

FROM THE OFFICE OF
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September 24, 2007

The Honorable David E. Freel
Executive Director
Ohio Ethics Commission
8 East Long Street, 10th Floor
Columbus, Ohio 43215

The Honorable Marc Dann
Ohio Attorney General
Opinions Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

**Re: Request for opinion dealing with public contract between a Township
Trustee and the Township he/she serves.**

Gentlemen:

By this letter I am seeking an opinion from each of your respective offices regarding a situation that this office may soon confront. As will be further detailed below, I believe a complete opinion on this matter will need to address multiple provisions of the Revised Code some of which may be within the authority of one of your offices to interpret, while the others may within the authority of the other office to interpret. Accordingly, I would like to request, if possible, a *joint* opinion from your two offices, or if that is not possible, some degree of coordination between your offices as to the interplay between various sections of the Revised Code. The questions I seek an opinion on are as follows?

(1) If a person is elected to office as a Township Trustee, and prior to his taking office he is party to an ongoing multi-year contract to supply the Township with garage storage facilities for a number of years in the future, may he continue to benefit from that pre-existing multi-year contract after taking office? If not, do the other Township Trustees have a legal duty to take steps to set aside that contract to avoid paying the newly-elected Trustee payments that would otherwise be due under that pre-existing contract?

(2) What effect do the provisions of R.C. § 2921.42(C)(1) through (4), and R.C. § 2921.42(F)(1) through (4) have on this situation? Since division (F)¹ is specific to Township Trustees, does it take precedence over division (C) by virtue of the rules of construction contained in R.C. § 1.51 that address specific or local provisions taking precedence over general provisions, or may Township Trustees seek to use the exceptions in *either* division (C) *or* (F)?

(3) What effect do the provisions of R.C. § 511.13 have on this situation since it does not contain similar exceptions to those contained in R.C. § 2921.42(C) or (F)? Does R.C. § 511.13 render the exceptions in R.C. § 2921.42(C) or (F) largely ineffectual? Or since it is the oldest statutory provision, may R.C. § 511.13 be deemed to be superceded by these newer enactments by virtue of the rules of construction contained in R.C. § 1.52(A) that make the latest enactment controlling when statutes are irreconcilable? Or is R.C. § 511.13 to be read as a third exception to a Township Trustee doing business with the Township (with R.C. § 2921.42(C) and § 2921.42(F) being the first two exceptions) compliance with any of the three exceptions then making the contract valid?

The factual background necessitating this opinion is rather simple. A candidate on the ballot this November for the office of Township Trustee has had a prior on-going contract with that Township to supply garage storage services for the Township's equipment. This contractual relationship has been in existence for a number of years and involves the expenditure of approximately \$2,000 a month from the Township for these services. Earlier this year, this contractual relationship was extended for a period of five years. As a result, should this candidate win election and thereafter take office in January, 2008, the Township will be contractually obligated to pay him/her on this contract. It has been represented to me that due to the size of the Township's garage storage needs, there is no other readily available comparable garage facility for use by the Township.

Because of the rapidly approaching election, a quick – and definitive – answer to these questions is imperative. I hope that your respective offices can assist in getting a timely response to me. Thank you in advance for your attention to this matter.

Sincerely,



Kenneth W. Oswalt
Licking County Prosecuting Attorney

¹ I believe that this is soon to be re-lettered as "G" by amendment effective September 29, 2007, as the prior version of the statute had two sections "F"s. However, throughout this letter I will make reference to "F"