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November 25, 2009

OFFICIAL OPINION 2009-4

The Honorable Brandt Hershman
Indiana State Senate
200 W. Washington Street
Indianapolis, Indiana 46204

Re: Authority for Oversight of Township Emergency Services

Dear Senator Hershman:

You have requested a legal opinion concerning the authority of a township board to oversee the daily operation of township emergency services.

Brief Answer

Township boards do not have authority to oversee the daily operation of township services, including emergency services.

Analysis

A township's governmental powers are divided between an executive body and a legislative body. The township trustee is the township executive body. Ind. Code § 36-6-4-2(a). The township board is the legislative body for a township. Ind. Code § 36-6-6-2(c). The board is also the fiscal body for the township while the trustee is the fiscal officer. Ind. Code §§ 36-1-2-6, -7. Both the township trustee and township board are elected by voters of the township.

Generally, legislative power is the authority to make laws, while executive power is the authority to enforce those laws. *Book v. State Office Bldg. Commission*, 149 N.E. 2d 273 (Ind. 1958). "Executive" is defined as "the branch of government responsible for effecting and enforcing laws." *Black's Law Dictionary* (8th ed. 2004). "Executive power" is defined as "the power to see that the laws are duly executed and enforced." *Id.* "Legislative" is defined as "of or relating to lawmaking or the power to enact laws". *Id.*

Townships and their activities are governed by provisions in Title 36 of the Indiana Code. Section 36-6-4-3 sets out a list of duties to be performed by the township trustee. The township

trustee also has certain powers enumerated in section 36-6-4-4. Neither the powers nor duties listed in chapter 36-6-4 are exhaustive as each section includes a general reference to other duties and powers prescribed by statute. In contrast, the role of the township board as set out in the statute is primarily a fiscal role. The board is responsible for adopting the township's annual budget and taking other action related to fiscal matters of the township. *See* Ind. Code §§ 36-6-6-10, -11.

Chapter 36-8-13 governs township fire protection and emergency services. The township trustee, with the approval of the township board, is authorized to provide for fire protection and emergency services in the township. Ind. Code § 36-8-13-3(a). The statute sets out various methods that may be used to provide those services. Ind. Code § 36-8-13-3. Section 36-6-4-8 concerning the township executive provides for the township trustee to use funds appropriated by the township board for all categories of community services, including authority for the trustee to contract for emergency ambulance services. The township legislative body is authorized to adopt a resolution for imposition and collection of fees for ambulance services provided by the township police or fire department. Ind. Code § 36-6-4-8(d).

Article 16-31 concerns the provision of emergency medical services in political subdivisions of the state. Section 16-31-5-1 provides that:

The governing body of a city, town, township, or county by the governing body's action or in any combination may do the following:

- (1) Establish, operate, and maintain emergency medical services.
- (2) Levy taxes under and limited by IC 6-3.5 and expend appropriated funds of the political subdivision to pay the costs and expenses of establishing, operating, maintaining, or contracting for emergency medical services.
- (3) Except as provided in section 2 of this chapter, authorize, franchise, or contract for emergency medical services. However:
 - (A) a county may not provide, authorize, or contract for emergency medical services within the limits of any city without the consent of the city; and
 - (B) a city or town may not provide, authorize, franchise, or contract for emergency medical services outside the limits of the city or town without the approval of the governing body of the area to be served.
- (4) Apply for, receive, and accept gifts, bequests, grants-in-aid, state, federal, and local aid, and other forms of financial assistance for the support of emergency medical services.
- (5) Establish and provide for the collection of reasonable fees for emergency ambulance services the governing body provides under this chapter.
- (6) Pay the fees or dues for individual or group membership in any regularly organized volunteer emergency medical services association on their own behalf or on behalf of the emergency medical services personnel serving that unit of government.

The term “governing body” as used in section 16-31-5-1 is not defined and may be a generic reference to the government bodies of the various political subdivisions to which the statute applies.¹ Although the statute is silent as to the meaning of “governing body” in the context of section 16-31-5-1, the statutes are not silent as to the functions of the executive and legislative bodies of a township. The functions of the township trustee and the township board are well defined in Title 36. To the extent that the provision of emergency medical services under chapter 16-31-5 requires legislative action on the part of a township, that would be a function of the township board. Likewise, if 16-31-5 requires executive action by a township, that would be a function of the township trustee.

The question you posed concerns whether the township board has authority to oversee the daily operation of emergency services being provided in the township.

The statutory powers and duties of the township trustee are wide-ranging and relate to a variety of matters. In addition to providing for fire protection and emergency services as noted above, the trustee is responsible for such things as administering township assistance, managing township property interests, receiving and paying out township funds, and examining and settling all accounts and demands chargeable against the township. Ind. Code § 36-6-4-3. The responsibilities conferred by statute on the township board are narrow in scope, pertaining to fiscal matters of the township such as appropriating money, making budgets and setting salaries.² Ind. Code chapter 36-6-6. While the legislative body is responsible for adopting the annual budget, the executive of the township is responsible for executing the budget as adopted. *Township Board of Calumet Township v. Elgin*, 850 N.E.2d 1020 (Ind. Ct. App. 2006). The township statutes authorize the township board to appropriate funds and may require the township trustee to obtain approval or consent of the board; however, there is no language in the township statutes that authorizes the board, a legislative body, to perform the executive function of overseeing the day-to-day operations of the township. To do so would encroach upon the statutory role of the trustee. *Id.*

A township board’s authority with respect to provision of emergency medical services is limited to matters that require legislative action. The board’s authority does not extend to operating, managing or overseeing the daily operations of emergency services once the board’s legislative function has been completed. That authority is within the purview of the township trustee as the township executive.

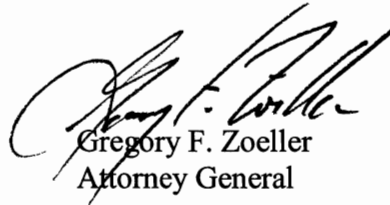
¹ P.L.2-1993 did provide various definitions for “governing body” as used in Title 16, but did not define “governing body” for purposes of IC 16-31-5. See Ind. Code § 16-18-2-150.

² The township board is required to fix the salaries of all officers and employees of the township, including the township trustee, but may not reduce the salary of the trustee during the trustee’s term of office without the consent of the trustee. Ind. Code § 36-6-6-10(f).

Conclusion

It is my opinion that the township trustee, not the township board or any officers of the board, has the authority to oversee the day-to-day operation of services, including emergency medical services, in the township.

Sincerely,



Gregory F. Zoeller
Attorney General

Elizabeth A. Brown
Deputy Attorney General