context used herein) to be paid from another source, viz., township general funds. This argument is tenuous, however, and the more logical reasoning is that this language is merely a recognition that in certain instances revenues may be available by means other than tax levies, as for example, from contracts to furnish police protection to another township entered pursuant to Section 505.50, Revised Code.

Your second question calls for a consideration of the terms of Section 505.48, Revised Code, as hereinbefore set forth. The words "unincorporated territory" appear at several places in the section. If a municipality is located in whole or in part in a township, it follows that the area making up the municipality could hardly be regarded as "unincorporated territory" in the sense that it could be such for township police district purposes.

Further bearing on your second question is the fact that Section 715.05, Revised Code, provides that all municipal corporations may organize and maintain police and fire departments. Section 737.15, Revised Code, provides that each village shall have a marshal, designated chief of police. See also Section 737.161, Revised Code, as effective May 6, 1963, for right of a village to establish an auxiliary police unit and appointment of auxiliary police. Mention might also be made of Section 505.441, Revised Code, which provides:

"In order to obtain police protection, or to obtain additional police protection in times of emergency, any township may enter into a contract with one or more townships, municipal corporations, or county sheriffs upon such terms as are agreed to by

them, for services of police departments or use of police equipment, or the interchange of the service of police departments or use of police equipment within the several territories of the contracting subdivisions, if such contract is first authorized by respective boards of township trustees or other legislative bodies.

"* * *

* * *

* * *"

Apart from the foregoing, there is no statutory provision which would permit a police district to include as a part thereof all or any portion of a municipality lying within the township. I can think of no sound reason why there should be any merger of municipal territory with that for an intended police district. In view thereof a negative answer to your second question is required.

The first part of your third question likewise requires a consideration of the terms of aforesaid Section 505.48, Revised Code. I find no difficulty in concluding that its provisions authorize the creation of a single police district, viz., one that comprises the entire township, when there is no incorporated municipal territory in such township.

The second part of your third question must be answered in the same manner as your first question, as I find no authority in the statute for making a distinction on a basis of whether the township police district included all or only a portion of the unincorporated territory of the township.

In answer to your specific questions it is my opinion that:

(1) When a township police district is created by a board of trustees pursuant to Section 505.48, Revised Code, and such district does not include all of the township territory, no portion of the expenses of the district in providing police protection may be paid out of general funds of the township. However, those current expenses which the township trustees are authorized to incur by Sections 505.49, 505.50 and 505.54, Revised Code, may be incurred on behalf of the township as distinguished from on behalf of the police district alone, and if so incurred they may properly be considered expenses of the township rather than expenses of the police district.

(2) When there is located within a township a municipality or part thereof, the portion of the township in which the municipality is located may not be included in the township police district.

(3) When a township does not have located within it any municipality or portion thereof, the entire township may be created into a township police district under the provisions of Section 505.48, Revised Code. In such event, the authority to use the general funds of the township would be no different from that which exists when the police district consists of less than the entire unincorporated territory of the township.