

July 17, 2025

The Honorable James R. Flaiz
Geauga County Prosecuting Attorney
231 Main Street, 3rd Floor
Chardon, Ohio 44024

SYLLABUS:

2025-011

1. A township has no obligation to contribute toward the maintenance, construction, or reconstruction of a road that is entirely outside of its jurisdictional boundaries.
2. If a township road is “along the line between [two or more] townships, extending into or through all such townships, or wholly within the township but within less than the legal assessment distance of the township line,” R.C. 5573.15 authorizes the boards of township trustees to jointly improve the road. However, R.C. 5573.15 is not the sole means by which a township may assist a neighboring township. A township may provide construction, reconstruction, or maintenance services to another township in an emergency or pursuant to a mutual aid agreement under R.C. 5535.08, regardless of the road’s location.
3. The legal assessment distance in R.C. 5573.15 is equal to the distance within which properties

may be assessed for a township road improvement, which is not more than a mile from either side of a road. Thus, to qualify for joint improvement, the township road to be improved must be within one mile of the boundary between townships.

4. Generally, if a township jointly improves a road within a neighboring township, it may pay its share of costs from the same sources of funding as for roads within its boundaries. Revenue from the gas excise tax, however, may only be used for road improvements *within* the township, and a township's share of the local government fund may not be used for permanent improvements to township roads.



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OPINION NO. 2025-011

The Honorable James R. Flaiz
Geauga County Prosecuting Attorney
231 Main Street, 3rd Floor
Chardon, Ohio 44024

Dear Prosecutor Flaiz:

You have requested an opinion regarding a township's responsibility to assist neighboring townships with road maintenance and improvements. Your request presents the following questions:

1. Does a township have any responsibilities to maintain, construct, or reconstruct a road within a neighboring township where the road right-of-way abuts township boundaries, but the road right-of-way and road fall entirely outside of its jurisdictional boundaries?
2. Is a joint road improvement under R.C. 5573.15 the only statutory means by which neighboring townships could jointly improve a road located within just one of the townships?

3. When reviewing the statutory scheme set forth in R.C. 5573.15, can your office provide guidance on how the term “within less than the legal assessment distance of the township line” is defined?
4. Is a township prohibited from using any of the following funds to contribute to the maintenance, construction, or reconstruction of township roads outside of its jurisdictional boundaries:
 - a. Taxes levied pursuant to R.C. 5705.19(G);
 - b. Inside millage assigned to road and bridge purposes under R.C. 5705.06(F);
 - c. Gas excise tax pursuant to R.C. 5735.27;
 - d. Automobile registration fund distributions pursuant to R.C. 4501.04(E);
 - e. Local government fund distributions pursuant to R.C. 5747.50 - 5747.53; or
 - f. General fund monies.

I

To resolve your questions, I will begin with an overview of first principles governing township road maintenance and improvement in Ohio.

The highways of the state are generally classified as either state, county, or township roads. Township roads are “all public highways other than state or county roads.” R.C. 5535.01(C). County and township roads located within municipal corporations are classified as streets. *See* 2006 Ohio Atty.Gen.Ops. No. 2006-051, at 2-490; *see also* 1988 Ohio Atty.Gen.Ops. No. 88-036 (regarding the division of responsibility between a township, cities, and villages).

“[T]he general statutory scheme is that the state, county, and township, each as to its respective jurisdiction, bears the responsibility for maintenance and repair of its respective road or highway system, although the various subdivisions may cooperate in the maintenance and repair of the others’ roads.” 1981 Ohio Atty.Gen.Ops. No. 81-039, at 2-155; *see* R.C. 5535.08(A) (“[t]he state, county, and township shall each maintain its roads, as designated in section 5535.01 of the Revised Code.”). More specifically, R.C. 5571.02 provides that “[t]he board of township trustees shall have control of the township roads of its township and, except for those township roads the board places on nonmaintained status . . . shall keep them in good repair.” *See also* R.C. 5535.01(C) (“[t]he board of township trustees shall maintain all such roads within its township. The board of county commissioners may assist the board of township trustees in maintaining all such roads.”).

The township trustees' duty to keep roads within the township in good repair is mandatory and may be enforced by writ of mandamus. *See State ex rel. Kreis v. English*, 168 Ohio St. 566, 568 (1959); *see also State ex rel. Rogers v. Taylor*, 152 Ohio St. 241, 244 (1949) ("The repeated and consistent use of the word 'shall' leaves nothing to conjecture."); *Mezger v. Horton*, 2013-Ohio-2964, ¶11 (12th Dist.) ("the proper method of compelling a township's compliance with statutory duties to maintain roadways is to seek a writ of mandamus."). There is an exception to the trustees' duty: a township is not responsible for maintaining roads located within a municipal corporation. *See* 1988 Ohio Atty.Gen.Ops. No. 1988-036, paragraph three of the syllabus.

As for township road *improvements*, R.C. 5571.01 states that "[a] board of township trustees may construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction." *See also* R.C. 5573.01. Unlike the duty to keep roads in good repair, the township trustees' authority to improve roads is discretionary. *See, e.g., State ex rel. Simms v. York Twp. Trustees*, 2000 Ohio App. LEXIS 3305, at *7 (4th Dist. July 14, 2000).

There are two ways to initiate an improvement to a township road. If a petition is signed and submitted by at least 51% of the landowners or lot owners who are to be specifically taxed or assessed for the improvement, the board of township trustees may decide by a

majority vote that the public convenience and welfare require the road's construction, reconstruction, resurfacing, or improvement. R.C. 5571.07. If no petition is presented, the board may decide to construct, reconstruct, or improve a particular road if the trustees unanimously vote to adopt a resolution declaring its necessity. R.C. 5571.15.

With this general framework for road maintenance and improvements in mind, I will proceed to your first question.

II

First, you ask whether a township has any responsibility to maintain, construct, or reconstruct a road within a neighboring township where the road right-of-way abuts the township boundaries.

Townships are creatures of statute, and the authority of their officers and employees is limited to the powers expressly granted by statute or clearly implied. *See Trs. of New London Twp. v. Miner*, 26 Ohio St. 452, 456 (1875); *see also State ex rel. Schramm v. Ayres*, 158 Ohio St. 30, 33 (1952) ("the question is not whether townships are prohibited from exercising such authority. Rather it is whether townships have such authority conferred on them by law."). Thus, we must determine whether any law establishes a duty or grants authority for a township to contribute toward another

township's road maintenance or improvements. *See, e.g.*, 1988 Ohio Atty.Gen.Ops. No. 88-036, at 2-175.

A township has an obligation to maintain township roads under its jurisdiction. *See* R.C. 5535.01(C), 5535.08(A), and 5571.02. However, a township has no duty to maintain, construct, or reconstruct roads outside of its control. Rather, several statutory provisions permit, but do not require, a township to assist other political subdivisions with road repair and maintenance. Briefly summarized:

- (1) Under R.C. 5535.08(A), “the county or township, by agreement between the board of county commissioners and the board of township trustees, may contribute to the repair and maintenance of the roads under the control of the other.” *See* 1990 Ohio Atty.Gen.Ops. No. 90-097 (describing in detail how a county might contribute to township road maintenance); *see also* R.C. 5571.02.
- (2) R.C. 5535.08(A) permits a township to “expend any funds available for road construction, improvement, or repair upon roads inside a village.” *But see* 1988 Ohio Atty.Gen.Ops. No. 1988-036, paragraph six of the syllabus (“The authority granted to a board of township trustees by R.C. 5535.08 to expend any funds avail-

able for road construction, improvement, or repair upon roads inside a village does not extend to roads inside a city.”).

- (3) R.C. 5535.08(B) allows a township to assist another political subdivision (such as a county, township, or municipality) with road repair or maintenance in case of a natural disaster or other declared state of emergency. *See* R.C. 5535.08(B) and (D).
- (4) R.C. 5535.08(C) allows a township to enter a mutual aid agreement with another political subdivision to “provide road or street construction, reconstruction, resurfacing, improvement, repair, or maintenance services” in nonemergency situations. *See* 2008 Ohio Atty.Gen.Ops. No. 2008-038, at 2-384 to 386.

None of the statutes above require a township to contribute toward the maintenance, construction, or reconstruction of a road that is entirely within another township. Rather, a township has discretion to assist another political subdivision (such as a neighboring township) according to the means provided by statute. In each case, the statutory language is permissive; a township ‘may’ take any such actions, rather than ‘shall.’ *See Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 533 (“The word ‘may’ clearly connotes discretion.”); *accord Dennison v. Dennison*, 165 Ohio St. 146, 149 (1956)

(“Ordinarily, the word, ‘shall,’ is a mandatory one, whereas ‘may’ denotes the granting of discretion.”).

III

Your second question references R.C. 5573.15, which allows two or more townships to jointly “construct, reconstruct, resurface, or improve a township road or part thereof, along the line between such townships, extending into or through all such townships, or wholly within the township but within less than the legal assessment distance of the township line.” You ask whether a joint road improvement under R.C. 5573.15 is the only statutory means by which neighboring townships could jointly improve a road located within just one of the townships.

One of my predecessors concluded that R.C. 5573.15 “merely empowers or permits boards of township trustees, undertaking improvements of the nature therein specified, to cooperate in the manner set forth. It does not require that such improvements be undertaken only in accordance with its provisions.” 1956 Ohio Atty.Gen.Ops. No. 6547, p. 358, at 360. The law has not changed, and the opinion is still correct. As noted in response to the first question, a joint road improvement under R.C. 5573.15 is not the only statutory means by which neighboring townships could cooperate in maintaining or improving a road located wholly within just one of the townships. In an emergency or

pursuant to a mutual aid agreement under R.C. 5535.08, a township may provide construction, reconstruction, or maintenance services to another township, regardless of the road's location.

I would also note several other methods by which a township may receive assistance for its road maintenance or improvements. By agreement between the county commissioners and township trustees, the county may contribute financially to the repair and maintenance of township roads. *See* R.C. 5535.08(A). This may be done by direct cash grant. *See* 1990 Ohio Atty.Gen. Ops. No. 90-097, at 2-412. A township may also receive financial assistance for capital improvements in the form of loans, grants, or local debt support from the Ohio Public Works Commission. *See* R.C. 164.05 and 164.051.

IV

Your next question relates again to R.C. 5573.15, the law authorizing joint township road improvements. When a township road or any part of the road is “along the line between [two or more] townships, extending into or through all such townships, or wholly within the township but ***within less than the legal assessment distance of the township line***,” the boards of township trustees may jointly improve the road. You have requested our opinion on the meaning of this emphasized phrase.

R.C. 5573.15 was first enacted in 1917 as General Code Section 3298-15n, and it has remained unchanged since 1953. See Am.H.B. No. 300, 107 Ohio Laws 69, 82; 1956 Ohio Atty.Gen.Ops. No. 6547, p. 358, at 359-360; 1918 Ohio Atty.Gen.Ops. No. 1171, p. 611, at 612. Neither R.C. 5573.15 nor any other statute defines the distance that would be “within less than the legal assessment distance of the township line,” and no case law or prior attorney general opinion addresses the meaning of that phrase. Ordinarily, “any term left undefined by statute is to be accorded its common, everyday meaning.” *State v. Dorso*, 4 Ohio St.3d 60, 62 (1983); see R.C. 1.42. However, the term “legal assessment distance” is not in common use, and no dictionary definition sheds light on its meaning.

In 1906, the Ohio Supreme Court was tasked with discerning the meaning of another ambiguous and undefined term within the law governing assessments for road improvements. The Court relied on the following interpretive principle:

[T]he provisions of a statute are to be construed in connection with all laws in *pari materia* and especially with reference to the system of legislation of which they form a part, and when in a system of laws relating to a particular subject a general

policy is plainly declared, in order to arrive at the meaning of any particular part or provision the whole must be considered and that construction adopted, if may be, which will bring it in harmony with such general policy.

Alexander v. Baker, 74 Ohio St. 258, 269 (1906).

As in *Alexander*, our reading of R.C. 5573.15 must be informed by the “system of laws” governing road maintenance and improvement. “It is proper in the construction of statutes to examine other statutory provisions of a kindred character, particularly in respect to the meaning of language employed in the definition of terms.” *Carter v. Div. of Water, City of Youngstown*, 146 Ohio St. 203, 209 (1946). Thus, I will begin by examining the three other statutes that use the term “legal assessment distance”—R.C. 5555.05, 5555.31, and 5571.06.

R.C. 5555.31 relates to proposed improvements to county roads that are “wholly within one county but within less than the legal assessment distance of the county line.” That law authorizes joint improvements of county roads similar to those authorized by R.C. 5573.15 for township roads. However, the law provides no further definition of the “legal assessment distance.”

R.C. 5555.05 and 5571.06 relate to petitions for road improvements. As noted earlier in this opinion, one way in which a county or township road improvement may be initiated is by petition, which must be signed by at least 51% of the land or lot owners who may be “specially taxed or assessed” for the property. *See* R.C. 5555.03 and 5571.07. For purposes of determining the minimum number of signers, R.C. 5555.05 and 5571.06 exclude “[r]esident landowners whose only real estate *within the legal assessment distance* of such road is located in a municipal corporation.” R.C. 5571.06 (Emphasis added.) In context, it appears the “legal assessment distance” refers to the distance within which property may legally be assessed for the cost of a road improvement. To understand why, consider the following:

R.C. 5573.07 describes various methods of paying for a township road improvement, including by assessment of real estate that is (1) directly abutting the road improvement; (2) within one-half mile of either side of the road; or (3) within one mile of either side of the road, “according to the benefits accruing to such real estate.” Only a property within that distance may be assessed.

When two or more townships jointly improve a township road, “in the making of assessments and issuing bonds,” the boards of trustees generally must follow the same laws that apply to joint improvements of county roads. R.C. 5573.15; *see also* 1994 Ohio

Atty.Gen.Ops. No. 94-038, at 2-196 to 197. However, R.C. 5573.07 remains the proper basis “for apportioning and paying the costs of township road improvements.” 1994 Ohio Atty.Gen.Ops. No. 94-038, at 2-197.

Without another township’s involvement, a board of township trustees cannot “assess residents in an adjoining township for improvements to a road solely within the jurisdiction of the board of township trustees, even if residents of the adjoining township clearly benefit from the use of the improved road.” *Id.* at paragraph one of the syllabus. But, property in an adjoining township *may* be assessed if the boards of township trustees “jointly undertake the improvement of a township road or part of a township road . . . wholly within one township but within less than the legal assessment distance of the township line” pursuant to R.C. 5573.15. *Id.*, paragraph three of the syllabus. According to the terms of R.C. 5573.07, the townships involved in a joint improvement could only assess property that is within one mile from each side of the road to be improved. Thus, if a township road (or the part to be improved) were more than a mile from the township boundary, properties within the neighboring township could not be assessed.

As I will discuss at length below, a township may pay for a road improvement without relying on property assessments. *See* R.C. 5573.07(B). Nonetheless, based

on the context in which R.C. 5573.15 appears, I conclude that the “legal assessment distance of the township line” is a distance equal to that within which properties may be assessed for a township road improvement, regardless of whether they are actually assessed. That distance is never more than a mile from either side of a road. R.C. 5573.07(A). Thus, to qualify for joint improvement under R.C. 5573.15, the township road must be within one mile of the boundary between townships.

V

Next, you ask whether a township may expend the following categories of funds to contribute to road improvements outside of its boundaries:

1. Taxes levied pursuant to R.C. 5705.19(G);
2. Inside millage assigned to road and bridge purposes under R.C. 5705.06(F);
3. Gas excise tax pursuant to R.C. 5735.27;
4. Auto registration fund distributions pursuant to R.C. 4501.04(E);
5. Local government fund distributions pursuant R.C. 5747.50-5747.53;
6. General fund monies.

As a general rule, if a township jointly improves a road within a neighboring township, it may pay its share of costs from the same sources of funding as it would use for roads within its boundaries. R.C. 5573.13 states:

“The proportion of the compensation, damages, and costs of any road improvement to be paid by the township shall be paid out of *any road improvement fund available* for it.” (Emphasis added); *see also* R.C. 5573.09 (“The board of township trustees, upon a unanimous vote, may, without a petition therefor, order that all compensation, damages, and costs of constructing any road improvement be paid *out of the proceeds of any levy for road purposes* on the grand duplicate of the township, *or out of any road improvement fund available therefor.*” (emphasis added)). Similarly, pursuant to a mutual aid agreement under R.C. 5535.08(C), the township receiving assistance may pay the cost of services “from general fund moneys . . . or from any other funds available for the repair and maintenance of roads or streets within that political subdivision.”

Still, we must review the laws governing each source of revenue for road improvements to ensure no additional restrictions apply. *See* R.C. 1.51 (a special provision may prevail as an exception to a general provision in Ohio law). I will separately examine each source of revenue listed in your question, beginning with property tax revenue.

A

According to R.C. 5705.03, the “taxing authority of each subdivision may levy taxes annually, subject to

the limitations of [R.C. 5705.01 to 5705.47] . . . on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements.” Taxes levied may be either general or special levies, within or outside the ten-mill limitation. *See* R.C. 5705.02 and 5705.04. Special levies within the ten-mill limitation may be authorized without voter approval. Special levies in excess of the ten-mill limitation must be approved by electors of the political subdivision and authorized for the particular purposes described in R.C. 5705.19. *See* Ohio Const., art. XII, §2.

According to Article XII, Section 5 of the Ohio Constitution, “every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.” Two provisions of R.C. Chapter 5705 authorize property tax levies specifically for road maintenance and improvements: R.C. 5705.06(F) authorizes a special levy within the ten-mill limitation for the “construction, reconstruction, resurfacing, and repair of roads and bridges, excluding state roads and bridges, including the township’s portion of the cost of the construction, improvement, maintenance, and repair of county roads and bridges.” R.C. 5705.19(G) authorizes a levy outside of the ten-mill limitation “[f]or the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships.”

Nothing in the language of R.C. 5705.06(F) or 5705.19(G) prevents a township from using the property tax revenue generated for highway purposes toward a joint improvement of a township road within another township pursuant to R.C. 5573.15. On the same basis, one of my predecessors opined that a county may use revenue from its property tax levies under R.C. 5705.06(D) and 5705.19(G) to support the repair and maintenance of township roads. *See* 1990 Ohio Atty.Gen.Ops. No. 1990-097, at 2-419. Further, R.C. 5573.09 and 5573.13 permit a township to pay for a road improvement “out of any road improvement fund available for it.” And, R.C. 5573.09 allows a board of township trustees, by unanimous vote, to pay for any road improvement authorized by the trustees “out of the proceeds of any levy for road purposes.”

B

Next, we consider revenue from the gas excise tax. R.C. 5735.27 creates the gasoline excise tax fund in the state treasury, which consists of revenue from the motor vehicle fuel excise taxes levied under R.C. 5735.05. The tax revenue is distributed to municipalities, counties, and townships for specific purposes. *See* R.C. 5735.27(A)(1) to (3); *see also* 1993 Ohio Atty.Gen.Ops. No. 1993-057, at 2-268 to 269. Article XII, Section 5a of the Ohio Constitution allows gas tax revenue to be used for the “payment of highway obligations, costs for

construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes.” However, a township may only use its share of revenue from the gasoline excise tax “for the purposes of planning, constructing, maintaining, widening, and reconstructing the public roads and highways *within* the township” and associated costs. (Emphasis added.) R.C. 5735.27(A)(3)(d).

The plain language of R.C. 5735.27 prohibits a township from spending its share of revenue on road maintenance or improvements outside of its jurisdictional boundaries. If a township road were located along the line between townships, R.C. 5735.27 might allow a township to use the gas tax revenue for maintaining or improving the portion of road within its boundaries. *See* R.C. 5579.03 (regarding boundary line roads); 1956 Ohio Atty.Gen.Ops. No. 6547, p. 358, at 361. However, your questions relate to a portion of road located entirely within another township. A township cannot use its share of revenue from the gas excise tax to assist another township with road maintenance or improvements when the road is entirely within the other township.

C

Next, you reference the township’s share of revenue from the auto registration distribution fund. For

background, “R.C. Chapter 4503 establishes a comprehensive mechanism for the licensing and registration by the state of motor vehicles that are owned by Ohio residents and operated on Ohio roads, streets, and highways. *See generally* R.C. 4503.10-.84. In conjunction therewith R.C. 4503.02 levies an annual license tax upon the operation of motor vehicles on public roads and highways, and designates the purposes for which that tax is to be used.” 1990 Ohio Atty.Gen.Ops. No. 90-097, at 2-413. Registration fees are paid to the Registrar of Motor Vehicles and deposited into the auto registration distribution fund. *See* R.C. 4501.03. Five percent of the money is distributed to townships based on the ratio of each township’s total number of miles of township roads compared to the total mileage of township roads across the state. R.C. 4501.04(E).

Among the various purposes listed in R.C. 4503.02, the revenue from the annual license tax may be used for “planning, constructing, maintaining, and repairing public roads, highways, and streets.” *See also* Ohio Const., Art. XII, §5a. Nothing in R.C. 4501.04 or 4503.02 prevents a township from using the revenue it receives from this source for its share of the cost of a joint improvement under R.C. 5573.15. *See* OAG 1990-097, at 2-415 (“Given the fairly general character of the language thus used in R.C. 4501.04, I am inclined to the view that . . . a county may use a portion of its state motor vehicle

license tax revenues in support of road repair and maintenance that is undertaken by other local governments within the county.”); *see also* R.C. 5535.08(C)(1) (“The cost, if any, of services obtained under [a mutual aid] agreement may be paid from general fund moneys of the political subdivision receiving the services, or from any other funds available for the repair and maintenance of roads or streets within that political subdivision.”).

D

Next, we address local government fund distributions and the township’s general fund. R.C. 5705.10(A) describes the revenue that is deposited into a township’s general fund: “All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in 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.” It would be impossible to account for every possible source of money deposited to the general fund, so we will focus our analysis on two of the primary sources: (1) the township’s share of the undivided local government fund; and (2) the general levy for current expenses. *See* R.C. 5747.50 to 5747.53 and R.C. 5705.05.

Each year, the state tax commissioner distributes a share of local government fund money to every county in the state. The county, in turn, allocates those funds to subdivisions within the county, including all townships. *See* R.C. 5747.50 to 5747.53; *see also* 2001 Ohio Atty.Gen.Ops. No. 2001-005, at 2-34 to 36 (providing general background). According to 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.” (emphasis added); *see also* R.C. 5747.53(F) (using identical language). R.C. 5747.51(B) defines “current operating expenses” as “the lawful expenditures of a subdivision, except those for permanent improvements and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision.”

The cost of road maintenance is a recurring “current operating expense” for a township. Township trustees have a constant duty to keep the roads “in good repair.” R.C. 5571.02. Construction, reconstruction, or other permanent improvements to a township road would *not* be within the scope of “current operating expenses” or “current expenses” of a township. *See* R.C. 5705.01(F) and 5747.51(B). Such projects

would fall within the definition of a “permanent improvement” if the roadwork has “an estimated life or usefulness of five years or more.” R.C. 5705.01(E).

A township’s share of the local government fund may be used toward road maintenance, but may not be used for construction, reconstruction, or other permanent improvements to township roads, whether within a township’s borders or beyond. The line between road maintenance and permanent improvements can be difficult to draw. *See, e.g., Savage v. Bd. of Commrs.*, 29 Ohio App. 1 (3d Dist. 1928). “The term ‘maintenance’ refers generally to the process of keeping something in proper condition . . . The term ‘improvement’ extends more broadly to include changes and upgrades.” 2006 Ohio Atty.Gen.Ops. No. 2006-028, at 2-261. Thus, “[e]ach project must be considered by itself.” 1941 Ohio Atty.Gen.Ops. No. 4665, p. 1081, at 1089.

E

A township’s general fund also includes revenue from the township’s general levies for current expenses. R.C. 5705.10(A). This includes both the “general levy for current expense within the ten-mill limitation,” authorized by R.C. 5705.04(B), and any levy that exceeds the ten-mill limitation for current expenses of the subdivision, as authorized by R.C.

5705.19(A). The purpose of a general levy for current expenses is specified in R.C. 5705.05. As the name implies, its primary purpose is “to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made.” *Id.* But “[t]he taxing authority of a political subdivision [*i.e.*, the township trustees] may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, *including the acquisition or construction of permanent improvements* and the payment of judgments.” *Id.* (emphasis added).

As explained in 2009 Ohio Atty.Gen.Ops. No. 2009-054, at 2-405, “Prior to December 30, 2008, R.C. 5705.05 expressly prohibited townships or counties from using these moneys for the construction, reconstruction, resurfacing, or repair of roads and bridges. *See* 2008 Op. Att’y Gen. No. 2008-009, at 2-96 to 2-98. In 2008, R.C. 5705.05 was amended so that the prohibition against using the general levy for current expenses for road and bridge improvements no longer applies to townships. *See* Sub. H.B. 458, 127th Gen. A. (2008) (eff. Dec. 30, 2008).” Thus, a township may use revenue from a general levy for current expenses to pay for improvements to township roads. If a township jointly improves a township road within a neighboring township, nothing in R.C.

5705.05 prevents the township from using that money in the general fund for its share of the cost.

In summary, money in the general fund that is derived from general levies for current expenses may be used for road maintenance and improvements. However, money in the general fund derived from the township's share of local government fund revenue may not be used for permanent improvements. Although we cannot comprehensively address every source of money in the general fund, there could be other money that is not restricted to a specific use. *See* R.C. 5705.10; 2008 Ohio Atty.Gen.Ops. No. 2008-009, Slip Op. at 6 and 18; 1981 Ohio Atty.Gen.Ops. No. 81-035, at 2-135.

There is one practical concern to note. In an opinion on a county's use of the general fund for bridge construction and repair, one of my predecessors explained that "[w]here moneys from various sources are deposited in the general fund and thereafter become commingled, it may be difficult or impossible from a practical standpoint to insure that . . . restricted revenues would not be included within a proposed expenditure for bridge construction, repair, etc." 1981 Ohio Atty.Gen.Ops. No. 81-035, at 2-137; *see also* 2008 Ohio Atty.Gen.Ops. No. 2008-009, paragraph one of the syllabus (overruled on other grounds by 2009 Ohio Atty.Gen.Ops. No. 2009-054 on the basis of legislative change).

To ensure money from each source of revenue is expended for its legal purpose, it may be necessary to keep separate accounts within the general fund. *See generally* 2004 Ohio Atty.Gen.Ops. No. 2004-017, at 2-141 (“it is appropriate for funds and accounts to be structured to enable public officials to expend public moneys in accordance with the provisions of law governing the expenditure of those moneys”). If it is not possible to avoid commingling sources of revenue in the general fund, township officials must limit use of the general fund to current operating expenses, such as routine road maintenance and repairs, rather than permanent improvements to roads.

F

In summary, with respect to your fourth question, if a township jointly improves a road within a neighboring township, it may pay its share of costs from the same sources of funding as it would use for roads within its boundaries. However, revenue from the gas excise tax may only be used for road improvements within the township, and a township’s share of the local government fund may not be used for permanent improvements to township roads. Money in the general fund that is derived from general levies and other unrestricted sources of revenue may be used toward township road maintenance and improvements, including joint improvements pursuant

to R.C. 5573.15, but only if that money can be separately identified.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

1. A township has no obligation to contribute toward the maintenance, construction, or reconstruction of a road that is entirely outside of its jurisdictional boundaries.
2. If a township road is “along the line between [two or more] townships, extending into or through all such townships, or wholly within the township but within less than the legal assessment distance of the township line,” R.C. 5573.15 authorizes the boards of township trustees to jointly improve the road. However, R.C. 5573.15 is not the sole means by which a township may assist a neighboring township. A township may provide construction, reconstruction, or maintenance services to another township in an emergency or pursuant to a mutual aid agreement under R.C. 5535.08, regardless of the road’s location.

3. The legal assessment distance in R.C. 5573.15 is equal to that distance within which properties may be assessed for a township road improvement, which is not more than a mile from either side of a road. Thus, to qualify for joint improvement, the township road to be improved must be within one mile from the boundary between townships.
4. Generally, if a township jointly improves a road within a neighboring township, it may pay its share of costs from the same sources of funding as it would use for roads within its boundaries. Revenue from the gas excise tax, however, may only be used for road improvements *within* the township, and a township's share of the local government fund may not be used for permanent improvements to township roads.

Respectfully,

A handwritten signature in blue ink, appearing to read "Dave Yost", with a stylized, cursive script.

DAVE YOST
Ohio Attorney General