

May 27, 2021

The Honorable James R. Flaiz  
Geauga County Prosecuting Attorney  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, Ohio 44024-1235

SYLLABUS: 2021-013

1. If a township's town hall is located in the same building as office space, and if the township proposes to renovate both the office space and the town meeting hall, R.C. 505.26 prevails over R.C. 511.01 whenever the majority of the cost of the work will be allocated to renovating office space.
2. The procedure set forth in R.C. 505.262 does not apply to improvements or renovations to an existing township building.



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OPINION NO. 2021-013

The Honorable James R. Flaiz  
Geauga County Prosecuting Attorney  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, Ohio 44024-1235

Dear Prosecutor Flaiz:

You requested an opinion regarding “the statutes that apply to a township project and whether any portion of that project requires voter approval.” Your letter states that Bainbridge Township and its Board of Township Trustees plans to renovate an existing township building that includes both the township meeting room and office and community space. I have framed your questions in the following manner:

1. If a township’s town hall is located in the same building as office space, and if the township proposes to renovate both the office space and the town meeting hall, does R.C. 505.26 prevail over R.C. 511.01 if the majority of the cost of the work will be allocated to renovating office space?
2. Does R.C. 505.262 apply to a renovation project for a township building that includes a township hall and township offices, or does that statute only apply to the “purchase” or “construction” of township buildings?

I

As I understand your request, Bainbridge Township is considering renovating an existing building that

includes both the township meeting room and office and community space. As described in your letter, less than half of the cost of the work will consist of “improvements to the township meeting room,” including “work on the trustee bench, floor replacement and technology upgrades.” Your letter estimates that the cost of the work on the township meeting room alone will be over \$50,000. The remainder of the work, and more than half of the cost, will consist of “reorganizing the lower level offices, community spaces, bathrooms, [and] storage spaces and creating a new executive conference room.” For purposes of this opinion, I will assume that this entire remainder consists of work on areas that are part and parcel of, and can be fairly deemed, “office space.” (I cannot make a factual conclusion on the matter, because factfinding is beyond the scope of my power to issue legal opinions. *See* 1986 Op. Att’y Gen. No. 86-039, at 2-198; 1983 Op. Att’y Gen. No. 83-057, at 2-232.)

You identify two statutes that might govern this situation, and ask which ought to prevail. The first, R.C. 505.26, provides:

[¶1] The board of township trustees may purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish, and equip a township hall ...

[¶2] ...

[¶3] If sufficient space for township offices is not available, the board of township trustees may purchase, lease, or construct, and furnish, equip, and maintain office space. When such offices are to be provided by construction, a site upon which to erect such offices may be acquired by purchase, lease for twenty-five years or longer, or otherwise. The cost of providing such office space shall

be paid out of funds in the township treasury. If sufficient funds are not available the board shall proceed as provided in sections 511.01 to 511.04 of the Revised Code.

R.C. 511.01, for its part, provides:

If, in a township, a town hall is to be built, improved, enlarged, or removed at a cost greater than fifty thousand dollars, the board of township trustees shall submit the question to the electors of such township and shall certify their resolution to the board of elections not later than four p.m. of the ninetieth day before the day of the election.

As these statutes show, a board of township trustees may itself authorize a project permitted by R.C. 505.26. *See* R.C. 505.26 ¶3. In contrast, a program carried out under R.C. 511.01 over the cost threshold specified in that statute *must* be submitted to the electors of the township.

Your proposed project implicates both statutes. The proposed project entails (at least) constructing, furnishing, equipping, and maintaining office space, thus implicating R.C. 505.26. And it also entails (at least) improving a town hall, thus implicating R.C. 511.01. *See* Black's Law Dictionary 907 (11th Ed.2019) (defining "improvement" to mean: "An addition to property, usu. real estate, whether permanent or not; esp., one that increases its value or utility or that enhances its appearance.") While neither statute defines these verbs, their plain meaning controls, *see* R.C. 1.42, and that plain meaning covers the project you describe.

Critically, I am not interpreting these statutes on a blank slate. In 1969, a predecessor of mine considered which statute applies to a project that consists of work

to a single building that contains *both* a town hall and office space. 1969 Op. Att’y Gen. No. 69-132. My predecessor determined that, when “the major portion of the cost” is “allocated” to work on the meeting hall, the project is covered by R.C. 511.01. In contrast, when “the major portion of the cost” is “allocated to the office space” in the town hall, it is governed by 505.26. *See* 1969 Op. Att’y Gen. No. 69-132 at 2-287, syllabus. Whether or not my predecessor was correct as an original matter, the General Assembly has repeatedly amended the relevant statutes without changing any of the relevant language. *See* Am. Sub. H.B. No. 847, 113th Gen. A. (1980), at 3777; Am. Sub. H.B. No. 1062, 113th Gen. A. (1981), at 4604; Am. H.B. No. 717, 118th Gen. A. (1990), at 6386-87; Am. Sub. H.B. No. 48, 128th Gen. A. (2010), at 59; Am. Sub. H.B. No. 153, 129th Gen. A. (2011), at 538. That matters because, when “administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations.” *Bragdon v. Abbott*, 524 U.S. 624, 625, 118 S.Ct. 2196, 141 L.Ed.2d 540 (1998). Therefore, just as the General Assembly is presumed to legislate against the background of the Supreme Court’s interpretations, *see Obetz v. McClain*, Slip Opinion No. 2021-Ohio-1706, ¶21, it should also be presumed to legislate against the background of the Attorney General’s past interpretations. Because the General Assembly re-enacted identical language many times in the decades following my Office’s 1969 interpretation, and because the General Assembly was presumptively aware of the 1969 interpretation, the statutory language is best interpreted to incorporate that interpretation.

Your letter explains that the major cost of the project will be dedicated to office space, not to the township meeting hall. As such, between these two statutes, R.C. 505.26 ¶3 applies and prevails over R.C. 511.01.

II

You also ask whether the township can pursue the proposed project using the procedure laid out in R.C. 505.262. The answer is “no.”

Start with the text. R.C. 505.262, initially enacted later than the other two statutes discussed in this opinion, provides:

(A) Notwithstanding division (D) of section 505.37 of the Revised Code or any other statute of this state, the board of township trustees of any township, by unanimous vote, may adopt a resolution allowing the township to contract for the purchase of equipment, buildings, and sites, or for the construction of buildings, for any lawful township purpose. The board may issue, by resolution adopted by unanimous vote, securities of the township to finance purchases and construction made pursuant to this division. The securities shall be signed by the board and attested by the signature of the township fiscal officer, and the maximum maturity of those securities is subject to the limitations in section 133.20 of the Revised Code. The securities shall bear interest not to exceed the rate determined as provided in section 9.95 of the Revised Code and shall not be subject to Chapter 133. of the Revised Code. The resolution authorizing the issuance of the securities shall provide for levying and collecting annually by taxation, amounts sufficient to pay the interest on and principal of the securities. The securities may contain a clause permitting prepayment at the option of the board. Securities shall be offered for sale on the open market or given to the vendor or contractor if no sale is made.

(B) No purchase or construction pursuant to division (A) of this section shall be undertaken unless the county auditor certifies that, if the purchase or construction is undertaken, the debt service charge for the purchase or construction in the first year, together with the debt service charge for that same year for any other purchase or construction already undertaken pursuant to division (A) of this section, does not exceed one-tenth of the township's total revenue from all sources. If the county auditor so certifies, in every year of the debt after the first year, the county budget commission shall include a debt charge in the township's annual tax budget submitted pursuant to sections 5705.01 to 5705.47 of the Revised Code sufficient to meet the annual debt incurred pursuant to division (A) of this section, if the debt charge is omitted from the budget.”

R.C. 505.262 alters the authority set forth in R.C. 511.01 and 505.26 in limited circumstances. It provides that the board of township trustees may adopt a resolution by a unanimous vote to authorize the township “to contract for the purchase of equipment, buildings, and sites, or for the construction of buildings, for any lawful township purpose[,]” “[n]otwithstanding . . . any other statute of this state.” R.C. 505.262(A). That statute also permits the trustees, by unanimous vote, to issue notes to finance the purchase or construction authorized by that section, subject to certain limitations set forth in the statute. *See* R.C. 505.262(A), (B). A previous opinion has explained that the procedure in R.C. 505.262 is “separate and distinct from other statutory methods” to finance the covered projects. 1990 Op. Att’y Gen. No. 90-010, at 2-45. Accordingly, the opinion concluded that pursuant to R.C. 505.262, the board of township trustees “may, by unanimous adoption of a resolution,

authorize the township to acquire or construct a town hall, without approval of the electorate under R.C. 511.01. . .” 1990 Op. Att’y Gen. No. 90-010, at 2-45.

I need not address how R.C. 505.262 interacts with the previously discussed statutes, because I conclude that R.C. 505.262 does not apply to the project described in your letter. The authority of a board of township trustees under R.C. 505.262 is limited to contracting for the “purchase” of equipment, buildings and sites, or “the construction of buildings,” for any lawful purpose. The proposed project does not entail the purchase of equipment, buildings, or sites. Nor does it involve “the construction of buildings.” The statute does not define the meaning of this phrase, and so I look to ordinary meaning. In ordinary English, as in the law, the verb “to construct” generally means something like, “to build.” *See State ex rel. Celebrezze v. Natl. Lime & Stone Co.*, 68 Ohio St.3d 377, 382, 1994-Ohio-468, 627 N.E.2d 538 (citing Black’s Law Dictionary 542 (6th Ed.1990); *accord* Webster’s New International Dictionary of the English Language 572 (2d Ed.1945) (“To put together the constituent parts of (something) in their proper place and order; to build; form; make; as, to *construct* an edifice.”) But R.C. 505.262 covers only the “construction *of buildings*.” In ordinary parlance, the phrase “construction of buildings” means the bringing of buildings into existence—the putting together of their constituent parts—not to the altering of previously existing buildings. No one renovating a kitchen in his house or a waiting room at his business would describe the activity as involving the “construction of [a] building[].” And here, it would be most unnatural to describe the project outlined in your letter as the construction of a building. It could be fairly described as construction *of certain features* in a building—offices, community space, and so on. *See above* pgs. 1–2. But the statute here speaks only to the construction *of a building*.

Because the proposed project does not involve the construction of a building, R.C. 505.262 does not apply.



Conclusion

Accordingly, it is my opinion, and you are hereby advised as follows:

1. If a township's town hall is located in the same building as office space, and if the township proposes to renovate both the office space and the town meeting hall, R.C. 505.26 prevails over R.C. 511.01 whenever the majority of the cost of the work will be allocated to renovating office space.
2. The procedure set forth in R.C. 505.262 does not apply to improvements or renovations to an existing township building.

Respectfully,



DAVE YOST  
Ohio Attorney General