

**OPINION NO. 89-010****Syllabus:**

Moneys derived from a township fire levy pursuant to R.C. 5705.19(I) and paid to a private fire company as reasonable compensation for fire and rescue services may be expended by the private fire company for any proper purpose of the company, including litigation relating to the construction and operation of the contract under which the moneys were paid to the fire company, except to the extent that the terms of the contract restrict the purposes for which the fire company may expend the moneys.

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To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, February 23, 1989

I have before me your request for an opinion concerning the use of certain township moneys paid to a private volunteer fire company pursuant to a contract for fire protection services. You have described a situation in which a township has contracted with a private volunteer fire company for the fire company to provide fire and rescue services to the township. The contract includes the following provisions concerning the money to be paid by the township to the fire company for the provision of such services:

1. The Trustees shall provide for the Fire Company the sum of Sixty Three Thousand Sixteen Dollars (\$63,016.00) for the calendar year of 1985. Any additional amounts derived from the fire tax levies in effect in Crosby Township shall be appropriated by the [Trustees] for the purposes of fire protection and the life squad services pursuant to the terms of the fire levies upon the advice of the Fire Company. Payments to the Fire Company shall be at the regular meetings of the Trustees, upon receipt from the Fire Company of purchase orders and/or receipts for expenditures authorized by the terms of the township fire levies.

....  
12. The additional funds paid to the Fire Company under this contract, due to a tax levy approved in November of 1984, which represents Fifty-Five Percent (55%) of the total monies due the Fire Company under this contract shall be expended solely for additional equipment purchases and the training and equipping of volunteer firefighters and life squad persons and shall be maintained by the township in a fund separate from the operating levy fund.

13. The term of this contract shall be for a period of three years commencing on February 1, 1985, and ending 12:00 a.m. February 1, 1988 unless terminated pursuant to the provisions of the following paragraph. The monetary amount of this contract for 1986 and 1987 (if necessary) shall be stated in a monetary figure equivalent to ninety six percent (96%) of the dollars available from the fire tax levies for Crosby Township as certified by the Hamilton County Auditor in January of each year.

You have informed me that moneys derived from the township fire levies may, after receipt by the fire company, have been expended to pay the cost of litigation against the township with regard to the contract, and you have inquired as to the propriety of such a use of the levy proceeds. Your specific question is whether funds derived from a township fire levy pursuant to R.C. 5705.19(I) and paid to a private fire company under the terms of a particular contract may "be properly expended for the

purpose of paying the costs of litigation regarding the construction and operation of the contract and directed against the township."

I note, first, that I am unable to use the opinion-rendering function to make findings of fact or to determine the rights of parties to a particular contract. As I stated in 1983 Op. Att'y Gen. No. 83-087 at 2-342: "I am without authority to render an opinion interpreting a particular agreement or contract. The determination of particular parties' rights is a matter which falls within the jurisdiction of the judiciary, which I, as an executive officer, am unable and unwilling to usurp." See also 1988 Op. Att'y Gen. No. 88-076 at 2-371 ("it is inappropriate to use a formal opinion of the Attorney General as a means for determining the rights of particular persons under specific contractual provisions"); 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary"). In issuing this opinion I am, accordingly, considering the general principles of law that may be applicable to the issues that you have raised. I am not attempting to determine whether there has been compliance with the contract in question or what rights either party may have under that contract.

You have informed me that your question has arisen in connection with the audit of a township. See generally R.C. 117.10-.13; R.C. 117.18-.44. It appears that your question is whether a township may properly pay the tax levy moneys in question to a private fire company and whether any statutory restrictions limit the expenditure of the moneys by the fire company.

R.C. 9.60 authorizes a contract between a township and a private fire company under which the private fire company provides the township with fire protection, including ambulance, emergency medical, and rescue service. See also R.C. 505.37. You have indicated that the moneys to be paid to the private fire company have been derived from a levy pursuant to R.C. 5705.19(I). R.C. 5705.19(I) authorizes a levy in excess of the ten-mill limitation, see Ohio Const. art. XII, §2; R.C. 5705.02, for the following purpose:

For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of permanent, part-time, or volunteer firemen or fire fighting companies to operate the same, including the payment of the firemen employer's contribution required under section 742.34 of the Revised Code, or to purchase ambulance equipment, or to provide ambulance or emergency medical services operated by a fire department or fire fighting company....

While it is not immediately clear from the language of R.C. 5705.19(I) that moneys derived from a levy thereunder may be used to pay a private fire company to provide fire protection services with its own fire apparatus and appliances, the provision has been so construed. I considered its history in 1983 Op. Att'y Gen. No. 83-069 and concluded, in the first paragraph of the syllabus, that "[a] board of township trustees may use funds derived from a tax levy adopted under R.C. 5705.19(I) to pay a private volunteer fire company to operate fire apparatus and appliances which are owned by the private volunteer fire company." R.C. 5705.19(I) expressly authorizes the expenditure of moneys derived thereunder "to provide ambulance or emergency medical services operated by a fire department or fire fighting company." I conclude, accordingly, that moneys derived from a levy under R.C. 5705.19(I) may be paid by a township to a private fire company in exchange for fire and rescue services.

In general, amounts paid by a public body to a private entity in exchange for goods or services become the property of the private entity and may be expended by that entity for any purpose for which it may properly expend its money. See generally, e.g., 1988 Op. Att'y Gen. No. 88-045; Op. No. 83-069. In the situation that you have described, the township is authorized to pay the private fire company a reasonable amount for fire and rescue services. Nothing in R.C. 5705.19(I) restricts the purposes for which the private fire company may expend the moneys that it receives from the township for such services. It follows that, when the township pays tax levy moneys to a private fire company pursuant to a proper

contract, the moneys so paid are available for expenditure by the private fire company. As was stated in Op. No. 83-069:

[T]here is clear authority for a township to contract with a "[p]rivate fire company,"....No statutory limitations are placed upon the terms which such contracts may include. Subject to the standard of abuse of discretion, a board of township trustees may, therefore, agree to such terms and conditions as it deems appropriate. See generally 1980 Op. Att'y Gen. No. 80-028 (concerning discretion of township trustees in entering into a lease); 1928 Op. [Att'y Gen. No. 2955, vol. IV, p. 2736]. I am aware of no principle of law which would prohibit a board of township trustees from including terms and conditions which may result in making township funds available for the purchase of property or maintenance services for the fire company, provided, of course, that the payments made by the township are reasonable compensation for the services to be rendered.

Op. No. 83-069 at 2-287 (footnote omitted).

Op. No. 83-069 notes the principle that, absent a specific grant of authority, a township may not simply donate tax funds to a private individual or corporation. See, e.g., *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918); *Markley v. Village of Mineral City*, 58 Ohio St. 430, 51 N.E. 28 (1898); see also 1982 Op. Att'y Gen. No. 82-024. It notes, in addition, the provisions of Ohio Const. art. VIII, §6 that prohibit a township from raising money for, or lending its credit to, a private enterprise. "A contract which provides benefits to a private company which are disproportionate to those received by the township, or which inextricably mingles assets of the two bodies, see 1979 Op. Att'y Gen. No. 79-101, may run afoul of this provision. See 1981 Op. Att'y Gen. No. 81-093; 1977 Op. Att'y Gen. No. 77-049." Op. No. 83-069, at 2-287 n. 4; see also Ohio Const. art. VIII, §4; 1973 Op. Att'y Gen. No. 73-086. Exceptions to the lending credit prohibitions have been recognized where the recipient of public moneys is a nonprofit entity and the moneys are used for a public purpose. See, e.g., *Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864, appeal dismissed, 301 U.S. 601 (1968); *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955); 1985 Op. Att'y Gen. No. 85-011. Exceptions have also been established pursuant to constitutional provisions. See Ohio Const. art. VIII, §13. The question of lending credit is, however, not raised in a situation in which the money paid by a township to a private fire company constitutes reasonable compensation for the services rendered. See, e.g., 1984 Op. Att'y Gen. No. 84-080 at 2-272 ("the evil sought to be avoided by the lending credit provisions of the Ohio Constitution is...the payment of funds to private entities where no services are to be rendered in return, or where the governmental body seeks to enter into a joint venture with the private entity"). Such an arrangement does not constitute a lending of the credit of the township but, rather, a purchase of services, and the money is available to the private fire company for any purpose for which the private fire company may properly expend its funds, unless the terms of the contract restrict the purposes for which the money may be used.

You have raised a question concerning the expenditure of certain moneys that were paid to a private fire company under the terms of a particular contract. If the moneys were properly paid to the fire company, in accordance with the terms of the contract, as reasonable compensation for services rendered, they became the property of the fire company. The restriction on the purpose for which moneys derived under R.C. 5705.19(I) may be expended was satisfied when the moneys were paid to the fire company in exchange for fire and rescue services. The moneys then became available for expenditure by the fire company for any purpose for which the company was authorized to expend its funds. The materials that you have provided indicate that the fire company in question is a nonprofit corporation, organized and existing under the laws of Ohio for purposes relating to the provision of fire protection and emergency medical services. See also R.C. 9.60. Pursuant to R.C. 1702.12(A), a nonprofit corporation is authorized to sue and be sued. Such a corporation may, accordingly, litigate its rights under a contract to which it is a party. Absent some indication that the litigation is frivolous, expenses relating to litigation appear to constitute proper expenditures of moneys of the corporation. Absent a valid restriction on the expenditure of the moneys in question, they may be expended for such litigation expenses.

The facts with which you are concerned suggest that the terms of the contract may operate to restrict the purposes for which the private fire company may expend the moneys that it receives under the contract. As discussed above, I am unable, by means of this opinion, to track the expenditure of particular moneys or to determine the extent to which the contract restricts the expenditure of funds by the private fire company. It appears, however, that the contract purports to provide for the transfer to the fire company of all or nearly all the funds derived by the township from its fire levies. The contract provides that the township shall pay moneys to the fire company "upon receipt from the Fire Company of purchase orders and/or receipts for expenditures authorized by the terms of the township fire levies." Moneys paid without the required documentation may have been paid improperly. The contract further provides that certain funds may be expended "solely for additional equipment purchases and the training and equipping of volunteer firefighters and life squad persons." There is some ambiguity in the contract as to whether this restriction applies to expenditure by the township or expenditure by the fire company, since it speaks of funds "paid to the Fire Company" but states also that the funds "shall be maintained by the township in a fund separate from the operating levy fund." I am unable to resolve this ambiguity by means of this opinion, but I can conclude generally that, if the moneys were properly paid to the private fire company under the contract, the private fire company was entitled to expend them for any purpose that was consistent with its powers and not in violation of contractual provisions.

It is, therefore, my opinion, and you are hereby advised, that moneys derived from a township fire levy pursuant to R.C. 5705.19(I) and paid to a private fire company as reasonable compensation for fire and rescue services may be expended by the private fire company for any proper purpose of the company, including litigation relating to the construction and operation of the contract under which the moneys were paid to the fire company, except to the extent that the terms of the contract restrict the purposes for which the fire company may expend the moneys.