

3597.

APPROVAL, NOTES OF VILLAGE OF GREENFIELD, HIGHLAND COUNTY, OHIO—\$2,800.00.

COLUMBUS, OHIO, September 28, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3598.

VOLUNTEER FIRE COMPANY—TOWNSHIP TRUSTEES UNAUTHORIZED TO CONTRACT WITH SUCH COMPANY FOR FIRE PROTECTION UNDER SECTION 3298-60, GENERAL CODE—SUCH NOT A LIMITATION OF GENERAL POWER TO SECURE FIRE PROTECTION UNDER SECTION, 3298-54, GENERAL CODE.

SYLLABUS:

Section 3298-60, General Code, does not authorize the township trustees to enter into a contract with a volunteer fire company to furnish fire protection to the township, for the reason that this section specifically mentions "city, village and township." However, said section authorizing contracts by townships with other subdivisions in no wise cuts down the power to contract for fire protection with volunteer fire companies or to furnish equipment for volunteer fire companies under Section 3298-54, General Code.

COLUMBUS, OHIO, September 24, 1931.

HON. HOWARD NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

"Section 3298-60, of the General Code, provides in substance, that any township, in order to obtain fire protection, may enter into a contract for a period of not to exceed three years, with any city, village or township for the use of its fire department and apparatus.

In the Township of Conneaut, there is a volunteer fire department, and it is desired by the trustees of said township, to enter into a contract with this volunteer fire department for fire protection. The purpose of this is to enable the trustees to help the volunteer company in a financial way, inasmuch as some of their equipment has been destroyed by fire.

I have advised the trustees that this section is not broad enough to cover a contract with the volunteer company, but is restricted only to villages, cities and townships, but they have requested an opinion from you as to this, and I would appreciate very much an opinion from you as to whether or not you would consider such a contract legal."

Section 3298-60, General Code, does not specifically mention a volunteer fire company, but on the other hand, does refer to the authority to enter into a contract with a city, village or township, for the use of its fire apparatus.

In connection with your inquiry, your attention is directed to an Opinion

rendered by my predecessor, which is found in Opinions of the Attorney General for the year 1928, at page 2736. It was therein held that under the provisions of Section 3298-54, General Code, the township trustees could pay for the use of a fire department maintained by a neighboring political subdivision, although there was no express mention of such subdivision in the statute granting the power. The syllabus of said opinion reads:

“Township trustees may lawfully pay from township funds for the use of a fire department maintained by a neighboring political subdivision for the purpose of protecting the lives and property of citizens of the township against damages resulting from fires. Payment may be made therefor at an agreed price per year or per month, or for each fire as it occurs.”

Reference was made therein, to an opinion found in Opinions of the Attorney General for 1924, at page 82, wherein it was held:

“2. Under section 3298-54 G. C. before the township trustees purchase fire apparatus and appliances there must exist a volunteer fire company having such character as to give assurance of permanency and efficiency.

3. Joint action by the township trustees and a council of a village within the township to purchase fire apparatus and to use and maintain the same is not authorized by statute.”

In the 1928 opinion, it was pointed out that Section 3298-54, General Code, grants to township trustees power to establish all necessary regulations to guard against the occurrence of fires and to protect the property and lives of the citizens. It was further pointed out therein that Section 3298-35, General Code, authorizes a levy “to provide protection against fires.”

It therefore appears that Section 3298-60, General Code, was enacted for the purpose of definitely clarifying a question that was frequently presented, relative to the power of municipalities to enter into a contract with other subdivisions. In fact, the provisions of Section 3298-60, General Code, in so far as contracting with other subdivisions is concerned, is declaratory of what the law had originally been held to be. However, in said enactment the specific manner of entering into contracts with subdivisions was set forth and in that respect former holdings were modified.

Section 3298-54, General Code, to which reference has been made, reads:

“Township trustees may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damages and accidents resulting therefrom, and, when a volunteer fire company has been organized for service in the township, of such character as to give assurance of permanency and efficiency, may purchase and provide, for the use of such company, such fire apparatus and appliances as may seem to the trustees advisable, in which event they shall provide for the care and maintenance thereof, and, for such purpose, may purchase, lease or construct and maintain necessary buildings; and they may establish and maintain lines of fire alarm telegraph within the limits of the township.”

In view of the foregoing, it would appear that the powers granted to the township trustees in the section last above quoted, have not been taken away by the enactment of Section 3298-60, General Code. It therefore appears to be clear that if there is a volunteer fire company of such character as to give the assurance of permanency and efficiency, the township trustees may purchase fire apparatus and appliances for the use of said company. Furthermore, in my opinion No. 2376, issued under date of September 26, 1930, it was held as disclosed by the second branch of the syllabus:

“The board of township trustees may lawfully enter into a contract and pay a volunteer fire company for its services in furnishing fire protection to the township.”

I am therefore of the opinion, in specific answer to your question that Section 3298-60, does not authorize the township trustees to enter into a contract with a volunteer fire company to furnish fire protection to the township, for the reason that this section specifically mentions “city, village and township.” However, said section authorizing contracts by townships with other subdivisions in no wise cuts down the power to contract for fire protection with volunteer fire companies or to furnish equipment for volunteer fire companies under Section 3298-54, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3599.

APPROVAL, BONDS OF STRUTHERS CITY SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$16,000.00.

COLUMBUS, OHIO, September 25, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3600.

APPROVAL, NOTES OF PERRY COUNTY, OHIO—\$17,000.00.

COLUMBUS, OHIO, September 25, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.