

Note from the Attorney General's Office:

1988 Op. Att'y Gen. No. 88-074 was overruled in part by
2004 Op. Att'y Gen. No. 2004-032.

OPINION NO. 88-074**Syllabus:**

1. When a village becomes part of a township fire district pursuant to R.C. 505.37(C), the township fire district is governed by the board of township trustees, the township clerk is responsible for keeping records for the district, and legal questions may be addressed to the county prosecutor or other legal counsel for the township.
 2. When a board of township trustees and the legislative authority of a village agree pursuant to R.C. 505.37(B) to undertake joint action to provide fire protection services or facilities, or contract pursuant to R.C. 9.60 to provide or obtain fire protection services, apparatus, or equipment, each participant must perform the tasks that relate to its duties under the agreement, and each may call upon its own legal counsel for advice. The participants may allocate duties of record keeping relating to the joint activity or contractual relationship in such manner as they see fit.
 3. When a township and a village create a joint fire district pursuant to R.C. 505.371, the joint fire district is governed by a board of fire district trustees, which includes representatives of the township and village. The board is required to employ a clerk to serve as its fiscal officer and to keep its records, and the board is authorized to employ an attorney to provide it with legal advice.
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To: Phillip S. Schneider, Champaign County Prosecuting Attorney, Urbana, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 13, 1988

I have before me your request for an opinion concerning the provision of fire protection in a township and village. Your letter of request states:

This office is requesting an opinion regarding the Johnson Township Fire District Board's keeping of records. In 1953, a joint fire district was created between Johnson Township and the Village of St. Paris, Ohio. Fire levies are currently being run by each subdivision and at present monies are received from each subdivision but the record keeping is being done by the Township. The township clerk requests an opinion as to the proper procedure for handling the interests and monies of the Fire District Board. The township also requests opinions on the creation of an actual Fire District Board whose directors would control the book work now done by the Township and such a subdivision's right to hire private counsel.

The township clerk has informed my staff that the village is not located completely within the township.

It is not clear from your request precisely what type of arrangements are in effect in the township and village in question. I am unable, by means of an opinion, to untangle what may be a confusing factual situation. *See, e.g.*, 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"). I am, however, able to outline the various types of arrangements that are authorized by statute, so that the entities that are involved can determine which are currently in effect and which will best suit their purposes.

There are three different statutorily-authorized arrangements by which a township and a village may join to provide fire protection. The village may become part of a township fire district, *see* R.C. 505.37(C); the legislative authority of the village and the board of township trustees may undertake joint action or make other contractual arrangements, *see* R.C. 9.60; R.C. 505.37(B); or the township and village may create a joint fire district, *see* R.C. 505.371. Each of these arrangements is organized in a different manner, and I shall discuss each in turn.

I consider first the creation of a township fire district. R.C. 505.37(C) authorizes the board of township trustees of any township, "by resolution, whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence, [to] create a fire district of any portions of the township that it considers necessary." R.C. 505.37(C) requires that a fire district so created be given a separate name. Similar language was in effect in 1953. *See* 1951 Ohio Laws 397 (Am. H.B. 244, approved June 8, 1951). A township fire district may, thus, include a village that is located wholly within the township.

A township fire district created pursuant to R.C. 505.37(C) is governed by the board of township trustees that has created the fire district. *See, e.g.*, R.C. 9.60(A)(3) ("['g]overning board' means...the board of township trustees in the case of a township or township fire district..."); R.C. 505.37(C), (D), (E); R.C. 505.38; R.C. 505.39; R.C. 505.40; R.C. 505.42; R.C. 5705.01(C) (including the board of township trustees of the township in which the district is located as the "'taxing authority' or 'bond issuing authority'" of a township fire district); R.C. 5705.19-.191; 1957 Op. Att'y Gen. No. 153, p. 18. Expenses of the district are borne only by the portion of the township that is located within the district. *See, e.g.*, R.C. 505.39; R.C. 505.40; R.C. 5705.01(A) (including a township fire district as a "subdivision"); R.C. 5705.19-.191; 1987 Op. Att'y Gen. No. 87-040; 1952 Op. Att'y Gen. No. 1101, p. 50; 1950 Op. Att'y Gen. No. 2396, p. 685; 1948 Op. Att'y Gen. No. 3957, p. 524; 1945 Op. Att'y Gen. No. 231, p. 195 (overruled in part on other grounds by 1969 Op. Att'y Gen. No. 69-014); 1943 Op. Att'y Gen. No. 5798, p. 44. *See generally* 1988 Op. Att'y Gen. No. 88-036. In administering the functions of a township fire district, the trustees act only on behalf of the portion of the township comprising the district. *See* 1950 Op. No. 2396; 1948 Op. No. 3957. They do, however, act in their statutory capacities as township trustees. It appears that the township clerk is,

similarly, responsible as part of his statutory duties for attending to functions of a township fire district. *See, e.g.*, R.C. 507.04 (requiring the township clerk to keep an accurate record of all accounts and transactions of the board of township trustees); R.C. 507.07; R.C. 5705.01(D). For example, R.C. 505.40 authorizes the board of township trustees to issue bonds as provided in R.C. 133.09-.13 upon approval by vote of the people in a township fire district. R.C. 505.42 states: "The proceeds of bonds issued under [R.C. 505.40], other than any premium and accrued interest which is credited to the sinking fund, shall be placed in the township treasury to the credit of a fund to be known as 'the fire equipment fund'." The bonds are, accordingly, administered in the same manner as bonds issued on behalf of the entire township. It follows that the township clerk has the same responsibilities for record keeping and paper work of a township fire district that he has for the record keeping and paper work of the township as a whole. It appears, similarly, that legal questions involving the operations of a township fire district should be addressed to the county prosecutor or other legal counsel for the township. *See* R.C. 309.09 (the prosecuting attorney is the legal adviser for township officers, but a board of township trustees may employ additional legal counsel when the board deems it advisable or necessary).

As amended by Am. H.B. 432, 117th Gen. A. (1987) (eff. July 20, 1987), R.C. 505.37(C) authorizes a municipal corporation that is within or adjoining the township to become part of a township fire district, as follows:

A municipal corporation that is within or adjoining the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition and the municipal legislative authority's adoption of a resolution or ordinance requesting the addition of the municipal corporation to the fire district.

If the township fire district imposes a tax, additional unincorporated territory of the township or a municipal corporation that is within or adjoining the township shall become part of the fire district only after all of the following have occurred:

(1) Adoption by the board of township trustees of a resolution approving the expansion of the territorial limits of the district and, if the resolution proposes to add a municipal corporation, adoption by the municipal legislative authority of a resolution or ordinance requesting the addition of the municipal corporation to the district;

(2) Adoption by the board of township trustees of a resolution recommending the extension of the tax to the additional territory;

(3) Approval of the tax by the electors of the territory proposed for addition to the district.

Each resolution of the board adopted under division (C)(2) of this section shall state the name of the fire district, a description of the territory to be added, and the rate and termination date of the tax, which shall be the rate and termination date of the tax currently in effect in the fire district.

Under such circumstances, the fire district continues to be governed by the board of township trustees, and the township clerk retains responsibility for keeping records for the district.

The statutory provisions in effect in 1953 permitted the creation of a township fire district including a municipality that was located wholly within the township. *See* 1951 Ohio Laws 397 (Am. H.B. 244, approved June 8, 1951); 1969 Op. Att'y Gen. No. 69-014. They did not, however, permit the creation of a township fire district including any territory located outside the township. *See* Am. H.B. 244 (authorizing a board of township trustees to create a fire district only of "portions of the township"); Op. No. 69-014; 1945 Op. No. 231.

I turn now to the statutes authorizing joint action and other contractual arrangements between a township and a village for fire protection purposes. R.C. 505.37(B) authorizes a township and a village to undertake joint action to provide fire protection services, as follows:

The boards of township trustees of any two or more townships, or the legislative authorities of any two or more political subdivisions, or

any combination thereof, may, through joint action, unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in sections 505.37 to 505.42 of the Revised Code, and may prorate the expense of the joint action on any terms that are mutually agreed upon.

This provision existed in essentially the same form in 1953. *See* 1951 Ohio Laws 397 (Am. H.B. 244, approved June 8, 1951). Pursuant to R.C. 505.37(B), the board of trustees of a township and the legislative authority of a village may, through joint action, provide fire protection services and facilities and prorate the expense on any terms that are mutually agreed upon. *See, e.g.,* Op. No. 69-014; 1954 Op. Att'y Gen. No. 4093, p. 375; 1940 Op. Att'y Gen. No. 2520, vol. 1, p. 677.

It appears that, in entering into joint action pursuant to R.C. 505.37(B), the township trustees are authorized to act either on behalf of the entire township or on behalf of a township fire district. *See* R.C. 505.37(C). One of my predecessors considered the authority of a township fire district to act jointly with a municipality, as follows:

[A]s to the authority of boards of trustees of the townships in which fire districts have been set up, to act jointly with the council of a village in providing for the purchase and maintenance of fire equipment, it appears to me that the intent of [G.C.] Section 3298-54 [now R.C. 505.37], is to authorize joint arrangements between township trustees and municipalities for the purchase, maintenance, use and operation of fire fighting equipment either for the entire area of such townships or for such fire districts as the trustees may have carved out. While the language of said Section 3298-54 does not specifically state that a township may contract for such joint purchase and operation in behalf of a fire district in such township, yet the whole purpose of the section is to permit a joint arrangement for fire protection and the entire section indicates an intention to give the trustees discretion in providing such protection either for the entire township or for a certain portion thereof. Furthermore, unless it may make such contract, it would seem that a township would be unable to avail itself of the power conferred by the section in contracting with a village within its own boundaries for joint installation, since the portion of the township outside the village would have to be set up as a fire district, to avoid imposing a double burden upon the taxpayers of the village.

1945 Op. No. 231 at 199. *But see* 1950 Op. No. 2396 at 687 (predecessor to R.C. 505.37(B) "relates to cooperative action between two or more political subdivisions and does not include in its terms any provisions for contracts by a fire district with any political subdivision"); 1948 Op. No. 3957 at 525 (G.C. 3298-54 "contemplates cooperative action between two or more *political subdivisions* and does not include in its terms any contracts by a fire district with any political subdivision").

R.C. 9.60 authorizes various entities, including townships, township fire districts, and villages, to enter into contracts to provide fire protection. It includes as "fire protection" the extension of the use of firefighting apparatus or equipment. R.C. 9.60 states, in part:

(A) As used in this section:

(1) "Firefighting agency" means a municipal corporation, township, township fire district, joint ambulance district, or joint fire district.

(2) "Private fire company" means any nonprofit group or organization owning and operating firefighting equipment not controlled by any firefighting agency.

(3) "Governing board" means the board of county commissioners in the case of a county; the legislative authority in the case of a municipal corporation; the board of trustees of a joint ambulance district in the case of a joint ambulance district; the board of township trustees in the case of a township or township fire district; the board of fire district trustees in the case of a joint fire district; and the

board of trustees in the case of a private fire company.

(4) "*Fire protection*" includes the provision of ambulance, emergency medical, and rescue service by the fire department of a firefighting agency or by a private fire company and *the extension of the use of firefighting apparatus or firefighting equipment*.

(B) *Any firefighting agency or private fire company may contract with any state agency or instrumentality, county, or political subdivision of this state or with a governmental entity of an adjoining state to provide fire protection, whether on a regular basis or only in times of emergency, upon the approval of the governing boards of the counties, firefighting agencies, political subdivisions, or private fire companies or the administrative heads of the state agencies or instrumentalities that are parties to the contract.*

(C) *Any county, political subdivision, or state agency or instrumentality may contract with a firefighting agency of this state, a private fire company, or a governmental entity of an adjoining state to obtain fire protection, whether on a regular basis or only in times of emergency, upon the authorization of the governing boards of the counties, firefighting agencies, political subdivisions, or private companies or administrative heads of the state agencies or instrumentalities that are parties to the contract. (Emphasis added.)*

Pursuant to R.C. 9.60, a board of township trustees, on behalf of either the entire township or a township fire district, and the legislative authority of a village may agree to share the use of firefighting apparatus or equipment or to provide one another with firefighting services. *See generally* 1981 Op. Att'y Gen. No. 81-027. Predecessor provisions to R.C. 9.60, in effect in 1953, authorized a township or township fire district to contract with a village, for a period not to exceed three years, for the provision or interchange of fire services or apparatus. *See* 1951 Ohio Laws 587 (Am. H.B. 533, approved June 12, 1951); 1951 Ohio Laws 397 (Am. H.B. 244, approved June 8, 1951).

A governmental body undertaking joint action pursuant to R.C. 505.37 or entering into a contract pursuant to R.C. 9.60 does not become part of another legal entity. *See, e.g.,* 1958 Op. Att'y Gen. No. 3150, p. 739; 1950 Op. Att'y Gen. No. 2307, p. 633; 1940 Op. No. 2570. *See generally* 1987 Op. Att'y Gen. No. 87-003. Rather, it simply agrees to cooperate with one or more other bodies in performing particular activities and in allocating the costs of those activities among the participants. No statutory provision specifies who is to handle the record keeping for such activities. It appears, accordingly, that the entities may decide whether the township clerk, the village clerk, or some other person is to be responsible for particular aspects of keeping records and carrying out necessary paper work relating to a joint agreement or other contract. *See, e.g.,* Op. No. 69-014 at 2-19 (the "scope or structure" of joint action under R.C. 505.37 "is not defined" by statute); 1958 Op. No. 3150. Each participant in a joint arrangement and each party to a contract must, of course, perform those tasks that relate to its duties under the agreement. *See, e.g.,* 1945 Op. No. 231 at 200 ("[t]he expense incident to such joint arrangement would be borne by each contracting subdivision in the proportion agreed upon..."). Further, each participant may call upon its own legal counsel if questions arise. *See* R.C. 309.09; R.C. 733.48 ("[w]hen it deems it necessary, the legislative authority of a village may provide legal counsel for the village..."). *See generally* 1924 Op. Att'y Gen. No. 1213, vol. I, p. 82 and 1920 Op. Att'y Gen. No. 1641, vol. II, p. 1065 (under statutory scheme then in effect there was no authority for township trustees and the council of a village within the township to jointly purchase, use, and maintain fire apparatus).

I consider now the third statutorily-authorized type of fire protection activity between a township and a village—that is, creation of a joint fire district. R.C. 505.371 authorizes a township and a village to create a joint fire district, as follows:

The boards of township trustees of one or more townships and the legislative authorities of any one or more municipal corporations within or adjoining such townships, or the boards of township trustees of two or more townships, may, by adoption of a joint resolution by a majority of the members of each board of township trustees and by a

majority of the members of the legislative authority of each municipal corporation, *create a joint fire district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon.* A joint fire district so created shall be given a name different from the name of any participating township or municipal corporation.

The governing body of the joint fire district shall be a board of fire district trustees, which shall include one representative from each board of township trustees and one representative from the legislative authority of each municipal corporation in the district. The board of fire district trustees may exercise the same powers as are granted to a board of township trustees in sections 505.37 to 505.45, inclusive, of the Revised Code, including, but not limited to, the power to levy a tax upon all taxable property in the fire district, as provided in section 505.39 of the Revised Code. The board of fire district trustees may be compensated at a rate not to exceed twenty dollars per meeting, not to exceed twelve meetings per year, and may be reimbursed for all necessary expenses incurred. *The board shall employ a clerk of the board of fire district trustees.* (Emphasis added.)

A joint fire district created pursuant to R.C. 505.371 is a legal entity separate from the bodies of which it is formed. See R.C. 9.60(A)(3) ("'[g]overning board' means...the board of fire district trustees in the case of a joint fire district..."); R.C. 5705.01(A) (including a joint fire district as a "subdivision"); *In re Termeer*, 52 Ohio Misc. 101, 103, 369 N.E.2d 819, 820 (C.P. Franklin County 1977) ("R.C. 505.371 provides for the board of trustees of the joint fire district to act as a separate legal entity"); Op. No. 87-003; 1985 Op. Att'y Gen. No. 85-071; Op. No. 81-027. The activities of a joint fire district are administered by the board of fire district trustees, which includes representatives of the townships and municipal corporations of which it is comprised. See Op. No. 81-027; 1979 Op. Att'y Gen. No. 79-082. The board is required to employ a clerk to serve as its fiscal officer. See R.C. 505.371; R.C. 505.372 (requiring the clerk of a board of fire district trustees to execute a bond); R.C. 5705.01(D) (naming the clerk of the board of fire district trustees as "fiscal officer" of a joint fire district). The operations and fiscal activities of a joint fire district are, thus, separate from those of a township that belongs to the district. See, e.g., R.C. 505.37; R.C. 505.371; R.C. 505.42 (in contrast with proceeds of bonds of a township or a township fire district, which are placed in the township treasury and paid out on the order of the board of township trustees, "[i]n the case of a joint fire district created under [R.C. 505.371], such proceeds shall be placed in the treasury of the joint fire district to the credit of the joint fire district fire equipment fund. Such fund shall be paid out on the order of...the board of fire district trustees"). The clerk of a township that participates in the creation of a joint fire district has no statutory responsibility to keep records or perform fiscal functions for the joint fire district.

A joint fire district board of trustees is not entitled to legal advice from the county prosecutor but may, instead, hire its own attorney. See, e.g., Op. No. 87-003. See generally 1987 Op. Att'y Gen. No. 87-089. The county prosecutor may, however, advise a township trustee on matters that arise from his position as a township trustee, even if such matters relate to the possible participation in, or the activities of, a joint fire district. As was stated in Op. No. 85-071 (syllabus):

1. A county prosecuting attorney is not, under R.C. 309.09, legal adviser to a joint fire district organized pursuant to R.C. 505.37 and R.C. 505.371.
2. A county prosecuting attorney has a duty to act as legal adviser to a township trustee who serves as a representative to a board of fire district trustees on matters relating to the activities of the joint fire district which arise from such individual's position as township trustee.
3. The board of fire district trustees of a joint fire district may employ such legal counsel as is necessary for the performance of its functions.

Accord, Op. No. 87-003.

It is not clear from the information before me which of the statutory arrangements discussed above has been established in Johnson Township and the Village of St. Paris. If each subdivision runs its own tax levy for fire purposes, then the township and the village are not part of a fire district or joint fire district for such purposes, since, if they were, the district would levy a single tax in both the township and the village. *See, e.g.,* R.C. 505.37; R.C. 505.39. If the township and village levy separate taxes and simply act jointly or pursuant to contract to provide fire protection, the duty of carrying out paper work and record keeping relating to the various activities may be divided as they see fit. *See, e.g.,* Op. No. 69-014; 1945 Op. No. 231. If, however, the township has created a township fire district and the village has joined that fire district, then it is appropriate for district activities to be carried out by the township trustees and for record keeping to be performed by the township clerk.

Your letter of request makes reference to a joint fire district created between Johnson Township and the Village of St. Paris. If such a district has been created pursuant to R.C. 505.371, it should bear a name other than "Johnson Township Fire District," since R.C. 505.371 provides that a joint fire district "shall be given a name different from the name of any participating township or municipal corporation." Further, such a district could not have been created in 1953, since R.C. 505.371 did not become effective until 1969. *See* 1969-1970 Ohio Laws, Book II, 2204 (Am. H.B. 454, eff. Oct. 30, 1969). *See also* 1958 Op. No. 3150. The requirement that a joint fire district employ a clerk was added by amendment of R.C. 505.371 in 1971. *See* 1971-1972 Ohio Laws, Part II, 2089 (Am. H.B. 584, eff. Dec. 10, 1971). Prior to that time, bond proceeds of a joint fire district were placed in the treasury of the township in the district with the largest assessed valuation, and the clerk of that township was the fiscal officer of the joint fire district. *See* 1971-1972 Ohio Laws, Part II, 2091-92 (Am. H.B. 584, eff. Dec. 10, 1971). If the township and village have created a joint fire district, then the district must hire a clerk to serve as its fiscal officer and keep its records.

Communications with the township clerk have suggested that a combination of the arrangements discussed above may have been used to provide the township and village with fire protection services and facilities over the last thirty-five years. While it may not be clear precisely what the legal relationship between the entities was at all times, case law suggests that activities undertaken cooperatively prior to the enactment of R.C. 505.371 may be continued by a joint fire district. *In re Termeer* considered the argument that the fire board governing a joint fire department of two townships was not legally constituted and stated:

[T]he minutes of the meeting of the board dated July 6, 1942, reflect compliance with the statutory requirements in effect at that time.

The appellant argues that the Washington-Perry Township Joint Fire Board is a "legal fiction," and that "any" actions taken by it are void. The phrase "legal fiction" is a contradiction of terms. The board is either one or the other—either legal or a "fiction," and this court finds that R.C. 505.371 provides for the board of trustees of the joint fire district to act as a separate legal entity. This eliminates a requirement of individual township action under R.C. 505.37. Two or more townships, as well as one or more corporations, may unite to create a joint fire district.

The board has continued to function since 1942 as an administrative unit of government for fire protection under R.C. 505.37. Therefore, the court finds that appellant's second assignment of error [that the joint township fire board is not a legally constituted body and does not comply with R.C. 505.371] is not well taken.

52 Ohio Misc. at 102-03, 369 N.E.2d at 820.

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

1. When a village becomes part of a township fire district pursuant to R.C. 505.37(C), the township fire district is governed by the board of township trustees, the township clerk is responsible for keeping records for the district, and legal questions may be addressed to the county prosecutor or other legal counsel for the township.

2. When a board of township trustees and the legislative authority of a village agree pursuant to R.C. 505.37(B) to undertake joint action to provide fire protection services or facilities, or contract pursuant to R.C. 9.60 to provide or obtain fire protection services, apparatus, or equipment, each participant must perform the tasks that relate to its duties under the agreement, and each may call upon its own legal counsel for advice. The participants may allocate duties of record keeping relating to the joint activity or contractual relationship in such manner as they see fit.
3. When a township and a village create a joint fire district pursuant to R.C. 505.371, the joint fire district is governed by a board of fire district trustees, which includes representatives of the township and village. The board is required to employ a clerk to serve as its fiscal officer and to keep its records, and the board is authorized to employ an attorney to provide it with legal advice.