

OPINION NO. 92-003**Syllabus:**

1. The term "budget," as used in R.C. 505.24 for purposes of determining the authorized compensation of township trustees, is based upon the official certificate of estimated resources, and any amended official certificates, received from the county budget commission. (1979 Op. Att'y Gen. No. 79-006, approved and followed.)
2. When a township, pursuant to R.C. 133.10, borrows money in anticipation of the distribution of second half real property taxes and, pursuant to R.C. 5705.36, obtains an amended official certificate of estimated resources from the county budget commission, the township's budget, as determined for purposes of R.C. 505.24, increases to the amount of the amended official certificate of estimated resources. In that case, the township trustees are, from the date of the amended official certificate, entitled to compensation based upon the amount set forth in the amended official certificate.

To: Lynn Alan Grimshaw, Scioto County Prosecuting Attorney, Portsmouth, Ohio
By: Lee Fisher, Attorney General, March 18, 1992

You have requested an opinion relating to the "budget" of a township, as that term is used in R.C. 505.24. Your question is whether, when a township borrows money in anticipation of the distribution of second half real property taxes, the township's budget increases for purposes of R.C. 505.24.

R.C. 505.24 establishes the compensation to which township trustees are entitled. A portion of that compensation is determined on the basis of the township's budget. R.C. 505.24(B). R.C. 505.24 states, in part:

Each township trustee is entitled to compensation as follows:

....

(B) An amount for each day of service in the business of the township, to be paid from the township treasury as follows:

....

(5) In townships having a budget of more than five hundred thousand but not more than seven hundred fifty thousand dollars, thirty-two dollars per day for not more than two hundred days;

(6) In townships having a budget of more than seven hundred fifty thousand but not more than one million five hundred thousand dollars, thirty-six dollars per day for not more than two hundred days....

The term "budget" is not defined for purposes of R.C. 505.24. It has, however, been construed as "including all amounts over which a township has control, or which are expended by or on behalf of a township to satisfy its obligations." 1986 Op. Att'y Gen. No. 86-022 at 2-117. 1979 Op. Att'y Gen. No. 79-006, at 2-16, states: "when R.C. 505.24 refers to a 'budget' it refers to the amount of money which the township is authorized to appropriate, under R.C. 5705.36, pursuant to the county budget commission's certificate of estimated resources and amendments thereto." *See also* 1958 Op. Att'y Gen. No. 2470, p. 456 at 460 (for purposes of determining the compensation of the township clerk under R.C. 507.09, a township's annual budget "in order to be complete, and in order to be informative as to the precise tax levy that must be made, must include an estimate of the entire gross income and the entire expense of the subdivision, whether paid by it or for it"). *See generally* 1954 Op. Att'y Gen. No. 3525, p. 59.

A township is required to prepare a tax budget for each fiscal year. *See* R.C. 5705.28-.30. The county budget commission reviews the tax budget and may make certain adjustments. *See* R.C. 5705.31; R.C. 5705.32. The county budget commission provides the township with an official certificate of estimated resources, which states the total estimated resources that are available for appropriation in the fiscal year. *See* R.C. 5705.35. The township must revise its tax budget so that its contemplated expenditures do not exceed the amounts certified by the budget commission; that revised budget is the basis of the annual appropriation measure. *See* R.C. 5705.35. If the township collects revenue from a new source that is not included in an official certificate, or if actual balances and receipts exceed the certified estimate, the township may certify that fact to the budget commission, and the budget commission will issue an amended official certificate of estimated resources including the additional balances and receipts. *See* R.C. 5705.36. *See generally, e.g.,* 1987 Op. Att'y Gen. No. 87-032. The amount set forth in the county budget commission's official certificate of estimated resources, or subsequent amended official certificate of estimated resources, has been considered to be the amount of the township's "budget" for purposes of R.C. 505.24. *See* Op. No. 79-006.

On the facts that you have presented, a township received a certificate of estimated resources from the county budget commission in the amount of \$693,000. *See* R.C. 5705.35. The township then borrowed \$75,000 in anticipation of the distribution of second half real property taxes, *see* R.C. 133.10, and obtained an amended certificate in the amount of \$768,000, *see* R.C. 5705.36. The township questions whether the receipt of the amended certificate in the higher amount entitles the township trustees to a salary increase from the date of the amended certificate of available funds. On the basis of the authorities discussed above, it must be concluded that the transaction in question does result in an increase in the budget so as to increase the amount of compensation to which the trustees are entitled pursuant to R.C. 505.24.

There is apparently some question as to whether the borrowing of money pursuant to R.C. 133.10 should increase the township's budget for purposes of R.C. 505.24, since the money was borrowed in July of 1991 and was to be repaid in the same calendar year, after the second half distribution of real property taxes was received. *See* R.C. 133.10 (authorizing the issuance of securities in anticipation of the collection of current revenues). The fact that the loan was for a short period of time does not affect the conclusion that the money must be included in the township's budget.

An amount of money that is borrowed is available for the expenditure of the township and, therefore, is properly included in the amended official certificate. *See* R.C. 5705.36. The money must later be repaid to the lender; such repayment is another expenditure of township funds. *See* R.C. 133.10; Op. No. 86-022. Even though the total purchasing power of a township might not be increased by the act of obtaining a loan, the amount of money that the township officials must handle will be increased. The fact that the trustees are responsible for the expenditure of additional amounts of money provides a basis for increasing their authorized compensation. *See, e.g.,* Op. No. 79-006 at 2-16 ("[b]y allowing the trustees of the townships with larger 'budgets' to receive a greater compensation the General Assembly seems to be recognizing that as township expenditures increase, the time and effort required of the trustees increase as well").

In considering a similar question, prior Attorneys General concluded that moneys received from the sale of a bond issue and moneys expended to redeem outstanding bonds or notes were "expenditures" of the township for purposes of determining the salary of the clerk. *See, e.g.,* 1950 Op. Att'y Gen. No. 1602, p. 161; 1948 Op. Att'y Gen. No. 2805, p. 99. Moneys that are borrowed and moneys that are used to pay back loans may, thus, both be properly included within the budget of a township.

As your letter indicates, any increase in the compensation to which the trustees are entitled as a result of an amended official certificate of available funds becomes effective from the date of the amended certificate. Op. No. 79-006 states that, if a township's budget increases during a fiscal year "so as to bring it within the next increment under R.C. 505.24, then per diem compensation of trustees may be increased for the balance of the fiscal year but may not be applied to days already served." Op. No. 79-006 (syllabus).

It is, therefore, my opinion, and you are advised, as follows:

1. The term "budget," as used in R.C. 505.24 for purposes of determining the authorized compensation of township trustees, is based upon the official certificate of estimated resources, and any amended official certificates, received from the county budget commission. (1979 Op. Att'y Gen. No. 79-006, approved and followed.)
2. When a township, pursuant to R.C. 133.10, borrows money in anticipation of the distribution of second half real property taxes and, pursuant to R.C. 5705.36, obtains an amended official certificate of estimated resources from the county budget commission, the township's budget, as determined for purposes of R.C. 505.24, increases to the amount of the amended official certificate of estimated resources. In that case, the township trustees are, from the date of the amended official certificate, entitled to compensation based upon the amount set forth in the amended official certificate.