

OPINION NO. 2008-014**Syllabus:**

2008-014

1. A final plan for implementing a countywide 9-1-1 system remains in effect indefinitely once adopted pursuant to R.C. 4931.44.
2. There is no method by which the subdivisions included in a final plan for implementing a countywide 9-1-1 system may terminate the final plan once the final plan is adopted pursuant to R.C. 4931.44.
3. Pursuant to R.C. 4931.45, a previously adopted final plan for implementing a countywide 9-1-1 system may be amended to create new terms, conditions, requirements, and specifications.
4. A board of county commissioners is required to make an appropriation to finance the purchase of new equipment and software for a public safety answering point when required under an adopted final plan for implementing a countywide 9-1-1 system. However, the board of county commissioners has discretion in establishing the amount to be appropriated for that purpose, subject to an abuse of discretion standard.

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio

By: Marc Dann, Attorney General, May 14, 2008

You have requested an opinion concerning the enforceability of a final plan for implementing a countywide 9-1-1 system that was adopted pursuant to R.C. 4931.44. By way of background, you have informed us that,

[u]nder Ohio Revised Code Sections 4931.40 et seq., a county can implement a 9-1-1 system. Trumbull County, Ohio originally adopted such a plan on March 9, 1993. The plan was renewed for three year periods. On May 19, 2004, the Trumbull County Board of Commissioners adopted a resolution renewing the Trumbull County 9-1-1 Final Plan for the period June 1, 2004 through May 31, 2007. Therefore the Plan has technically expired on May 31, 2007 according to the terms [of the resolution]. The prior agreement provided for Trumbull County to financially support six independent [public safety answering points] within the county. Prior to the expiration of the plan, the county gave notice to the six independent [public safety answering points] that it would no longer be able to financially support them with new equipment and software. However, the County is still operating under the terms of the “expired” plan with the exception of the financial support detailed above.

In light of the foregoing facts, you ask the following questions:

1. May a final plan for implementing a countywide 9-1-1 system terminate or expire?
2. Is there a method by which the subdivisions included in a final plan for implementing a countywide 9-1-1 system may terminate the final plan?
3. If a final plan for implementing a countywide 9-1-1 system expires or is terminated, may an entirely new final plan for implementing a countywide 9-1-1 system be adopted and implemented?
4. If a board of county commissioners is obligated under a final plan for implementing a countywide 9-1-1 system to finance the purchase of new equipment and software for a public safety answering point, does such an obligation take precedence over other obligations funded with general fund money?

For the reasons discussed below, we conclude that a final plan for implementing a countywide 9-1-1 system remains in effect indefinitely once adopted pursuant to R.C. 4931.44. We conclude further that there is no method by which the subdivisions included in a final plan for implementing a countywide 9-1-1 system may terminate the final plan once the final plan is adopted pursuant to R.C. 4931.44. We also conclude that, pursuant to R.C. 4931.45, a previously adopted final plan for implementing a countywide 9-1-1 system may be amended to create new terms, conditions, requirements, and specifications. Finally, we conclude that a board of county commissioners is required to make an appropriation to finance the purchase

of new equipment and software for a public safety answering point when required under an adopted final plan for implementing a countywide 9-1-1 system. However, the board of county commissioners has discretion in establishing the amount to be appropriated for that purpose, subject to an abuse of discretion standard.

Establishment of a Final Plan for Implementing a Countywide 9-1-1 System

Before addressing your specific questions, we will begin with a brief overview of the provisions of R.C. 4931.40-.70 governing the creation of a final plan for implementing a countywide 9-1-1 system.¹ In order to establish a countywide 9-1-1 system, a board of county commissioners must convene a 9-1-1 planning committee,² which is responsible for developing the final plan for implementing the system. R.C. 4931.42-.43.

¹ A countywide 9-1-1 system is a system through which individuals can request emergency service using the telephone number 9-1-1 throughout all of the territory of the townships and municipal corporations in the county and any portion of such a municipal corporation that extends into an adjacent county. *See* R.C. 4931.40(A); R.C. 4931.41(A)(1). *But see generally* R.C. 4931.41(A)(2) (a countywide 9-1-1 system “shall exclude any territory served by a wireline service provider that is not capable of reasonably meeting the technical and economic requirements of providing the wireline telephone network portion of the countywide system for that territory. The system shall exclude from enhanced 9-1-1 any territory served by a wireline service provider that is not capable of reasonably meeting the technical and economic requirements of providing the wireline telephone network portion of enhanced 9-1-1 for that territory”). “A countywide 9-1-1 system may be a basic or enhanced 9-1-1 system, or a combination of the two, and shall be for the purpose of providing both wireline 9-1-1 and wireless 9-1-1.” R.C. 4931.41(B). *See generally* R.C. 4931.40(B) (“basic 9-1-1” is “a 9-1-1 system in which a caller provides information on the nature of and the location of an emergency, and the personnel receiving the call must determine the appropriate emergency service provider to respond at that location”); R.C. 4931.40(C) (“enhanced 9-1-1” is “a 9-1-1 system capable of providing both enhanced wireline 9-1-1 and wireless enhanced 9-1-1”); R.C. 4931.40(D) (“enhanced wireline 9-1-1” is “a 9-1-1 system in which the wireline telephone network, in providing wireline 9-1-1, automatically routes the call to emergency service providers that serve the location from which the call is made and immediately provides to personnel answering the 9-1-1 call information on the location and the telephone number from which the call is being made”); R.C. 4931.40(E) (“wireless enhanced 9-1-1” is “a 9-1-1 system that, in providing wireless 9-1-1, has the capabilities of phase I and, to the extent available, phase II enhanced 9-1-1 services as described in 47 C.F.R. 20.18(d) to (h)”); R.C. 4931.40(H) (“wireless 9-1-1” is “the emergency calling service provided by a 9-1-1 system pursuant to a call originating in the network of a wireless service provider”); R.C. 4931.40(I) (“wireline 9-1-1” is “the emergency calling service provided by a 9-1-1 system pursuant to a call originating in the network of a wireline service provider”).

² A 9-1-1 planning committee is composed of the following voting members:

After a 9-1-1 planning committee is convened, the committee prepares a proposal on the implementation of a countywide 9-1-1 system. R.C. 4931.43(A); *see* R.C. 4931.42(B). Upon completion of the proposal, the committee holds a public meeting on the proposal to explain the system to, and receive comments from, public officials.³ R.C. 4931.43(A). Following the public meeting, a 9-1-1 planning committee may modify the proposal and adopt a final plan for implementing a countywide 9-1-1 system. R.C. 4931.43(C).

Immediately upon completion of a final plan implementing a countywide 9-1-1 system, a 9-1-1 planning committee must send a copy of the final plan to the board of county commissioners, the legislative authority of each municipal corporation in the county, the board of township trustees of each township in the county, and the board of trustees, directors, or park commissioners of each subdivision that will be served by a public safety answering point under the final plan for implementing a countywide 9-1-1 system. *Id.* A final plan for implementing a countywide 9-1-1 system becomes effective when it is approved in the manner set forth in R.C. 4931.44.⁴

Once a final plan for implementing a countywide 9-1-1 system becomes ef-

(1) The president or other presiding officer of the board of county commissioners, who shall serve as chairman of the committee;

(2) The chief executive officer of the most populous municipal corporation in the county;

(3) From the more populous of the following, either the chief executive officer of the second most populous municipal corporation in the county or a member of the board of township trustees of the most populous township in the county as selected by majority vote of the board of trustees.

In counties with a population of one hundred seventy-five thousand or more, the planning committee shall consist of two additional voting members as follows: a member of a board of township trustees selected by the majority of boards of township trustees in the county pursuant to resolutions they adopt, and the chief executive officer of a municipal corporation in the county selected by the majority of the legislative authorities of municipal corporations in the county pursuant to resolutions they adopt.

R.C. 4931.42(A).

³ At least thirty days, but not more than sixty days, before a public meeting to discuss a proposal on the implementation of a countywide 9-1-1 system, a 9-1-1 planning committee must send a copy of the proposal and written notice of the meeting to the board of county commissioners, the legislative authority of each municipal corporation in the county, the board of township trustees of each township in the county, and the board of trustees, directors, or park commissioners of each subdivision that will be served by a public safety answering point under the final plan for implementing a countywide 9-1-1 system. R.C. 4931.43(A).

⁴ R.C. 4931.44 provides, in part:

fective, “all of the telephone companies and subdivisions⁵ included in the plan are subject to the specific requirements of the plan and to [R.C. 4931.40-.70].” R.C. 4931.44(C) (footnote added). *See generally* R.C. 4931.50(A) (“[t]he attorney general, upon request of the public utilities commission or on the attorney general’s own initiative, shall begin proceedings against a telephone company that is a wire-line service provider to enforce compliance with [R.C. 4931.40-.70] or with the terms, conditions, requirements, or specifications of a final plan”); R.C. 4931.50(B) (“[t]he attorney general, upon the attorney general’s own initiative, or any prosecu-

(A) Within sixty days after receipt of the final plan pursuant to [R.C. 4931.43(C)], the board of county commissioners of the county and the legislative authority of each municipal corporation in the county and of each township whose territory is proposed to be included in a countywide 9-1-1 system shall act by resolution to approve or disapprove the plan, except that, with respect to a final plan that provides for funding of the 9-1-1 system in part through charges imposed under [R.C. 4931.51], the board of county commissioners shall not act by resolution to approve or disapprove the plan until after a resolution adopted under [R.C. 4931.51] has become effective as provided in division (D) of that section Each such authority immediately shall notify the board of county commissioners in writing of its approval or disapproval of the final plan. Failure by a board or legislative authority to notify the board of county commissioners of approval or disapproval within such sixty-day period shall be deemed disapproval by the board or authority.

(B) A countywide plan is effective if all of the following entities approve the plan in accordance with this section:

(1) The board of county commissioners;

(2) The legislative authority of a municipal corporation that contains at least thirty per cent of the county’s population, if any;

(3) The legislative authorities of municipal corporations and townships that contain at least sixty per cent of the county’s population or, if the plan has been approved by a municipal corporation that contains at least sixty per cent of the county’s population, by the legislative authorities of municipal corporations and townships that contain at least seventy-five per cent of the county’s population.

⁵ The term “subdivision,” as used in R.C. 4931.40-.70, includes:

a county, municipal corporation, township, township fire district, joint fire district, township police district, joint ambulance district, or joint emergency medical services district that provides emergency service within its territory, or that contracts with another municipal corporation, township, or district or with a private entity to provide such service; and a state college or university, port authority, or park district of any kind that employs law enforcement officers that act as the primary police force on the grounds of the college or university or port authority or in the parks operated by the district.

R.C. 4931.40(M).

tor, upon the prosecutor's initiative, shall begin proceedings against a subdivision as to wireline or wireless 9-1-1 to enforce compliance with [R.C. 4931.40-.70] or with the terms, conditions, requirements, or specifications of a final plan"). Also, every emergency service provider that provides emergency service within the territory of the countywide 9-1-1 system must participate in the countywide 9-1-1 system. R.C. 4931.41(C).

Termination or Expiration of a Final Plan for Implementing a Countywide 9-1-1 System

Let us now consider your first question, which asks whether a final plan for implementing a countywide 9-1-1 system that was adopted pursuant to R.C. 4931.44 may terminate or expire. R.C. 4931.44 plainly and unequivocally states that a final plan for implementing a countywide 9-1-1 system "is effective" when approved by the requisite governmental entities set forth in R.C. 4931.44(B). Moreover, once such a final plan becomes effective, all of the telephone companies and subdivisions included in the final plan are required to comply with the terms, conditions, requirements, and specifications of the final plan, R.C. 4931.44(C); *see also* R.C. 4931.50, and every emergency service provider that provides emergency service within the territory covered by the final plan is required to participate in the countywide 9-1-1 system, R.C. 4931.41(C); *see also* R.C. 4931.50(B).

While the General Assembly explicitly provides for when a final plan for implementing a countywide 9-1-1 system is to go into effect and mandates compliance with the provisions of the final plan once adopted, the General Assembly has not established or limited the duration of a final plan or set forth events upon which a final plan terminates or expires. It is also significant that the General Assembly has not provided the subdivisions included in a final plan with any express authority or procedures to terminate a final plan once adopted. Instead, the subdivisions included in a final plan are authorized by R.C. 4931.45 to amend a final plan so as to meet future needs concerning the implementation of a final plan adopted under R.C. 4931.44.⁶

With respect to the procedures for amending a final plan, R.C. 4931.45(B)

⁶ The General Assembly's purpose in enacting R.C. 4931.45 is gleaned from its legislative history. *See generally* R.C. 1.49 ("[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters . . . [t]he legislative history"). When the provisions of law governing the creation of countywide 9-1-1 systems were originally introduced and considered in the General Assembly, they did not have language authorizing the amendment of a final plan implementing a countywide 9-1-1 system after the final plan was adopted. *See* Am. Sub. H.B. 491, 116th Gen. A., Reg. Sess. (May 14, 1985) (as passed by the House); Sub. H.B. 491, 116th Gen. A., Reg. Sess. (May 8, 1985) (as reported by the House Public Utilities Committee); H.B. 491, 116th Gen. A., Reg. Sess. (Apr. 24, 1985) (as introduced); *see also* Ohio Legislative Service Comm'n, Analysis, Sub. H.B. 491, at p. 5 (as reported by the House Public Utilities Committee) ("[t]he bill makes no specific provisions for supervision or management of a joint 911 system as an ongoing system that may need to be altered to meet future needs. The bill's

provides that, except as provided in R.C. 4931.45(C), “a final plan shall be amended in the manner provided for adopting a final plan under [R.C. 4931.42-.44], including convening a 9-1-1 planning committee and developing a proposed amended plan prior to adopting an amended final plan.” R.C. 4931.45(A) states further that a final plan must be amended for any of the following purposes:

- (1) Expanding the territory included in the county-wide 9-1-1 system;
- (2) Upgrading any part or all of a system from basic to enhanced wireline 9-1-1;
- (3) Adjusting the territory served by a public safety answering point;
- (4) Represcribing the funding of public safety answering points as between the alternatives set forth in [R.C. 4931.43(B)(5)];
- (5) Providing for wireless enhanced 9-1-1;
- (6) Adding a telephone company as a participant in a countywide 9-1-1 system after the implementation of wireline 9-1-1 or wireless enhanced 9-1-1;
- (7) Providing that the state highway patrol or one or more public safety answering points of another 9-1-1 system function as a public safety answering point or points for the provision of wireline or wireless 9-1-1 for all or part of the territory of the system established under the final plan, as contemplated under [R.C. 4931.41(J)];
- (8) Making any other necessary adjustments to the plan.

Additional procedures for amending a final plan are also set out in R.C. 4931.45(C), which provides, in part, as follows:

requirements end with the adoption of the final plan”); Ohio Legislative Service Comm’n, Analysis, H.B. 491, at p. 4 (as introduced) (same as the previous parenthetical). *See generally* 1985-1986 Ohio Laws, Part II, 4544 (Am. Sub. H.B. 491, eff. June 18, 1985) (an Act to encourage the establishment of countywide 9-1-1 systems).

Recognizing this omission, the General Assembly added language to R.C. 4931.45 authorizing the subdivisions included in a final plan for implementing a countywide 9-1-1 system to amend the final plan to meet future needs. *See* Sub. H.B. 491, 116th Gen. A., Reg. Sess. (May 28, 1985) (as reported by the Senate Ways and Means Committee); *see also* Ohio Legislative Service Comm’n, Analysis, Sub. H.B. 491, at p. 4 (as reported by the Senate Ways and Means Committee) (“[t]he bill provides that after its adoption a final plan may be amended by a reconstituted planning committee created in the same manner as the original planning committee was created”). *See generally* 1985-1986 Ohio Laws, Part II, 4544, 4552-53 (Am. Sub. H.B. 491, eff. June 18, 1985) (setting forth the enacted version of R.C. 4931.45).

(C)(1) To amend a final plan for the purpose described in division (A)(6) of this section, an entity that wishes to be added as a participant in a 9-1-1 system shall file a written letter of that intent with the board of county commissioners of the county that approved the final plan. The final plan is deemed amended upon the filing of that letter. The entity that files the letter shall send written notice of that filing to all subdivisions and telephone companies participating in the system.

(2) An amendment to a final plan for a purpose set forth in division (A)(1), (3), (5), or (8) of this section may be amended by an addendum approved by a majority of the 9-1-1 planning committee. The board of county commissioners shall call a meeting of the 9-1-1 planning committee for the purpose of considering an addendum pursuant to this division.

The General Assembly thus has provided the subdivisions included in a final plan for implementing a countywide 9-1-1 system the authority to amend the final plan for future needs.

That the General Assembly has not provided for the termination or expiration of a final plan for implementing a countywide 9-1-1 system, but has provided a process for amending a final plan to meet all future needs, evinces a clear legislative intent that such a final plan once adopted remains in effect indefinitely. *See generally* 1970 Op. Att'y Gen. No. 70-056 (because the power to dissolve or abolish a regional airport authority is not found in the statutes of Ohio, there is no delegation of power or authority to the board of county commissioners enabling them to abolish a regional airport authority). Accordingly, in response to your first question, we conclude that a final plan for implementing a countywide 9-1-1 system remains in effect indefinitely once adopted pursuant to R.C. 4931.44.⁷

⁷ We are aware that a provision of a final plan for implementing a countywide 9-1-1 system may provide for the termination or expiration of a final plan. If such a provision exists in a final plan, it could be argued that the final plan may terminate or expire in accordance with the terms of that provision.

In light of the fact that R.C. 4931.40-.70 require a final plan for implementing a countywide 9-1-1 system to remain effective indefinitely once adopted, we hesitate to conclude that a provision of a final plan may provide for the termination or expiration of the final plan. Indeed, if a final plan were to terminate or expire in such a manner, the subdivisions included in the final plan would, in essence, be changing the scheme established by the General Assembly whereby 9-1-1 service is provided indefinitely once established in a county. We are unaware of any provision of law that would permit subdivisions through the provisions of a final plan for implementing a countywide 9-1-1 system to thwart the General Assembly's statutorily-established policy of providing continued 9-1-1 service throughout a county once established. *See* 1980 Op. Att'y Gen. No. 80-097 at 2-391 (because only the legislative branch of government is vested with the authority to amend

Methods by which to Terminate a Final Plan for Implementing a Countywide 9-1-1 System

Your second question asks whether there is a method by which the subdivisions included in a final plan for implementing a countywide 9-1-1 system may terminate the final plan. As explained above, a review of the provisions of R.C. 4931.40-.70 discloses that the General Assembly has not authorized the termination or expiration of a final plan once adopted. Consequently, it was unnecessary for the General Assembly to provide a method by which the subdivisions included in a final plan could terminate a final plan once adopted since the final plan is effective indefinitely. Therefore, there is no method by which the subdivisions included in a final plan for implementing a countywide 9-1-1 system may terminate the final plan once the final plan is adopted pursuant to R.C. 4931.44.

Authority to Adopt a New Final Plan for Implementing a Countywide 9-1-1 System

Your third question asks whether an entirely new final plan for implementing a countywide 9-1-1 system may be adopted and implemented when a previously adopted final plan for implementing a countywide 9-1-1 system expires or is terminated. Because we have determined that a final plan for implementing a countywide 9-1-1 system that was adopted pursuant to R.C. 4931.44 remains in effect indefinitely, it follows that an entirely new final plan for implementing a countywide 9-1-1 system may not be adopted and implemented to take the place of a previously adopted final plan.

Nevertheless, the subdivisions included in a final plan for implementing a countywide 9-1-1 system have the authority to amend the final plan after the final plan is adopted for the purpose of meeting current and future needs. R.C. 4931.45 expressly grants this authority to the subdivisions included in a final plan. Under this statute, any of the terms, conditions, requirements, or specifications of a final plan for implementing a countywide 9-1-1 system that was adopted pursuant to R.C. 4931.44 may be changed by adopting an amended final plan or adding addendums to the final plan. Any amendments to a final plan must, however, be done as provided in R.C. 4931.45.

Thus, even though an entirely new final plan for implementing a countywide 9-1-1 system may not be adopted and implemented to take the place of a

laws, the Superintendent of Insurance, by administrative fiat, may not delegate or transfer a statutory responsibility to a non-governmental entity). *See generally* 47 U.S.C.S § 615 (“[t]he Federal Communications Commission shall encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 9-1-1 service”); 1985-1986 Ohio Laws, Part II, 4544 (Am. Sub. H.B. 491, eff. June 18, 1985) (preamble) (enacting statutes “to encourage the establishment of a uniform emergency telephone number system throughout the state”).

previously adopted final plan, it is possible to amend a previously adopted final plan to create new terms, conditions, requirements, and specifications in the final plan. As indicated above, R.C. 4931.45 specifically authorizes the subdivisions included in a final plan to amend the final plan for a wide variety of purposes, including, but not limited to, changing the method by which the countywide 9-1-1 system is funded, adjusting the formula for allocating the costs of operating public safety answering points, upgrading the services provided, or making any other necessary adjustments to the final plan. There is no limitation on the number of changes that can be made to a previously adopted final plan. Accordingly, pursuant to R.C. 4931.45, a previously adopted final plan for implementing a countywide 9-1-1 system may be amended to create new terms, conditions, requirements, and specifications.

Duty of a Board of County Commissioners when Appropriating General Fund Money

Your final question asks whether an obligation to finance the purchase of new equipment and software for a public safety answering point⁸ takes precedence over other obligations funded with general fund money⁹ when a board of county

⁸ For purposes of the statutes governing the operation of a countywide 9-1-1 system, R.C. 4931.40-.70, a “public safety answering point” is “a facility to which 9-1-1 system calls for a specific territory are initially routed for response and where personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider.” R.C. 4931.40(P).

⁹ A county may levy property taxes in an amount up to ten mills without the vote of the electorate and may levy taxes in excess of the ten-mill limitation when authorized by law or by vote of the electorate. Ohio Const. art. XII, § 2; R.C. 5705.02-.03. The property taxes are divided into various levies, including the general levy for current expenses within the ten-mill limitation, special levies authorized by R.C. 5705.01-.47 within the ten-mill limitation, levies for debt charges, and special or general levies authorized by law or by vote of the people in excess of the ten-mill limitation. R.C. 5705.04.

Each county is required to establish several funds within the county treasury to hold its moneys. *See* R.C. 5705.09. Among these funds are the general fund, a special fund for each special levy, and a special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose. *Id.* Proceeds of the general levy for current expenses within the ten-mill limitation are paid into the general fund. R.C. 5705.10(A); *see also* R.C. 5705.05 (“[t]he purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made”). However, the general fund also holds amounts other than general levy moneys. *See* R.C. 5705.10(A) (“[a]ll revenue derived from the general levy for current expense within the ten-mill limitation, from any levy for current expense authorized by vote in

commissioners is required under a final plan for implementing a countywide 9-1-1 system to finance the purchase of new equipment and software for the public safety answering point.

Provisions for the operation and funding of public safety answering points are set forth in R.C. 4931.41 and R.C. 4931.43. R.C. 4931.41 states, in pertinent part:

(D)(1) Each public safety answering point shall be operated by a subdivision and shall be operated constantly.

(2) A subdivision that operates a public safety answering point shall pay all of the costs associated with establishing, equipping, furnishing, operating, and maintaining that facility and shall allocate those costs among itself and the subdivisions served by the answering point based on the allocation formula in a final plan

(E) Except to the extent provided in a final plan that provides for funding of a 9-1-1 system in part through charges imposed under [R.C. 4931.51], each subdivision served by a public safety answering point shall pay the subdivision that operates the answering point the amount computed in accordance with the allocation formula set forth in the final plan.

R.C. 4931.43(B)(5) provides further that a final plan implementing a countywide 9-1-1 system must specify “[w]hether the cost of establishing, equipping, furnishing, operating, or maintaining each public safety answering point should be funded through charges imposed under [R.C. 4931.51] or will be allocated among the subdivisions served by the answering point and, if any such cost is to be allocated, the formula for so allocating it.” The various provisions of R.C. 4931.41 and R.C. 4931.43 thus mandate that, except when a countywide 9-1-1 system is funded in part through charges imposed under R.C. 4931.51, a subdivision that operates or is served by a public safety answering point is required to provide funding for that public safety answering point. *See generally* 2000 Op. Att’y Gen. No. 2000-044 at 2-269 through 2-271 (discussing the financing of a countywide 9-1-1 system).

According to the amended final plan for implementing a countywide 9-1-1 system adopted by the Trumbull County Board of County Commissioners, the county’s portion of the operating costs of the originally designated public safety answering points participating in the countywide 9-1-1 system is the provision of financial assistance for the purchase of new equipment and software to operate the

excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund”); *see also, e.g.*, R.C. 5747.51(J) (“[a]ll money received into the treasury of a subdivision from the undivided local government fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision”).

public safety answering points. Trumbull County 9-1-1 Final Plan, section M(3).¹⁰ *See generally State ex rel. DiFrangia v. Trumbull County Bd. of Comm'rs*, 99 Ohio App. 3d 569, 651 N.E.2d 447 (Trumbull County 1994) (a board of county commissioners has the authority to purchase and maintain the equipment required to operate a public safety answering point staffed by another subdivision). You have also informed us that, in order to provide such financial assistance, the board of county commissioners uses general fund money.¹¹ *See generally State ex rel. DiFrangia v. Trumbull County Bd. of Comm'rs* (a board of county commissioners may rely solely on general fund money to finance a countywide 9-1-1 system); 1998 Op. Att'y Gen. No. 98-032 at 2-181 n.2 (a board of county commissioners may fund a countywide 9-1-1 system with moneys from its general fund).

It is a well-established principle of Ohio county budgetary law that a board of county commissioner, as the appropriating authority for the county, *see* R.C. 5705.28; R.C. 5705.38,¹² “is bound to provide first for all those expenditures made imperative by statute” when appropriating general fund money. *Jenkins v. State ex*

¹⁰ Trumbull County 9-1-1 Final Plan, section M(3) reads, in part:

a. Political subdivisions originally designated as a [public safety answering point] through the initial 9-1-1 Plan will not pay for direct costs to provide the equipment furnished to the various [public safety answering points]. Normal maintenance will be [the] responsibility of the Trumbull County Commissioners

b. Purchase of equipment for the [public safety answering points] and the equipments normal maintenance will be the responsibility of the Board of Trumbull County Commissioners.

¹¹ From the information you have provided it appears that the board of county commissioners has not imposed a charge pursuant to R.C. 4931.51 on improved realty within the county to pay for public safety answering points. *See generally* R.C. 4931.51(F) (“[a]ll money collected by or on behalf of a county under [R.C. 4931.51] shall be paid to the county treasurer of the county and kept in a separate and distinct fund to the credit of the county”).

¹² R.C. 5705.28(A) requires the taxing authority of each subdivision to adopt the subdivision’s annual tax budget. R.C. 5705.28(C)(1) provides further:

To assist in the preparation of the tax budget, the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority, . . . before the forty-fifth day prior to the date on which the budget must be adopted, an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the auditor of state.

R.C. 5705.38 requires a taxing authority to also do the following on behalf of the subdivision:

(A) . . . On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an appropriation measure, and thereafter during the year it may pass any supplemental appropriation measures as it finds nec-

rel. Jackson County Agric. Soc'y, 40 Ohio App. 312, 179 N.E. 421 (Jackson County 1931) (syllabus, paragraph three); 1941 Op. Att'y Gen. No. 3681, p. 299 (syllabus, paragraph one); 1933 Op. Att'y Gen. No. 974, vol. II, p. 938 (syllabus, paragraph eight); *see, e.g.*, R.C. 5705.28(C)(1) (“[t]he taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision”). As explained in 2006 Op. Att’y Gen. No. 2006-013 at 2-109 and 2-110:

[T]here are a myriad of statutes that mandate, in some respect, specific agency appropriations, and thus affirmatively constrict the authority of the board of commissioners to zero out those appropriations. Some statutes mandate appropriations for a particular item, purpose, or amount Some statutes more broadly require the board to appropriate funds sufficient to enable an agency to perform its functions and duties. Still other statutes empower an agency to determine the amount of its own budget or a particular budget item, and require the board of commissioners to appropriate

essary, based on the revised tax budget or the official certificate of estimated resources or amendments of the certificate. If it desires to postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, it may pass a temporary appropriation measure for meeting the ordinary expenses of the taxing unit until no later than the first day of April of the current year, and the appropriations made in the temporary measure shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed.

. . . .

(C) Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services.

For purposes of R.C. Chapter 5705, a board of county commissioners is a “taxing authority,” R.C. 5705.01(C), and a county is a “subdivision,” R.C. 5705.01(A). Accordingly, under R.C. 5705.28, R.C. 5705.38, and other provisions of R.C. Chapter 5705, a board of county commissioners is made the appropriating authority for the county. *See State ex rel. Trussell v. Meigs County Bd. of Comm’rs*, 155 Ohio App. 3d 230, 2003-Ohio-6084, 800 N.E.2d 381, ¶12 (Meigs County 2003) (the board of county commissioners is “the appropriating authority for county offices”); 2006 Op. Att’y Gen. No. 2006-013 at 2-109 (“R.C. Chapter 5705 requires the board of commissioners to provide separately for the appropriations of each agency”); *see also* R.C. 5705.392 (“[a] board of county commissioners may adopt as a part of its annual appropriation measure a spending plan, or in the case of an amended appropriation measure, an amended spending plan, setting forth a quarterly schedule of expenses and expenditures of all appropriations for the fiscal year from the county general fund”).

moneys to fund that established amount. Statutes such as these that require an appropriation to be made to an agency would bar the board of county commissioners from removing that appropriation from the agency's budget. (Footnotes and citations omitted.)

Moreover, where no statute sets the amount of an appropriation mandated by law for a particular purpose or requires a board of county commissioners to appropriate an amount established by another entity, a board of county commissioners has broad discretion in establishing the amount to be appropriated, subject to an abuse of discretion standard. *See* 2006 Op. Att'y Gen. No. 2006-013 at 2-110; *State ex rel. Trussell v. Meigs County Bd. of Comm'rs*, 155 Ohio App. 3d 230, 2003-Ohio-6084, 800 N.E.2d 381, ¶12-13 (Meigs County 2003) (the board of commissioners "has the final authority to determine the sheriff's budget, absent an abuse of its discretion . . . Absent a constitutional provision or statute requiring full funding, an appropriating authority has discretion over how to fund all budgetary requests"). Accordingly, if a statute mandates an appropriation for a specific purpose and no statute sets the amount of the appropriation or requires a board of county commissioners to appropriate an amount established by another entity, a board of county commissioners is required to make an appropriation for that specific purpose and has discretion in establishing the amount to be appropriated, subject to an abuse of discretion standard.

Except as provided in R.C. 4931.51, a subdivision that operates or is served by a public safety answering point is required by law to provide funding for that public safety answering point. R.C. 4931.41; R.C. 4931.43. No statute in the Revised Code specifies the amount that a subdivision must appropriate to fund a public safety answering point. Instead, a subdivision is required to appropriate the amount computed in accordance with the allocation formula set forth in the final plan for implementing a countywide 9-1-1 system. *See* R.C. 4931.41; R.C. 4931.43.

With respect to your specific inquiry, the adopted final plan for implementing a countywide 9-1-1 system requires the board of county commissioners to finance the purchase of new equipment and software for public safety answering points as its share of the funding for the public safety answering points. The final plan does not, however, establish a specific amount of general fund money the board of county commissioners must appropriate to finance the purchase of new equipment and software for the public safety answering points. It thus follows that, insofar as the board is not required by law to appropriate a specific amount to finance the purchase of new equipment and software for the public safety answering points, the board has discretion in establishing the amount to be appropriated for that purpose, subject to an abuse of discretion standard. *See State ex rel. Trussell v. Meigs County Bd. of Comm'rs*, at ¶12-13; 2006 Op. Att'y Gen. No. 2006-013 at 2-110.

Therefore, in response to your final question, a board of county commissioners is required to make an appropriation to finance the purchase of new equipment and software for a public safety answering point when required under an adopted final plan for implementing a countywide 9-1-1 system. However, the board

of county commissioners has discretion in establishing the amount to be appropriated for that purpose, subject to an abuse of discretion standard.

Conclusions

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

1. A final plan for implementing a countywide 9-1-1 system remains in effect indefinitely once adopted pursuant to R.C. 4931.44.
2. There is no method by which the subdivisions included in a final plan for implementing a countywide 9-1-1 system may terminate the final plan once the final plan is adopted pursuant to R.C. 4931.44.
3. Pursuant to R.C. 4931.45, a previously adopted final plan for implementing a countywide 9-1-1 system may be amended to create new terms, conditions, requirements, and specifications.
4. A board of county commissioners is required to make an appropriation to finance the purchase of new equipment and software for a public safety answering point when required under an adopted final plan for implementing a countywide 9-1-1 system. However, the board of county commissioners has discretion in establishing the amount to be appropriated for that purpose, subject to an abuse of discretion standard.