

571

SYLLABUS:

A board of township trustees has no authority to create the position of township manager.

Columbus, Ohio, October 15, 1963

Hon. Paul R. Young
Prosecuting Attorney
Montgomery County
Dayton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“ ‘H’ Township in Montgomery County is a residential township having little or no industry and little or no agriculture. The trustees are young, competent businessmen and have their daytime hours occupied by their own business, leaving little or no time during the day for contact with the residents of the township.

“The Clerk is an elderly woman and seldom available. In an effort to serve the residents of the township, during the day, the trustees propose to engage the services of a township manager. The duties of the township manager as proposed are enclosed together with an organization chart. The duties of the manager are administrative and no statutory powers of the trustees will be delegated to him.

“Would you please advise us whether or not the trustees can create this position and employ a competent person to carry out the proposed duties.”

You have asked whether the board of township trustees has

the power to create the position of a township manager with such authority as outlined in the enclosed administrative code and organization chart.

In order to answer this question it must first be ascertained what general powers the board of township trustees possess. In *Hopple v. Brown Township*, 13 Ohio St., 311, the court stated in pertinent part:

“They (the township trustees) only possess the powers expressly conferred upon them as such body and officers respectively by the statute, and perhaps, where the statute is silent upon the subject, the authority, by necessary implication, which is requisite to execute the duties so imposed upon them.”

It is clear from the above statement that the powers granted the board by statute will be strictly construed, and include only those powers expressly granted or necessarily implied from those granted.

Prior attorneys general have followed this concept of the limited powers of township trustees. In Opinion No. 3114, Opinions of the Attorney General for 1940, it is stated:

“It is well settled that public officers and boards possess only those powers expressly granted by the Legislature and such additional implied powers necessary to carry into effect the express grant. The powers of township trustees are governed by the familiar rule.”

A 1951 opinion of the Attorney General followed the earlier opinion—Opinion No. 802—paragraph 2 of the syllabus reading:

“2. Township trustees possess only such powers and privileges as may be delegated to or conferred upon them by statute, or such powers as are necessarily implied from those granted.”

Chapter 505, Revised Code, provides for the election of township trustees and prescribes the powers of such trustees. There is no express authority in this chapter or in any section of the Revised Code for the trustees to engage the services of a township manager. Nor is this authority necessarily implied from the grant of express powers.

It is the township trustees principally who conduct the business

of the township—managing its funds and representing it generally in all functions. It has been held that the township trustees are the agents of the township and act in both a fiduciary and official capacity in the transaction of the business of the township. *Harding v. New Haven*, 3 Ohio 227; *Oliver v. Brill*, 14 Ohio App. 312. I think it is quite clear, both from the lack of statutory authority and from the nature of the relationship between the township and the township trustees, that the duties of the township trustees may not be delegated to a township manager.

In specific answer to your question, therefore, it is my opinion that a board of township trustees has no authority to create the position of township manager.

Respectfully,
WILLIAM B. SAXBE
Attorney General