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To Lynn & Marion Townships and to the rest of the Hardin County Townships.  
Re: Salaries and Gas Tax

Dear Trustees:

A question has been presented to our office concerning the transfer of funds from the Township General Fund to reimburse the Motor Vehicle Gas Tax and the Motor Vehicle tax funds for the portion of the Township Trustees salary for the tax years ending for 2006 and 2007.

The Lynn and Marion Township audits resulted in a finding that the Trustees (who are paid on a salary rate) did not keep track of the time expended for the 2006 and 2007 tax years. Further the finding held the trustees could not justify their portions of the annual salary that had been paid out of the Motor Vehicle Gas Tax and the Motor Vehicle tax funds as well as the remaining portions of their annual salary being paid out of the General Fund.

This finding by the Auditor Company is based on the holding of O.A.G. Opinion 2004-036. This opinion requires that the trustees document all time spent on the kind of services rendered to be paid out of any other funds besides the General Fund. In review of the O.A.G. opinion 2004-036, the facts presented for that opinion dealt with the Trustees time spent in connection on matters that relate to a separate entity involving Township Ambulance and Medical Services and/or the Township Fire District. These types of entities are distinct and separate jobs that can be performed by a Trustee and are not basically considered to be regular job functions of a Township Trustee in the performance of their duties as a Township Trustee. The auditors application of this Opinion (that dealt with these distinct and separate entities from the normal functions of a Trustee) to apply this opinion completely to all functions performed by a Trustee (who is paid by salary) is in direct conflict with O.R.C. 505.24(C).

Most particularly with the 2 townships (Lynn and Marion) and as well as other townships the majority of the time spent by a Township Trustee is the upkeep and repair and maintenance of Township roads. This may include the plowing of snow and the repair of the roads themselves and mowing of the roads. It also includes traveling the roads and locating trouble spots for repair. The other time is spent in the township meetings to discuss township issues with the majority of that time spent discussing roads.

The Auditors interpretation that O.A. G. opinion 2004-036 requires the trustees to document all their time in order to have a portion of their annual salary be paid out of funds other than General fund is in my opinion incorrect. Under O.R.C. 505.24 (C) the trustees are (when paid by an annual salary) to be paid out of the General Fund and from other Township Funds in such proportions as the board may specify by Resolution.

No where in the Ohio Revised Code (and especially O.R.C. 505.24) is there a requirement that the Trustees document all their time spent on different Township business in performing the normal duties of the Township Trustees in order to justify being paid under the resolution. Ohio law only requires the passage of the Resolution and the proportional source of the salary funds.

The Auditors interpretation of 505.24(C) O.R.C. in reaching its Findings for 2006 and 2007 that state that the trustees, when paid by salary, must provide a “documentation of time spent”, and continues with “however, for salaries not paid from the general fund, 2004 Op. Atty. Gen. No. 2004-036 requires trustees to establish administrative procedures to document the proportionate amount chargeable to other township funds based on the type of services rendered” is in my opinion not correct. This is not the requirement of O.R.C. 505.24 (C) when Trustees are paid by salary. The Auditors interpretation and application of the O.A. G. opinion that dealt with Fire Protection and EMT time spent by trustees outside of the normal duties of a Township Trustees being applied across the board to cover any funds paid towards the regular Trustees salary is in direct conflict with the Ohio Revised Code. Further, the finding for Transfer of funds that were paid out of the Motor Vehicle Gasoline tax as well as the Motor Vehicle tax for the years 2006 and 2007 and requiring the funds to be paid back from the General funds of the Township is not in consistent to the resolutions passed by the Trustees in accordance to the Ohio Revised Code 505.24 (C) and in my opinion need not be implemented.

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Bradford W. Bailey, Prosecutor

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Larry A. Gossard, Paralegal/Office Manager

§ **505.24.** Compensation of trustees

Each township trustee is entitled to compensation as follows:

(A) Except as otherwise provided in division (B) of this section, an amount for each day of service in the business of the township, to be paid from the township treasury as follows:

(1) In townships having a budget of fifty thousand dollars or less, twenty dollars per day for not more than two hundred days;

(2) In townships having a budget of more than fifty thousand but not more than one hundred thousand dollars, twenty-four dollars per day for not more than two hundred days;

(3) In townships having a budget of more than one hundred thousand but not more than two hundred fifty thousand dollars, twenty-eight dollars and fifty cents per day for not more than two hundred days;

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

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

(7) In townships having a budget of more than one million five hundred thousand but not more than three million five hundred thousand dollars, forty-four dollars per day for not more than two hundred days;

(8) In townships having a budget of more than three million five hundred thousand dollars but not more than six million dollars, forty-eight dollars per day for not more than two hundred days;

(9) In townships having a budget of more than six million dollars, fifty-two dollars per day for not more than two hundred days.

(B) Beginning in calendar year 1999, the amounts paid as specified in division (A) of this section shall be replaced by the following amounts:

(1) In calendar year 1999, the amounts specified in division (A) of this section increased by three per cent;

(2) In calendar year 2000, the amounts determined under division (B)(1) of this section increased by three per cent;

(3) In calendar year 2001, the amounts determined under division (B)(2) of this section increased by three per cent;

(4) In calendar year 2002, except in townships having a budget of more than six million dollars, the amounts determined under division (B)(3) of this section increased by three per cent; in townships having a budget of more than six million but not more than ten million dollars, seventy dollars per day for not more than two hundred days; and in townships having a budget of more than ten million dollars, ninety dollars per day for not more than two hundred days;

(5) In calendar years 2003 through 2008, the amounts determined under division (B) of this section for the immediately preceding calendar year increased by the lesser of the following:

(a) Three per cent;

(b) The percentage increase, if any, in the consumer price index over the twelve-month period that ends on the thirtieth day of September of the immediately preceding calendar year, rounded to the nearest one-tenth of one per cent;

(6) In calendar year 2009 and thereafter, the amount determined under division (B) of this section for calendar year 2008.

As used in division (B) of this section, "consumer price index" has the same meaning as in [section 325.18 of the Revised Code](#).

(C) Whenever members of a board of township trustees are compensated per diem and not by annual salary, the board shall establish, by resolution, a method by which each member of the board shall periodically notify the township fiscal officer of the number of days spent in the service of the township and the kinds of services rendered on those days. The per diem compensation shall be paid from the township general fund or from other township funds in such proportions as the kinds of services performed may require. The notice shall be filed with the township fiscal officer and preserved for inspection by any persons interested.

By unanimous vote, a board of township trustees may adopt a method of compensation consisting of an annual salary to be paid in equal monthly payments. If the office of trustee is held by more than one person during any calendar year, each person holding the office shall receive payments for only those months, and any fractions of those months, during which the person holds the office. The amount of the annual salary approved by the board shall be no more than the maximum amount that could be received annually by a trustee if the trustee were paid on a per diem basis as specified in this division, and shall be paid from the township general fund or from other township funds in such proportions as the board may specify by resolution. A board of township trustees that has adopted a salary method of compensation may return to a method of compensation on a per diem basis as specified in this division by a majority vote. Any change in the method of compensation shall be effective on the first day of January of the year following the year during which the board has voted to change the method of compensation.

#### **History:**

RS § 1539; S&C 1577; 42 v 4, § 2; 70 v 246, § 3; 75 v 48, § 22; 84 v 35; 86 v 119; 87 v 236; 89 v 286; 95 v 528; GC § 3294; 107 v 698; 118 v 575; 123 v 58; 124 v 352; Bureau of Code Revision, 10-1-53; 126 v 1154 (Eff 10-6-55); 130 v PtII, § 53 (Eff 3-8-65); 132 v H 1 (Eff 2-21-67); 134 v S 250 (Eff 12-30-72); 136 v S 237 (Eff 1-11-77); 139 v H 188 (Eff 11-5-81); 142 v S 452 (Eff 12-15-88); [146 v H 408](#) (Eff 5-8-96); [148 v H 712](#) (Eff 12-8-2000); [149 v H 94](#). Eff 9-5-2001; [151 v S 107](#), § 1, eff. 12-20-05.