

OPINION NO. 71-045

Syllabus:

1. A township may contract with a municipality under Section 505.441, Revised Code, for police protection and for additional police protection, notwithstanding that the two entities may be situated in different counties.

2. The board of trustees of a township may contract with a municipality under Section 505.50, Revised Code, for additional police protection for a police district, notwithstanding that the township and the municipality may be situated in different counties.

3. A township police district may cover only a part of a township, a part to be determined by the exercise of sound good faith judgment by the township trustees.

4. The cost of police protection and additional police protection provided by action of a township under either Section 505.441 or Section 505.48 et seq., Revised Code, may not be met by contributions by residents, whether contractual or voluntary, but must be borne from public tax derived revenues.

5. A township police district may not obtain all police protection by contract with a municipality but may obtain additional police protection under such contract, after providing directly for basic police protection through the employment of a chief of police, necessary patrolmen and the acquisition of police equipment.

To: Daniel T. Spitler, Wood County Pros. Atty., Bowling Green, Ohio
By: William J. Brown, Attorney General, August 25, 1971

I have before me your request for my opinion which you phrase as follows:

"Our office has been asked for an opinion on whether a municipal corporation has authority to provide police protection outside its corporate boundaries if the municipal corporation is in one county and the township, which protection is to be provided, is located in another.

"We would also like to know whether under Ohio Revised Code Section 505.48, et al., Police Districts, can be composed of a very irregular area. In other words farm land to pay a small amount (per acre) than a \$35,000 home on 1/2 acre.

"A final question relates to Section 505.51 and is whether the board of trustees of a township police district can contract with a municipal corporation and with private individuals to share all expenses of police protection within that district or whether a tax levy must be authorized. In the alternative, if you can suggest a better method of financing the above police district, we would appreciate your suggestions."

I understand your questions to be:

1. May a township contract with a municipality for police protection when the two are in different counties?

2. May a township police district be an irregular area, less than the whole township? By "irregular" I understand you to mean a contiguous area that might have an irregular perimeter, in order, for example, to bound a residential area in an otherwise rural township.

3. May the operating cost of a township police district be borne by arrangements with residents of the district, or

4. Must the operating cost of the district be borne exclusively from a tax levy in the district?

5. An implied question appears to be whether or not all of the police protection in a township police district may be obtained by contract with a municipality?

In addition to the police constables, authorized under Chapter 509, Revised Code, a township may procure police protection in one of two ways.

Pursuant to Section 505.441, Revised Code, a township may contract with a municipality, one or more other townships, or county sheriffs for the purpose of obtaining police protection, or additional police protection. The pertinent provisions of that Section are as follows:

"In order to obtain police protection, or to obtain additional police protection in times of emergency, any township may enter into a contract with one or more townships, municipal corporations, or county sheriffs upon such terms as are agreed to by them, for services of police departments or use of police equipment, or the interchange of the service of police departments or use of police equipment within the several territories of the contracting subdivisions, if such contract is first authorized by respective boards of township trustees or other legislative bodies.

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"Such contract may provide for a fixed annual charge to be paid at the time agreed upon and stipulated in the contract." (Emphasis added)

It appears that such contract contemplates protection for the entire township.

Alternatively, the board of township trustees may create a

township police district, pursuant to Section 505.48, Revised Code, which is as follows:

"The trustees of any township may, by resolution adopted by two-thirds of the members of the board, create a township police district comprised of all or a portion of the unincorporated territory of the township as the resolution may specify. If the township police district does not include all of the unincorporated territory of the township, the resolution creating the township police district shall contain a complete and accurate description of the territory of the district. The territorial limits of the township police district may be altered by a resolution adopted by a two-thirds vote of the board of trustees at any time one hundred twenty days after the district has been created and is operative. A township police district comprising only a part of the unincorporated territory of the township shall be given a separate and distinct name in the resolution authorizing its creation."

In contrast to the arrangements provided for in Section 505.441, supra, a police district may cover all or only part of a township.

Once a township police district has been created, the board of township trustees is authorized, under the provisions of Section 505.49, Revised Code, to appoint the number of men needed to provide such protection and to adopt rules and regulations necessary for the operation of the district. Section 505.49, supra, reads, in pertinent part, as follows:

"The township trustees by a two-thirds vote of the board may adopt rules and regulations necessary for the operation of the township police district, including a determination of the qualifications of the chief of police, patrolmen, and others to serve as members of the district police force.

"The township trustees by a two-thirds vote of the board shall appoint a chief of police for the district, determine the number of patrolmen and other personnel required by the district, and establish salary schedules and other conditions of employment for the employees of the township police district. The chief of police of the district shall serve at the pleasure of the township trustees and shall appoint patrolmen and such other personnel as the district may require, subject to the rules, regulations, and limits as to qualification, salary ranges, and numbers of personnel estab-

lished by the township board of trustees. The township trustees may include in the township police district and under the direction and control of the chief of police, any constable appointed pursuant to section 509.01 of the Revised Code, or designate the chief of police or any patrolman appointed by him as a constable, as provided for in section 509.01 of the Revised Code, for the township police district.

"* * * * *"

Furthermore, in addition to contracting to purchase necessary police equipment, separately or together with another township, the board of township trustees may obtain additional police protection with respect to the police district, through contract with one or more townships, a municipal corporation, or the county sheriff. These authorizations are provided for in Section 505.50, Revised Code, which, in pertinent part, is as follows:

"The township trustees may purchase or otherwise acquire such police apparatus, equipment, including a public communications system, or materials as the township police district requires and may build, purchase, or lease such building or buildings and site thereof as are necessary for the operations of the district.

"The boards of trustees of any two or more contiguous townships, may, by joint agreement, unite in the joint purchase, maintenance, use, and operation of police equipment, for any other police purpose designated in sections 505.48 to 505.55, inclusive, of the Revised Code, and to prorate the expense of such joint action on such terms as are mutually agreed upon by the trustees in each affected township.

"The board of trustees of any township may enter into a contract with one or more townships, a municipal corporation, or the county sheriff upon such terms as are mutually agreed upon for the provision of additional police protection services either on a regular basis or for additional protection in times of emergency. Such contract shall be agreed to in each instance by the respective board or boards of township trustees, the county commissioners, or the legislative authority of the municipal corporation involved. Such contract may provide for a fixed annual charge to be paid at the time agreed upon in the contract.

"* * * * *"

(Emphasis added)

It is noteworthy that the services to be obtained under such contract may be for additional police protection only, in contradistinction to the contract authorized under Section 505.441, supra, which may call for either primary or additional protection.

As appears to be true in the case of contracts entered into pursuant to Section 505.441, supra, the expenses of a township police district, embracing all of the territory of the township, may be covered by monies taken from the township general fund. On the other hand, where a police district contains only a portion of the township, funds from the township general fund cannot be used to finance such a district. Opinion No. 1255, Opinions of the Attorney General for 1964. Syllabus No. 1 of that Opinion is as follows:

"When a township police district is created by a board of trustees pursuant to Section 505.48, Revised Code, and such district does not include all of the township territory, no portion of the expenses of the district in providing police protection may be paid out of general funds of the township. * * *"

Operating costs of a police district may be financed by a property tax on the property in the district, pursuant to Section 505.51, Revised Code, which is as follows:

"The board of trustees of a township police district may levy a tax upon all of the taxable property in the township police district pursuant to sections 5705.19 and 5705.25 of the Revised Code to defray all or a portion of expenses of the district in providing police protection."

Acquisition of capital items may be financed under Sections 505.52 and 505.53, Revised Code, which are not necessary to quote here.

On the basis of the foregoing general principles, I now turn to your specific questions.

1. As to the power to contract with a municipality in another county, the language of Section 505.441, supra, would seem to interpose no bar. It authorizes a township to contract, for example, with "one or more * * * county sheriffs." Obviously, contracts with more than one sheriff must bind an official in another county.

It is true, on the other hand, that the omission of express authority to contract across the county line might be taken to be a restriction, when contrasted with other express authorization, such as that in Section 513.07, Revised Code, dealing with joint township hospitals. As to such hospitals, however, other officials in the different counties may be affected in their duties, e.g., two county auditors (Section 513.13, Revised Code) and express au-

thorization for cross-county arrangements, therefore, would be included. Here, no involvement of public officers or bodies other than the contracting parties is directly affected. Express mention of the power to cross county lines, therefore, is not required. Under these circumstances, it would be more reasonable to conclude that the legislature would have limited the authority to contract to the same county if this had been its intent. Silence, therefore, may be taken as permission to cross county lines in this situation.

Two more points warrant mention. First, no public purpose could be served by a construction that would bar a township adjacent to a municipality situated in the neighboring county from contracting for the city police protection, and, as indicated above, I find no ancillary relationships that would be adversely affected by such contract. Second, it is noteworthy that my predecessors, in dealing with contracts for fire protection under similar provisions of Section 505.44, Revised Code, barred contracts that crossed state lines but did not deem the implicit county line problem of sufficient importance to mention. Opinion No. 292, Opinions of the Attorney General for 1957; Opinion No. 2036, Opinions of the Attorney General for 1961. Thus, they felt that fire protection contracts might cross county lines.

There seems to be no substantial reason, therefore, that a single county restriction should be implied in relation to contracts for police protection, whether entered into under Section 505.441, supra, or Section 505.50, supra. It follows that a township may enter into a contract under either Section with a municipal corporation located in another county.

2. Your second inquiry relates primarily to the possible boundaries of a township police district created pursuant to Section 505.48, supra. Although the statute clearly includes provisions that must be followed if a proposed police district is to contain only a portion of a township, it includes no express restrictions concerning either its size or shape. The physical composition of the district apparently rests entirely with the sound, good faith discretion of the board of township trustees.

3. and 4. I find no statutory or other authority permitting financial support of the police protection available under Section 505.441, supra, or Sections 505.48 to 505.50, supra, through contributions, contractual or voluntary, by the residents benefiting from such protection. Costs under either type of statutory authorization can be paid from the township general fund where protection is being afforded to the entire township. Where a police district covers less than the township, however, such costs must be covered through a tax levy under Section 505.51, supra. Such levy is also available to support the district where the district includes the entire township.

Contractual arrangements, such as you appear to contemplate, can be made between freeholders and special constables appointed by a county judge, of course (Sections 1907.201 and 1907.211,

Revised Code), but no township, municipality or township police district is involved in such arrangements. That sort of protection, accordingly, is not discussed herein.

5. As heretofore indicated, "additional police protection" may be obtained by contract with other government agencies for a township police district. Additional protection is that needed after the employment of the chief of police and patrolmen (Section 505.49, Revised Code) and the purchase of police equipment (Section 505.50, supra). In other words, the creation of a police district contemplates the creation of police protection as a direct and immediate function thereof. It follows that all police protection for the district may not be obtained by contract, merely "additional" protection.

Under Section 505.441, supra, however, police protection for the entire township may be obtained by contract. Such contract does not presuppose the creation of a police district but may be entered into by the board of township trustees acting in that capacity.

In specific answer to your request, it is my opinion, and you are so advised:

1. A township may contract with a municipality under Section 505.441, Revised Code, for police protection and for additional police protection, notwithstanding that the two entities may be situated in different counties.

2. The board of trustees of a township may contract with a municipality under Section 505.50, Revised Code, for additional police protection for a police district, notwithstanding that the township and the municipality may be situated in different counties.

3. A township police district may cover only a part of a township, a part to be determined by the exercise of sound good faith judgment by the township trustees.

4. The cost of police protection and additional police protection provided by action of a township under either Section 505.441 or Section 505.48 et seq., Revised Code, may not be met by contributions by residents, whether contractual or voluntary, but must be borne from public tax derived revenues.

5. A township police district may not obtain all police protection by contract with a municipality but may obtain additional police protection under such contract, after providing directly for basic police protection through the employment of a chief of police, necessary patrolmen and the acquisition of police equipment.