

OPINION NO. 86-058**Syllabus:**

Pursuant to R.C. 505.37, a board of township trustees may establish regulations authorizing the use of water procured under authority of that statute to protect the property and lives of citizens against damages and accidents in emergency situations. Whether a particular situation constitutes an emergency is a determination to be made by the board of township trustees.

To: John E. Shoop, Lake County Prosecuting Attorney, Painesville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, August 21, 1986

I have before me your request for my opinion concerning the question whether a board of township trustees may provide water to township residents at township expense when the residents' wells have been contaminated by brine. The township would purchase the water to be provided to residents from the county.

Initially, I note that, a board of township trustees has only those powers which are expressly granted by statute or which may be implied as necessary to the execution of such express powers. Hopple v. Trustees of Brown Township, 13 Ohio St. 311 (1862). Thus, I must determine if a board of township trustees has the requisite statutory authority, either express or implied, to provide water to residents under the facts presented.

The authority of a board of township trustees to acquire water for certain township purposes is set forth in R.C. 505.37, which states in part:

(A) The board of township trustees may establish all necessary regulations to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents, and may, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes that seems advisable to the board. (Emphasis added.)

In examining the scope of authority conferred upon boards of township trustees by G.C. 3298-54 (now R.C. 505.37), one of my predecessors stated:

[T]he statute is primarily concerned with the guarding against the occurrence of fires. Yet it must be conceded that the township trustees may establish regulations to "protect the property and lives of the citizens against damages and accidents," and "damages and accidents" are not limited to those caused by fire. (Emphasis in original.)

1953 Op. Att'y Gen. No. 2416, p. 114, 115. Based upon this reasoning, the opinion concluded that G.C. 3298-54 (now R.C. 505.37) authorized a board of township trustees to establish regulations to procure not only that equipment needed for fire protection, but any equipment necessary for emergency purposes to protect property and lives against damage and accidents.

1962 Op. Att'y Gen. No. 3066, p. 437 addresses the specific question whether R.C. 505.37 authorizes a board of township trustees to provide water to township residents who are unable to obtain sufficient water at various times during the year due to drought or other conditions: Relying upon the rationale adopted in 1953 Op. No. 2416, 1962 Op. No. 3066 concludes that since R.C. 505.37 authorizes a board of township trustees to procure water for use by the fire department, the board may "furnish water of the township fire department to private citizens to protect the property and lives of such citizens where drought or other causes have resulted in an emergency situation" (emphasis added). 1962 Op. No. 3066 (syllabus, paragraph one).

The next relevant consideration is whether a particular situation constitutes an emergency situation. As concluded in 1962 Op. No. 3066 at 440: "Whether the particular situation presented is such an emergency that property and lives of citizens are threatened with damage unless water is furnished, is a question of fact that can be decided in the first instance only by the board of township trustees." In this regard, I note that 1956 Op. Att'y Gen. No. 6541, p. 344, 346 (distinguished in 1962 Op. No. 3066), cautions that a board of township trustees has limited powers with respect to supplying water to township residents and is without authority to allow property owners "to connect with township water supply lines laid for fire-fighting purposes,^[1] [otherwise] the township

¹ As noted above, the conclusion reached in 1956 Op. Att'y Gen. No. 6541, p. 344, that a board of township trustees has authority to procure such water supply as is necessary for "fire-fighting purposes" was distinguished in 1962 Op. Att'y Gen. No. 3066, p. 437, which explains that 1956 Op. No. 6541 intended only that the statutes granting townships fire-fighting authority do not authorize townships to go into the water supply business generally, but that in times of emergency a board of township trustees may provide water procured under R.C. 505.37 to citizens.

would be in the water supply business," for which it has no statutory authority.

Part of your question concerns whether such water may be furnished at township expense. As concluded in 1962 Op. No. 3066 (syllabus, paragraph three): "A board of township trustees lacks authority to charge a fee for its services in meeting the emergency needs of citizens for water." Since a board of township trustees is not permitted to charge a fee for providing water to meet the emergency needs of its citizens, the provision of such service must be at township expense.

It is, therefore, my opinion, and you are advised, that pursuant to R.C. 505.37, a board of township trustees may establish regulations authorizing the use of water procured under authority of that statute to protect the property and lives of the citizens against damages and accidents in emergency situations. Whether a particular situation constitutes an emergency is a determination to be made by the board of township trustees.