

OPINION NO. 2004-002**Syllabus:**

1. When a board of township trustees has purchased a vacant former school building from a school district and the board of township trustees has not yet determined whether the building is fit for public use, has not yet decided whether to keep or remove the building, and has not yet begun to use the building for any township purpose, R.C. 3313.76 does not require the board of township trustees to allow a citizen group or nonprofit organization to use the building.
2. If the board of township trustees decides to allow the public to use a former school building that the township owns, the board may, without competitive bidding, lease the building under such terms as are agreed upon, pursuant to R.C. 505.102, R.C. 505.11(A), or R.C. 511.03.
3. If the board of township trustees decides to sell or transfer a former school building that the township owns, the board may do so without competitive bidding pursuant to R.C. 505.10(A)(2), R.C. 505.10(A)(5), R.C. 505.10(A)(6), R.C. 505.102, or R.C. 505.104, or by public auction pursuant to R.C. 505.10(A)(1).
4. If the board of township trustees decides to divide real property owned by the township so that it can sell or lease a portion of the property and use the remaining property for a different purpose, it may do so pursuant to applicable statutes and in accordance with general principles of law governing real property.
5. The Ohio School Facilities Commission is not authorized by statute to provide money for the purpose of removing a former school building of a local school district after the ownership of that building has been transferred to a board of township trustees.

To: Richard D. Welch, Morgan County Prosecuting Attorney, McConnellsville, Ohio
By: Jim Petro, Attorney General, January 12, 2004

We have received your request for an opinion on several questions pertaining to the use or disposition of a former elementary school building that has been purchased by a board of township trustees.¹ Your questions may be phrased as follows:

1. Does R.C. 3313.76 require the board of township trustees to allow the Pennsville Community Center Inc., or any other citizen group, to use this old, vacant former school building, when the board of trustees has not yet determined whether the building is fit for public use or whether the board wishes to remove the building,

¹It is our understanding that the township in question has not adopted the limited home rule form of township government under R.C. Chapter 504, and this opinion does not address the powers of a township acting under that chapter.

especially where the board of trustees paid only \$1.00 for the building and has not used public funds to maintain the building? If so, what liability do the trustees incur as a result of being required to allow the public to use the building and how may they protect against such liability? Can the trustees charge a cost or fee to the public for such use of the building and/or what restrictions, if any, may the trustees place on the use of the property?

2. If the board of trustees decides to allow the public to use the building, and desires to enter into a lease agreement, must it use the competitive bidding process and what, if any, are the restrictions involved in such a lease agreement?
3. If the board of trustees decides to sell the building, what procedure must it follow to do so?
4. May the board of trustees divide the real property so that it can sell or lease a portion and use the remaining property for another use? If so, what procedure must it follow to do so?
5. Is the Ohio School Facilities Commission prohibited by any law, rule or regulation from providing money through the Morgan Local School District for the purpose of removing one of its former school buildings even though the school district has transferred ownership to the Penn Township Trustees?

Background

As you have described the situation, the Morgan Local School District recently built new elementary schools throughout the county. As a result, it had several old elementary school buildings to dispose of by conveyance or demolition. The board of education offered these buildings for sale, for \$1.00 each, to the respective townships in which they were located. The board of education also indicated that it would apply to the Ohio School Facilities Commission (OSFC) under R.C. Chapter 3318 for money to remove the buildings, if the townships so desired.

The Penn Township Trustees accepted the offer of an old elementary school building located within its boundaries, and the school district conveyed that building to the Trustees by quitclaim deed on August 22, 2002, for the sum of \$1.00. Following the conveyance, a controversy developed between the Trustees and a nonprofit corporation known as the Pennsville Community Center Inc. (PCCI). While the Trustees were considering what action to take with respect to the former school building, PCCI sought to lease the building for use for various educational and recreational activities. The Trustees did not wish to enter into such a lease and decided to ask the school district to apply for money to have the building removed. A dispute arose over the question whether OSFC money could be used to tear down a school building that was no longer owned by a school district, and OSFC declined to provide the removal money. The Penn Township Trustees are seeking guidance regarding their rights, duties, and potential liabilities with respect to the former school building.

Application of R.C. 3313.76 to Vacant Former School Building

Your first question asks if R.C. 3313.76 requires the Penn Township Trustees to allow the PCCI, or any other citizen group, to use the old, vacant former school building, when the Trustees have not yet determined whether it is fit for public use or whether they wish to remove it, and when the Trustees paid only \$1.00 for the building and have not used public funds to maintain it. To answer this question, it is necessary to examine R.C. 3313.76, which states:

Upon application of any responsible organization, or of a group of at least seven citizens, *all school grounds and schoolhouses, as well as all other buildings under the supervision and control of the state, or buildings maintained by taxation under the laws of this state, shall be available for use as social centers* for the entertainment and education of the people, including the adult and youthful population, and for the discussion of all topics tending to the development of personal character and of civic welfare, and for religious exercises. *Such occupation should not seriously infringe upon the original and necessary uses of such properties.* The public officials in charge of such buildings shall prescribe such rules and regulations for their occupancy and use as will secure a fair, reasonable, and impartial use of the same.

R.C. 3313.76 (emphasis added). A companion section specifies that any organization or group of citizens permitted to use properties under this provision “shall be responsible for any damage done them over and above the ordinary wear, and shall, if required, pay the actual expenses incurred for janitor service, light, and heat.” R.C. 3313.79.

The language of R.C. 3313.76 provides that certain public buildings must be made available to responsible organizations and groups for educational and recreational purposes, under reasonable rules and regulations for their occupancy and use, and with the limitation that providing such access “should not seriously infringe upon the original and necessary uses of such properties.” R.C. 3313.76. By its terms, this statute applies to school grounds and schoolhouses, other buildings under the supervision and control of the state, and buildings maintained by taxation under the laws of the state. It contemplates that the buildings to which it applies are being put to necessary use by the governmental entities that supervise and maintain them.

Although R.C. 3313.76 appears in Chapter 3313 of the Revised Code, which is directed to the organization and powers of boards of education, its language is general, and it has been found to apply to township buildings. *See* 1932 Op. Att’y Gen. No. 4014, vol. I, p. 136 (syllabus, paragraph 1) (“[a] town hall may be used for the purposes mentioned in [G.C. 7622-1, now R.C. 3313.76], so long as such use does not seriously infringe upon the original and necessary uses of such property”). You have suggested that the building in question might not be subject to R.C. 3313.76 because the township has not yet used public money to maintain it. While it is possible that the township may not yet have used public money to maintain the building, this is clearly a temporary state, and likely one of short duration. The fact that the township owns the property makes the township responsible for its supervision and maintenance, and any expenditures, including those necessary to keep the property from becoming a safety hazard, will bring it within the provisions of R.C. 3313.76. Accordingly, it is appropriate to consider the application of this section to the circumstances you have described.

The type of usage of public buildings that R.C. 3313.76 permits has been described as a license, rather than a lease, as follows:

[R.C. 3313.76 and related provisions] govern the use of schoolhouses and school grounds for purposes other than the education of pupils of the school district. While they authorize the board of education to permit the use of schoolhouses and school grounds for various purposes, they do not contemplate the grant of a leasehold or other interest in the real property. Essentially, R.C. 3313.76-.78 authorize the board to grant a license for the use of schoolhouses and school grounds. A license is "an authority to do some act or series of acts on the land of another without passing any interest in the land." *Ripple v. The Mahoning Nat'l Bank*, 143 Ohio St. 614, 619, 56 N.E.2d 289, 291 (1944) (citations omitted). A lease, on the other hand, "is a contract for the possession and profit of land by the lessee and in recompense of rent or increase to the lessor, and is a grant of an estate in the land." *Id*; see also *DiRenzo v. Cavalier*, 165 Ohio St. 386, 135 N.E.2d 394 (1956).

1992 Op. Att'y Gen. No. 92-016, at 2-56. Thus, permission to use a building under R.C. 3313.76 is merely a grant of a license to use the building for certain activities, rather than a grant of any interest in the building. See *DiRenzo v. Cavalier*, 165 Ohio St. 386, 135 N.E.2d 394 (1956) (syllabus, paragraph 1) ("[a] license to do an act upon land involves the exclusive occupation of the land by the licensee so far as is necessary to do the act and no further, whereas a lease gives the right of possession of the land and the exclusive occupation of it for all purposes not prohibited by its terms").²

Even though R.C. 3313.76 uses the mandatory word "shall," indicating that public property must be made available in accordance with its provisions, some discretion remains with the board of education or other public body that owns the property. As was stated by a prior Attorney General:

It is clearly within the board's power to say whether or not an organization or group of citizens desiring to use the school building is responsible and whether or not the proposed use is educational or entertaining in its scope, or the proposed meeting or entertainment is educational, civic, social or recreational in its nature, or whether topics to be discussed at any such meeting tend to the development of personal character or civic welfare. The board also in its discretion may prescribe such rules and regulations for the occupancy of the building as will secure a fair, reasonable and impartial use of the same.

This discretion reposed in the board but must not be exercised arbitrarily or in such a manner as to amount to its abuse.

1928 Op. Att'y Gen. No. 1670, vol. I, p. 280, at 283; see also 1974 Op. Att'y Gen. No. 74-063; 1920 Op. Att'y Gen. No. 1069, vol. I, p. 274.

The evident intent behind R.C. 3313.76 was to permit responsible organizations and groups of citizens to make use of public buildings for purposes of entertainment and educa-

²R.C. 3313.75, R.C. 3313.77, and R.C. 3313.78, which authorize the use of school buildings for community purposes, are directed only to boards of education and are not addressed in this opinion. See generally 1991 Op. Att'y Gen. No. 91-064.

tion, in such manner as would not conflict with the functions for which the buildings were acquired and maintained. Thus, for example, it was anticipated that community groups could meet in schoolhouses in the evenings, when the teachers and students were not using them. *See State ex rel. Richland Parent Teacher's Ass'n v. Bd. of Educ.*, 19 Ohio Op. 497, 501-02 (C.P. Vinton County 1941) (“[G.C. 7622-1, now R.C. 3313.76] indeed contemplates the right to use public property when application therefore [sic] is properly made, and such will not seriously infringe upon the ordinary and intended use thereof;” for request for use to be granted, application must refer to specific time or times when facilities are wanted and there must be an effort to determine if the requested times coordinate with the public use of the building).

Under the facts presented, the township has acquired a building that has not yet been used for any township purpose. The board of township trustees purchased the building for a dollar because it was made available at a bargain price. Apart from the potential uses of the building, the township has acquired the land on which the building is located. The board of township trustees has not yet decided how to use the building, or whether the greatest benefit for the township could be achieved by destroying the building and putting the land to a different use. The board of township trustees has not yet determined that the building is safe or fit for public use in its current condition. The board of township trustees has authority and discretion to decide how to use property that it has acquired. Because the board of township trustees has not yet made that decision and has not begun to use the building for a public purpose, the board is not required to make the building available for the use of citizen groups or nonprofit organizations pursuant to R.C. 3313.76.

R.C. 3313.76 states expressly that the occupation of public property by private organizations “should not seriously infringe upon *the original and necessary uses* of such property.” This language indicates that the first and principal use of the property must be to serve the needs of the public entity that owns it. Until the board of township trustees has determined how to use the property and has initially devoted the property to a public use, the board is not required to allow occupation by a third party, for such occupation has the potential of interfering with the necessary public use of the property. Further, in order to prevent possible damage or injury to persons or property, it is appropriate to permit the board of township trustees to assure that necessary maintenance and repair have occurred before any use of the property takes place, whether for public or private purposes.

R.C. 3313.76 provides for rules and regulations that secure “a fair, reasonable, and impartial” use of public property by private entities. Thus, R.C. 3313.76 is designed to allow groups and organizations the occasional use of public buildings, in a fair and reasonable manner. The board of township trustees retains authority to determine when the use of its property by private bodies is reasonable. R.C. 3313.76 does not give a nonprofit organization the right to mandate that a township grant it access to a building that has not yet been determined to be fit for public use and has not yet been put to use for a proper township purpose.³

³The conclusion that R.C. 3313.76 does not empower groups and organizations to dictate to a public body the public facilities that must be made available for their use was reflected in *State ex rel. Richland Parent Teacher's Association v. Board of Education*, 19 Ohio Op. 497 (C.P. Vinton County 1941). In that case, a nonprofit association brought an action in mandamus seeking the use of the auditorium in a new school building, after the board of education had denied that use but had offered the use of an old school building. The court denied the writ, upholding the authority of the board of education to exercise discretion in determining which property, or parts of property, to make available, and stating: “The respondent in this

We conclude, therefore, that when a board of township trustees has purchased a vacant former school building from a school district and the board of township trustees has not yet determined whether the building is fit for public use, has not yet decided whether to keep or remove the building, and has not yet begun to use the building for any township purpose, R.C. 3313.76 does not require the board of township trustees to allow a citizen group or nonprofit organization to use the building. Thus, on the facts you have presented, R.C. 3313.76 does not require the board of trustees to allow the PCCI to use the building. Therefore, it is not necessary to address the other aspects of your first question.

Lease of Township Building

Your second question concerns the possible lease of the building in question. Assuming that the board of township trustees decides to allow the public to use the building and desires to enter into a lease agreement for this purpose, you ask whether the board must use the competitive bidding process and what restrictions might be involved in such a lease agreement. As noted above, the lease of a building is a contract for possession of the property and a grant of an estate in the property. See *Black's Law Dictionary* 898 (7th ed. 1999) (defining "lease" as "[a] contract by which a rightful possessor of real property conveys the right to use and occupy that property in exchange for consideration, usu. rent"). Thus, it differs from a license to access property for a particular use, which may be granted pursuant to R.C. 3313.76.

A board of township trustees has only the powers it is granted by statute, either expressly or by necessary implication. See *In re Petition for Incorporation of the Village of Holiday City*, 70 Ohio St. 3d 365, 369, 639 N.E.2d 42 (1994); *Hopple v. Trs. of Brown Township*, 13 Ohio St. 311, 324-25 (1862). By statute, a board of township trustees has authority to acquire and hold real property for various public purposes, and its authority to lease the property may depend upon the purposes for which the property is acquired and held. See, e.g., R.C. 503.01; R.C. 505.10; R.C. 505.26; R.C. 505.37; R.C. 511.11.

For example, R.C. 505.102 authorizes a board of township trustees to sell, lease, or transfer real property belonging to the township and not needed for public use to a nonprofit senior citizens' organization to be used for public purposes involving housing, health, social services, or recreational activities for the benefit of older persons. Such transactions are excepted from competitive bidding requirements. See R.C. 505.10; 1987 Op. Att'y Gen. No. 87-106, at 2-705 n.1. A lease made under R.C. 505.102 may contain such terms and conditions as are agreed upon by the board of township trustees and the organization.

A provision dealing with town halls states, in part:

The board [of township trustees] shall have control of any town hall belonging to the township, and *it may rent or lease all or part of any hall, lodge, or recreational facility* belonging to the township, *to any person or organization under terms the board considers proper*, for which all rent shall

case [the nonprofit association] would appear to have an exaggerated conception of its discretion and authority under this and related code provisions." *State ex rel. Richland Parent Teacher's Ass'n v. Bd. of Educ.*, 19 Ohio Op. at 501; see also *State ex rel. Greisinger v. Grand Rapids Bd. of Educ.*, 88 Ohio App. 364, 100 N.E.2d 294 (Wood County 1949) (denying a writ of mandamus to allow Jehovah's Witnesses to use the school auditorium and upholding the authority of a board of education to exercise discretion in determining when to permit the use of school property).

be paid in advance or fully secured. In establishing the terms of any rental agreement or lease pursuant to this section, the board of township trustees may give preference to persons who are residents of or organizations that are headquartered in the township or that are charitable or fraternal in nature. All persons or organizations shall be treated on a like or similar basis, and no differentiation shall be made on the basis of race, color, religion, national origin, sex, or political affiliation. The rents received for such facilities may be used for their repair or improvement, and any balance shall be used for general township purposes.

R.C. 511.03 (emphasis added). If the board of township trustees decides to use the former school building as a hall, lodge, or recreational facility, it may lease the building under this provision. There is no competitive bidding requirement.⁴ The board has discretion to determine proper terms, but must require that the rent be paid in advance or fully secured. Preference may be given to local residents or organizations, or to charitable or fraternal organizations, but discrimination is not allowed on the basis of race, color, religion, national origin, sex, or political affiliation. The rents so received may be used for the repair or improvement of the building leased, and any balance is available for general township purposes.

A more general provision authorizing the lease of real property of a township appears in R.C. 505.11. It provides that "when, in its opinion, the township would be benefited, the board of township trustees may lease township real property to any person upon terms agreed upon by the board and the lessee." R.C. 505.11(A).⁵ Consideration must be paid to the township clerk, who provides a receipt for the amount received and deposits the money in the township general fund. *Id.* Again, there is no competitive bidding requirement.⁶

These statutory grants of authority to lease real property of the township provide the board of township trustees with broad discretion to determine the terms of the lease. In leasing real property, the township trustees must comply with the requirements of the applicable statutes. To the extent that the statutes are silent, the township trustees may exercise reasonable discretion in determining the terms of a lease. For example, R.C. 505.11(B) imposes specific time restrictions on leases of mining rights, whereas no specific restrictions are imposed on leases under R.C. 505.11(A), thereby leaving the determination of the appropriate terms of those leases to the reasonable discretion of the board of township trustees. *See generally* 1998 Op. Att'y Gen. No. 98-014, at 2-72 n.3.⁷ In general, there must be

⁴Of course, even when there is no competitive bidding requirement, the board of township trustees may choose to lease real property by competitive bidding. *See* 1994 Op. Att'y Gen. No. 94-021, at 2-95; 1987 Op. Att'y Gen. No. 87-079, at 2-519; 1980 Op. Att'y Gen. No. 80-028, at 2-117.

⁵R.C. 505.11(B) provides for the leasing of mining rights and is not relevant to the question you have raised.

⁶R.C. 505.11(A), providing general authority for a township to lease real property that it owns, was initially enacted in 1983-1984 Ohio Laws, Part I, 407, 408 (Am. S.B. 148, eff. June 13, 1984). Prior to that time, general authority for a township to lease real property not needed for current use was implied, pursuant to case law, from the authority to hold real property. *See* 1980 Op. Att'y Gen. No. 80-028.

⁷It has been stated that, when a public body leases property that is not currently needed for public use, the public body must reserve the power to revoke the lease if the need to use

consideration for a lease of real property, unless a statute provides otherwise. *Id.* Further, care must be taken to avoid entanglements between public and private interests that are prohibited by the lending credit provisions of Ohio Const. art. VIII, §§ 4 and 6; however, that issue is not of concern when the lease is with a nonprofit corporation for a public purpose. See 2002 Op. Att’y Gen. No. 2002-031, at 2-209; 1992 Op. Att’y Gen. No. 92-016.

Therefore, if the board of township trustees decides to allow the public to use a former school building that the township owns, the board may, without competitive bidding, lease the building under such terms as are agreed upon, pursuant to R.C. 505.102, R.C. 505.11(A), or R.C. 511.03.

Sale of Township Building

Your third question asks what procedure the board of township trustees must follow if it decides to sell the former school building. Like the lease of real property, the sale of real property may be subject to various statutory provisions. As discussed above, a board of township trustees is authorized, without competitive bidding, to sell, lease, or transfer real property that belongs to the township and is not needed for public use to a nonprofit senior citizens’ organization to be used for public purposes involving housing, health, social services, or recreation for the benefit of older persons, upon such terms and conditions as may be agreed upon. R.C. 505.10; R.C. 505.102; see 1987 Op. Att’y Gen. No. 87-106, at 2-705 n.1. Any deed conveying real property pursuant to R.C. 505.102 may state that, if the real property is used at any time for any purposes other than those enumerated in the statute, “all right, title, and interest in the property shall revert to the township.” R.C. 505.102. Further, while not authorizing a sale for money, R.C. 505.104 permits a board of township trustees, by resolution and without bidding or advertising, to exchange and transfer any real property belonging to the township for other real property, if certain conditions are met.

Provisions authorizing the sale of real property by a township appear in R.C. 505.10. As a general matter, R.C. 505.10 first requires a board of township trustees to determine by resolution that particular township property is not needed for public use, is obsolete, or is unfit for the use for which it was acquired. The statute goes on to specify the various ways in which the board may dispose of township property once such a resolution has been enacted.

R.C. 505.10 describes two specific types of transfers of real estate that may be made without competitive bidding. Pursuant to R.C. 505.10(A)(5), if a township has title to real property, the board of township trustees, by resolution, may authorize the transfer and conveyance of the property to any other political subdivision of the state upon such terms as are agreed upon. Pursuant to R.C. 505.10(A)(6) a board of township trustees that wishes to sell or otherwise transfer real property that the township owns may do so “upon a unanimous vote of its members and by resolution.” The property may be transferred and conveyed to any person upon terms agreed to by the board and the transferee. R.C. 505.10(A)(6).⁸

the property for a public purpose should arise. See, e.g., 1992 Op. Att’y Gen. No. 92-016, at 2-55 and 2-57; 1980 Op. Att’y Gen. No. 80-028. It does not appear that such a reservation is required when a statute clearly authorizes the lease and does not require a reservation of the power to revoke, or when the lease is for a purpose that benefits the public body. See 1987 Op. Att’y Gen. No. 87-106, at 2-705 n.1; note 5, *supra*. See generally *Minamax Gas Co. v. State ex rel. McCurdy*, 33 Ohio App. 501, 170 N.E. 33 (Scioto County 1929).

⁸Even in the absence of a statutory bidding requirement, it may be fiscally prudent for the township trustees to follow a competitive bidding process in the sale or transfer of township

If the board of trustees does not sell or transfer real property pursuant to one of the specific provisions discussed above, the sale must be made in accordance with the general provisions of R.C. 505.10, as follows:

(A)(1) *If the fair market value of property to be sold is, in the opinion of the board, in excess of two thousand five hundred dollars, the sale shall be by public auction, and the board shall publish notice of the time, place, and manner of the sale once a week for three weeks in a newspaper published, or of general circulation, in the township, the last of those publications to be at least five days before the date of sale, and shall post a typewritten or printed notice of the time, place, and manner of the sale in the office of the board for at least ten days prior to the sale.*

(2) *If the fair market value of property to be sold is, in the opinion of the board, two thousand five hundred dollars or less, the board may sell the property by private sale, without advertisement or public notification.*

R.C. 505.10 (emphasis added). Thus, if the fair market value of the property is in excess of two thousand five hundred dollars, the property must be sold by public auction, after proper notice. If the fair market value is two thousand five hundred dollars or less, the property may be sold by private sale, without advertisement or public notice.⁹

If property is offered at public auction and the township does not receive an acceptable offer, the board of township trustees, by resolution, may enter into a contract to sell the property without advertising or bidding. The resolution must specify a minimum acceptable price and minimum acceptable terms. The minimum acceptable price cannot be lower than the minimum price established for the public auction. R.C. 505.10(B).

Therefore, if the board of township trustees decides to sell or transfer a former school building that the township owns, the board may do so without competitive bidding pursuant to R.C. 505.10(A)(2), R.C. 505.10(A)(5), R.C. 505.10(A)(6), R.C. 505.102, or R.C. 505.104, or by public auction pursuant to R.C. 505.10(A)(1).

Division of Real Property Owned by the Township

Your fourth question asks whether the board of township trustees may divide the real property so that it can sell or lease a portion and use the remaining property for another purpose. You also ask about the appropriate procedure for accomplishing this result.

As discussed above, a board of township trustees is authorized to receive and hold real property, and to lease or convey it pursuant to statute. *See, e.g.*, R.C. 503.01; R.C. 505.10; R.C. 511.11. As a landowner, a public body has the same rights and powers as other landowners. Unless a statute provides an exception for a public landowner, the public body is governed by general principles of real property law and may divide real property that it

property. *See, e.g.*, 1994 Op. Att’y Gen. No. 94-021, at 2-95 (“[c]ompetitive bidding requirements are intended to assure the best and most efficient expenditure of public moneys and to prevent fraud and collusion in the making of public contracts”); 1987 Op. Att’y Gen. No. 87-079; note 4, *supra*.

⁹Effective February 12, 2004, the board of township trustees will have the option of selling property valued at more than two thousand five hundred dollars by sealed bid to the highest bidder, instead of by public auction. *See* Sub. S.B. 82, 125th Gen. A. (2003) (eff. Feb. 12, 2004) (amending, *inter alia*, R.C. 505.10(A)).

owns in the same manner as other landowners. *See generally Dir. of Highways v. Kramer*, 23 Ohio App. 2d 219, 223, 262 N.E.2d 561 (Trumbull County 1970) (“[t]here appears to be no logical reason why the degree of ownership in land, when defined as a fee simple title with all right, title and interest, should be different when the owner is a government subdivision rather than a private party”); *Trs. of German Township v. Farmers & Citizens Sav. Bank Co.*, 51 Ohio Op. 346, 351, 113 N.E.2d 409 (C.P. Montgomery County 1953) (“when the township as an agency of the state acts in the buying or selling or leasing of property, it acts within its proprietary capacity and not within its governmental capacity”), *aff’d*, 115 N.E.2d 690 (Ct. App. Montgomery County 1953); 1988 Op. Att’y Gen. No. 88-076 (syllabus, paragraph 1) (“[u]nless a statute provides to the contrary, the contracts of a governmental entity are governed by the same principles that apply to contracts between individuals”); R.C. 5301.68 (“[a]ll conservation easements and agricultural easements [including those granted to townships] shall be executed and recorded in the same manner as other instruments conveying interests in land”); R.C. Chapters 5301 and 5302.

Subject to specific statutes providing otherwise, a board of township trustees acts by resolution or order. Thus, real estate transactions are ordinarily authorized by resolution of the board of township trustees. In certain circumstances, voter approval is required. For example, “[i]f, in a township, a town hall is to be built, improved, enlarged, or removed at a cost greater than ten thousand dollars,” the question must be submitted to the voters. R.C. 511.01. *See generally* Rebecca C. Princehorn, B.A., J.D., M.P.A., *Baldwin’s Ohio Township Law*, vol. 3, F 1.19, F 9.1, F 9.3, F 9.4, F 9.5 (4th ed. 2003).

Therefore, if the board of township trustees decides to divide real property owned by the township so that it can sell or lease a portion and use the remaining property for a different purpose, it may do so pursuant to applicable statutes and in accordance with general principles of law governing real property.

Provision of Funds by the Ohio School Facilities Commission for the Removal of Former School Buildings

Your final question asks whether the Ohio School Facilities Commission is prohibited by any law, rule, or regulation from providing money through the Morgan Local School District for the purpose of removing one of its former school buildings, even though the school district has transferred ownership to the Penn Township Trustees. In addressing this question, it is important to note first that OSFC is a creature of statute and, as such, it has only the authority it is given by statute, either expressly or by necessary implication. R.C. 3318.30-.31; *see Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 379, 329 N.E.2d 693 (1975) (an administrative agency of the state “has only such authority, either express or implied, as conferred upon it by the General Assembly. Such authority that is conferred upon an administrative agency by the General Assembly cannot be extended by the agency”). Therefore, in considering whether OSFC may take particular action, the question to address is whether the authority to take that action is granted by statute.

The authority of OSFC to provide local school districts with funds for the construction of school buildings and related costs is derived from R.C. Chapter 3318. That chapter creates the OSFC and gives it the responsibility of administering the provision of financial assistance to school districts for the acquisition or construction of classroom facilities in accordance with statutory provisions. *See* R.C. 3318.30(A); *see also* R.C. 3318.31.

The primary function of OSFC is to assist school districts with the acquisition or construction of facilities. It is recognized, however, that the demolition of facilities that are

replaced may be an essential part of a building project, as evidenced by the following definition:

“Basic project cost” means a cost amount determined in accordance with rules adopted under section 111.15 of the Revised Code by the Ohio school facilities commission. The basic project cost calculation shall take into consideration the square footage and cost per square foot necessary for the grade levels to be housed in the classroom facilities, the variation across the state in construction and related costs, the cost of the installation of site utilities and site preparation, *the cost of demolition of all or part of any existing classroom facilities that are abandoned under the project*, the cost of insuring the project until it is completed, any contingency reserve amount prescribed by the commission under [R.C. 3318.086], and the professional planning, administration, and design fees that a district may have to pay to undertake a classroom facilities project.

R.C. 3318.01(L) (emphasis added). Rules adopted by OSFC recognize that, as part of the basic project cost, an allowance may be provided “for demolition of buildings that are being taken out of service.” 5 Ohio Admin. Code 3318-4-01(F). Thus, OSFC’s authority to provide school districts with basic project costs includes the authority to pay the cost of demolition of all or part of any existing classroom facilities that are abandoned under the project.

You have informed us that, in the instant case, OSFC has made some moneys for demolition available to the Morgan Local School District. However, no such funds are available to demolish the school building that has already been transferred to the Penn Township Trustees. This situation reflects the policy of OSFC to decline to grant moneys to demolish former school buildings when those buildings are no longer owned by the school district that abandoned them as part of its building project.

It appears that the policy adopted by OSFC is consistent with, and mandated by, the provisions of statute governing OSFC. The authority of OSFC to provide funds for the demolition of former school buildings extends only to boards of education. OSFC has no statutory authority to provide funds to a township. *See* R.C. Chapter 3318.

Further, OSFC is authorized to provide a school district only with funds that pertain to projects of the school district approved under R.C. Chapter 3318. *See* R.C. 3318.12; R.C. 3318.30(A); *see also* R.C. 3318.042; R.C. 3318.351; R.C. 3318.37; R.C. 3318.38. While the project of the Morgan County School District included abandonment of the school building in question and thus might include the cost of demolishing that building, the transfer of ownership of the building to a township eliminated the school district’s responsibility for that building. Because the school district no longer has legal authority over, or a legal interest in, the school building, OSFC has no authority to pay the school district funds relating to the improvement or demolition of the building.

We understand that, if the school district had retained the building, it might have obtained funds from OSFC for the demolition of the building, and it could have conveyed the real property to the township after the building was demolished. However, the township took ownership of the building prior to demolition. As you have indicated, the township apparently acquired the building intentionally, considering the possibility that it might maintain the building and use it for some township purpose. It appears that this transfer of ownership prior to demolition removed the property from the school district’s project and thus eliminated the possibility that OSFC might provide money for the cost of demolition.

We conclude, accordingly, that the Ohio School Facilities Commission is not authorized by statute to provide money for the purpose of removing a former school building of a local school district after the ownership of that building has been transferred to a board of township trustees.

Conclusions

Therefore, it is my opinion, and you are advised, as follows:

1. When a board of township trustees has purchased a vacant former school building from a school district and the board of township trustees has not yet determined whether the building is fit for public use, has not yet decided whether to keep or remove the building, and has not yet begun to use the building for any township purpose, R.C. 3313.76 does not require the board of township trustees to allow a citizen group or nonprofit organization to use the building.
2. If the board of township trustees decides to allow the public to use a former school building that the township owns, the board may, without competitive bidding, lease the building under such terms as are agreed upon, pursuant to R.C. 505.102, R.C. 505.11(A), or R.C. 511.03.
3. If the board of township trustees decides to sell or transfer a former school building that the township owns, the board may do so without competitive bidding pursuant to R.C. 505.10(A)(2), R.C. 505.10(A)(5), R.C. 505.10(A)(6), R.C. 505.102, or R.C. 505.104, or by public auction pursuant to R.C. 505.10(A)(1).
4. If the board of township trustees decides to divide real property owned by the township so that it can sell or lease a portion of the property and use the remaining property for another purpose, it may do so pursuant to applicable statutes and in accordance with general principles of law governing real property.
5. The Ohio School Facilities Commission is not authorized by statute to provide money for the purpose of removing a former school building of a local school district after the ownership of that building has been transferred to a board of township trustees.