

**Note from the Attorney General's Office:**

1966 Op. Att'y Gen. No. 66-114 was expanded by  
1987 Op. Att'y Gen. No. 87-040.

## OPINION NO. 66-114

**Syllabus:**

A township fire department has the primary responsibility to fight fires within the township or in any subdivision which the township trustees have agreed to protect, notwithstanding that such fire may be in connection with a vehicle traveling on a limited access highway to which no convenient entrance may be made within said township or protected subdivision. Agreements or contracts may be made, by the township or the protected subdivision, however, pursuant to statutory authority, with other subdivisions whose fire-fighting facilities could more easily enter the limited access highway and reach the fire in the said township or protected subdivision.

While a subdivision with convenient access to the highway may, according to Sections 505.442 and 717.021, Revised Code, extend its fire-fighting services via the highway to the site of a fire in a neighboring township, there does not seem to be any duty to do so.

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**To: Richard J. Rinebolt, Hancock County Paos. Atty., Findlay, Ohio**  
**By: William B. Saxbe, Attorney General, June 28, 1966**

Your request for my opinion reads in part as follows:

"Is a township fire department required to answer fire calls in connection with vehicles traveling on a limited access federal highway,\* \* \* when there are no accesses to said Interstate Highway within the boundaries of the township?"

"Is a township fire department which has entered into a contract with a village or villages in another township to furnish fire protection to them required to answer fire calls received from said village or villages which are not abutting on or directly accessible to a limited access federal highway in connection with vehicles traveling on said limited access federal highway?"

A board of township trustees is permitted by Section 505.37, Revised Code, to provide for protection against the occurrence of fires within the township, and for fighting such fires should they

occur. Section 505.37, Revised Code, provides in part:

"The board of township trustees may establish all necessary regulations to guard against the occurrence of fires, 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 such fire apparatus, mechanical resuscitators or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes as seems advisable to the board.\* \* \*"

It seems apparent that if a fire occurs in connection with a vehicle traveling on a portion of a limited access interstate highway within a township, or within the fire district of such township as provided in Section 505.37, Revised Code, then such fire deserves the same action by the township fire department as would be accorded any other fire within said township or fire district. The availability of convenient access to the highway does not determine whether such a fire is within the physical area to be protected by the township fire-fighting facilities. When fire protection is available in a township or a fire district pursuant to Section 505.37, supra, it must be furnished to all on an equal basis. This should be true notwithstanding that the one benefiting from the fire protection may not be a taxpayer in the township or fire district, but was merely traveling upon a highway located in said township or district.

Consideration should be given to Informal Opinion No. 220, Informal Opinions of the Attorney General for 1953, issued January 22, 1953, where it was said:

"\* \* \*I believe it clear that the General Assembly proceeded on the long and well-founded assumption that the political entity involved would afford fire protection to all of the property located therein without reference to its ownership.

"I am in full accord with the statement of one of my predecessors, as contained in Informal Opinion No. 21, issued to the State Fire Marshal on February 20, 1946, which reads:

"\*' \* \*If the township itself maintained a fire department, it would hardly be open to question that it would be as much its duty to furnish protection to a public building located within its limits as it would be to furnish such protection to privately owned buildings. Fire protection is not for certain individuals or properties but for all within the corporate territory.'

"The fact that some property may be exempted from real estate taxes does not alter the obligation of the political entity to furnish fire protection without discrimination.\* \* \*"

Thus it seems that the township fire department has an obligation to furnish the same protection to a vehicle traveling upon the limited access highway as would be accorded to a vehicle traveling anywhere within the township or fire district. It does not matter that the township fire-fighting equipment must leave the township or fire district to enter the limited access highway and then re-enter the township via the highway to fight the fire.

If there is concern that equipment might not arrive in time to be of any assistance in fighting such a fire, as is apparently the basis for your request, a township without convenient access to the highway may, pursuant to the statute, make some arrangements with other subdivisions of the state whose fire-fighting facilities might more quickly enter the highway to fight the fire within the particular township.

Sections 505.44 and 717.02, Revised Code, permit the township to enter into contracts with other political subdivisions or private fire companies to obtain fire protection, or additional fire protection in case of emergency, within the township or fire district. Such contracts may be three years in duration, and may be with fire departments of subdivisions in another state if necessary. Such a contract might be used to place the responsibility, for fighting fires on a limited access highway within the particular township, upon a fire department located close to an entrance to the highway but outside the said township.

Sections 505.442 and 717.021, Revised Code, provide for the "extension" of municipal or township fire services to other subdivisions of the state. Such fire protection may be extended outside the particular municipality or township where they are regularly found, or beyond any territory covered by contracts authorized by Sections 505.44 and 717.02, supra, upon authorization by the governing body of the municipality or township. Thus a subdivision with convenient access to the limited access highway has the statutory power to extend its services beyond its boundaries to the site of a fire upon that highway. While a township might request that such a municipality or neighboring township with easy access to the highway send its equipment to fight such a fire, there is nothing within the statute that places any duty on the subdivision to respond to such a call.

With regard to the second part of your request, the discussion above should be applicable. If a township fire department has entered into a contract to protect a village in a neighboring township, and if a fire occurs in connection with a vehicle traveling on a limited access highway within the fire district of the protected village, then the responsibility for fighting such a fire is upon the contracting township's fire department. Again, the fact that the township fire department does not have convenient access to the highway does not determine the responsibility for answering such a fire. If the village or the contracting township is concerned with the possibility of delay in reaching a fire on the limited access highway, the village or the township may make a separate agreement, according to Sections 505.44, 717.02, 731.14, or 731.141, Revised Code, with another subdivision whose fire equipment could more quickly enter the highway and fight the fire within the district of said village.

It must be remembered that in any case the board of township trustees may make only such arrangements or contracts for fire pro-

tection service as the statutes permit. It is well settled that township trustees possess only those powers which are expressly or by necessary implication conferred upon them by statute. Hopple v. Brown Township, 13 Ohio St. 311; Opinion No. 292, Opinions of the Attorney General for 1957, page 85.

It is therefore my opinion and you are hereby advised that:

A township fire department has the primary responsibility to fight fires within the township or in any subdivision which the township trustees have agreed to protect, notwithstanding that such fire may be in connection with a vehicle traveling on a limited access highway to which no convenient entrance may be made within said township or protected subdivision. Agreements or contracts may be made, by the township or the protected subdivision, however, pursuant to statutory authority, with other subdivisions whose fire-fighting facilities could more easily enter the limited access highway and reach the fire in the said township or protected subdivision.

While a subdivision with convenient access to the highway may, according to Sections 505.442 and 717.021, Revised Code, extend its fire-fighting services via the highway to the site of a fire in a neighboring township, there does not seem to be any duty to do so.