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FIREMEN, TOWNSHIP—REMOVAL—TOWNSHIP TRUSTEES  
TO FILE CHARGES—§§ 505.38, 733.35 TO 733.39, RC—CAUSES,  
POWERS AND PROCEDURE FOR REMOVAL.

## SYLLABUS:

1. Under the terms of Section 505.38, Revised Code, which incorporates by reference certain provisions of Sections 733.35 through 733.39, Revised Code, the board of township trustees is the proper authority to file charges initiating the procedure whereby any township fireman, including the fire chief, may be removed.

2. The board of township trustees exercises, by virtue of Section 505.38, Revised Code, that power conferred upon municipal legislative authorities and municipal executives by Sections 733.35 to 733.39, Revised Code, prescribing causes, powers, and procedure for removal of township firemen.

Columbus, Ohio, August 7, 1957

Hon. Geo. Cleveland Smythe, Prosecuting Attorney  
Delaware County, Delaware, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Your opinion is requested on the question of the removal of a township fireman under Section 505.38 R.C., wherein reference is made to Sections 733.35 to 733.39, R.C.

“Who is authorized to prefer charges against a delinquent fireman?

“If it be the fire chief, and he fail or refuses to act who is authorized to prefer charges?

“If the fire chief is delinquent, who is authorized to prefer charges against him?

“Do the township trustees have the same powers and duties as are conferred upon the legislative authority of a municipal corporation under Section 733.35 et seq., R.C.?”

Section 505.38, Revised Code, reads in pertinent part:

“In each township or fire district which has a fire department, the head of such department shall be a fire chief, appointed by the board of township trustees. The board shall provide for the employment of such firemen as it deems best, and shall fix their compensation. Such appointees shall continue in office *until removed therefrom as provided by sections 733.35 to 733.39, inclusive, of the Revised Code.*” (Emphasis added.)

Sections 733.35 to 733.39, Revised Code, prescribe causes, procedure and powers relating to removal of municipal officers. The questions you

present point out the obvious difficulty in applying such a system to township firemen.

Section 505.38, Revised Code, was formerly Section 3298-54a, General Code, enacted in House Bill 187, 94th General Assembly, 119 Ohio Laws 316, 1941, which reads in pertinent part :

“ \* \* \* The township trustees shall provide for the employment of such firemen as the trustees deem best and fix their compensation, and such appointees shall continue in office until removed therefrom for the *causes* and under the *powers* and *procedure* provided for the removal of officers by sections 4263 to 4267, inclusive, of the General Code.” (Emphasis added.)

Sections 4263 to 4267, General Code, are Sections 733.35 to 733.39, Revised Code.

This omission of wording by the revision of the code eliminated the basis for discerning the method of removal referred to in Section 505.38, *supra*. However, applying the express intent of the legislature as evidenced in Section 1.24, Revised Code, it is my opinion that such deleted wording was not omitted with the intent to change the meaning of Section 505.38, Revised Code.

Therefore, the *causes*, *powers* and *procedure* found in Sections 733.35 to 733.39, Revised Code, must be separated from these sections and applied to the situation presented when Section 505.38, *supra*, is sought to be applied.

The *causes* for removal found in Section 733.35, Revised Code, are readily apparent :

“ \* \* \* When the mayor has reason to believe that the head of a department or such officer has been guilty, in the performance of his official duty, of bribery, misfeasance, malfeasance, nonfeasance, misconduct in office, gross neglect of duty, gross immorality, or habitual drunkenness, he shall immediately file with the legislative authority, except when the removal of such head of department or officer is otherwise provided for, written charges against such person, setting forth in detail a statement of such alleged guilt, and, at the same time, or as soon thereafter as possible, serve a true copy of such charges upon the person against whom they are made.”

The *powers* of the board of township trustees are: removal or suspension of person involved, Sections 733.36 and 733.37, Revised Code; issu-

ance of compulsory process and rule-making for enforcement of subpoena authority, Section 733.38, Revised Code; administration of oaths and compulsory testimony, Section 733.39, Revised Code.

Finally, the *procedure* to be followed is to be found by searching the entire five sections. Section 733.35, Revised Code, provides for the mayor to file written charges against the person involved with the legislative authority. In applying this procedure to townships it is readily apparent that the board of township trustees is both the executive and legislative authority of a township. Therefore, to meet the requirements of the statute the board of township trustees files the written charges, causes a copy of such charge to be served upon the party against whom the charges are made and accepts the return of the service as provided in Section 733.35, Revised Code.

Section 733.36, Revised Code, provides for the time of hearing upon the charge. Section 733.37, Revised Code, authorizes the legislative authority to suspend the accused from service pending the hearing as provided for in Section 733.36, Revised Code.

Section 733.38, Revised Code, authorizes the board of township trustees to exercise subpoena power as an aid to investigation of the charges filed under Section 733.35, Revised Code. This authority is conferred only after such charges have been filed for the causes set forth in Section 733.35, Revised Code. It is to be noted that charges may be filed when the board of township trustees "has reason to believe" that an individual is guilty of one of the charges. Section 733.39, Revised Code, provides for the administering of oaths and privileges and immunities of witnesses.

Therefore, it is my opinion and you are accordingly advised that:

1. Under the terms of Section 505.38, Revised Code, which incorporates by reference certain provisions of Sections 733.35 through 733.39, Revised Code, the board of township trustees is the proper authority to file charges initiating the procedure whereby any township fireman, including the fire chief, may be removed.

2. The board of township trustees exercises, by virtue of Section 505.38, Revised Code, that power conferred upon municipal legislative authorities and municipal executives by Sections 733.35 to 733.39, Revised

Code, prescribing causes, powers, and procedure for removal of township firemen.

Respectfully,

WILLIAM SAXBE

Attorney General