

2129.

FIRE PROTECTION — BOARD OF TOWNSHIP TRUSTEES, CANNOT CONTRACT WITH MUNICIPALITY TO RECEIVE FIRE PROTECTION IN PORTION ONLY OF TOWNSHIP — MUNICIPALITY MAY NOT CONTRACT WITH ASSOCIATION OF CITIZENS FOR FIRE PROTECTION IN PORTION OF TOWNSHIP WHERE SUCH CITIZENS LIVE.

SYLLABUS:

1. *A board of township trustees cannot enter into a contract with a municipal corporation whereby the municipal corporation agrees to give fire protection to a portion or portions only of the township.*

2. *A municipal corporation may not enter into a contract with an association comprised of citizens living in a certain portion of a township for the furnishing of fire protection to that portion of the township in which the citizens comprising the association live.*

Columbus, Ohio, April 3, 1940.

Hon. Paul A. Baden, Prosecuting Attorney,
Hamilton, Ohio.

Dear Sir:

Your recent request for my opinion reads as follows:

"Adjacent to the City of Hamilton and lying in Fairfield Township there is a group of houses served by water mains and fire hydrants getting their water supply from the City of Hamilton. This area composes only a small part of Fairfield Township. Referring to Section 3298-60 G. C. I would like to have your opinion in answer to the following questions:

1. Can the Township Trustees of Fairfield Township enter into a contract with the City of Hamilton whereby the City of Hamilton would agree to give fire protection to that portion or those portions of Fairfield Township which have water supply and fire hydrants threaded to fit the fire fighting apparatus of the City?

2. Is there any way by which those citizens in this area in Fairfield Township can form an association and have this association enter into a contract with the City to furnish fire protection?

3. If such an association can be formed and such a contract entered into, would the firemen of the City of Hamilton be protected under the Workmen's Compensation Act and the Firemen's Pension in the event they are injured or killed while making runs to and from that area?"

Section 3298-54, General Code, authorizes the trustees of a township to unite with the trustees of another township or the council or other legislative authority of a political subdivision for the joint maintenance, use and operation of fire fighting equipment. Section 3298-55, General Code, provides for the levy of taxes by township trustees upon all taxable property in the township to provide protection against fires, and Section 3298-56, General Code, provides for the issuance of bonds for such purposes. Section 3298-60, General Code, to which you refer, provides as follows:

"Any township, village or city, in order to obtain fire protection or to obtain additional fire protection in times of emergency, shall have the authority to enter into a contract or contracts for a

period not to exceed three years, with one or more townships, villages or cities, upon such terms as may be agreed upon, for services of fire departments or the use of fire apparatus or for the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivisions, if such contracts are first authorized by the respective boards of trustees, councils, or other legislative bodies.

The provisions of section 3714-1 of the General Code so far as the same shall apply to the operation of fire departments, shall apply to the contracting political subdivisions and fire department members when said members are rendering service outside their own subdivision pursuant to such contracts.

Fire department members acting outside the subdivision in which they are employed, pursuant to such contracts, shall be entitled to participate in any pension or indemnity fund established by their employer to the same extent as while acting within the employing subdivision, if the rules of the board of trustees of the firemen's pension or indemnity fund provide therefor; and shall be entitled to all the rights and benefits of the workmen's compensation act, to the same extent as while performing service within said subdivision.

Such contracts may provide for a fixed annual charge to be paid at the times agreed upon and stipulated therein, or for compensation based upon a stipulated price for each run, call or emergency, or the number of members or pieces of apparatus employed or the elapsed time of service required, in such run, call or emergency; and may provide for compensation for loss or damage to equipment or apparatus while engaged outside the limits of the subdivision owning and furnishing the same; and said contracts may provide for the reimbursement of the subdivision wherein the fire department members are employed for any pension or indemnity award or premium contribution assessed against the employing subdivision for workmen's compensation benefits, for injuries or death of its fire department members occurring while engaged in rendering service in pursuance thereof."

If a board of township trustees enters into a contract with a city for fire protection, the funds which the township would expend thereunder would necessarily be derived from taxation on all the taxable property in the township and the board of township trustees is certainly not authorized to use public funds obtained by taxation on all the property in the township to contract for fire protection for a portion only of the township, even though such portion may contain water mains and fire hydrants threaded to fit the fire fighting apparatus of the municipality with which the contract is made.

You also ask whether the citizens in a portion of the township might form an association which would enter into a contract with the city for fire protection. In my opinion the city would have no power to enter into a con-

tract for such purpose with such an association. In *Realty Company v. Youngstown*, 118 O. S., 204, at 207, it was said in the opinion of the court:

“Municipalities in Ohio have only such powers as are conferred upon them, either directly by the Constitution, or by the Legislature under authority of the Constitution.”

I find nothing either in the Constitution or in the statutes which would authorize a city to enter into a contract with an association comprised of a portion of the citizens of a township whereby the city obligated itself to furnish fire protection to a portion of a township. This being the case, your second question must be answered in the negative.

In view of the conclusion reached in answer to your second question, I find it unnecessary to answer your third question. You are therefore advised, in specific answer to your first and second questions, that:

1. A board of township trustees cannot enter into a contract with a municipal corporation whereby the municipal corporation agrees to give fire protection to that portion or portions only of the township which have water supply and fire hydrants threaded to fit the fire fighting apparatus of the municipal corporation.

2. A municipal corporation may not enter into a contract with an association comprised of citizens living in a certain portion of a township for the furnishing of fire protection to that portion of the township in which the citizens comprising the association live.

Respectfully,

THOMAS J. HERBERT,
Attorney General.