

3957

FIRE DISTRICT—TRUSTEES OF TOWNSHIP WITHOUT AUTHORITY TO CONTRACT ON BEHALF OF FIRE DISTRICT ESTABLISHED IN PORTION OF TOWNSHIP FOR SERVICES OF FIRE DEPARTMENT OF TOWNSHIP—MAY MAKE CONTRACT WITH MUNICIPALITY LOCATED IN TOWNSHIP OR WITH ANOTHER POLITICAL SUBDIVISION—SECTION 3298-54 G. C.

SYLLABUS:

The trustees of a township who have established a fire district in a portion of their township as provided in Section 3298-54, General Code, are without authority to contract on behalf of such fire district for the services of the fire department of said township, but may make such contract with a municipality located in such township or with another political subdivision.

Columbus, Ohio, November 5, 1948

Hon. William G. Wickens, Prosecuting Attorney
Lorain County, Lorain, Ohio

Dear Sir :

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

“One of the townships of our county is having difficulty financing its fire department. It is now contemplating establishing a fire district in that portion of the township lying outside of the City of Lorain and submitting the question of a special tax levy for fire fighting purposes to the electors of the proposed fire district.

“We hereby solicit your opinion as to whether, under Section 3298-54, General Code, the trustees of the fire district may contract for fire protection for such fire district with the township in which such fire district is located. It will be apparent that in such case the township trustees will be signing both ends of the contract. However, the said statute provides that the trustees of a township wherein there is a fire district may contract for such protection for such fire district the same as provided in Section 3298-60, General Code, for other subdivisions.

“Before creating the fire district the trustees would like your opinion relating to the same as they desire to have the proposed fire district supplement the revenues of the present township fire department, through such contract arrangement as an alternative

to having the fire district establish another fire department of its own.”

Section 3298-54, General Code, contains somewhat elaborate provisions for the establishment by township trustees of facilities for protecting the property and lives of the citizens against damage from fire. By the first paragraph of this section the trustees are authorized to “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”, etc. They are further authorized, with the approval of the specifications by the county prosecuting attorney, to purchase or otherwise provide such fire apparatus, hydrants and water supply for fire fighting purposes as they deem advisable, and to construct necessary buildings and maintain lines of fire alarm telegraph within the limits of the township. They are authorized to employ firemen or at their option to enter into an agreement with a volunteer fire company for the use and operation of such equipment. All of the above provisions contemplate a department serving the *entire township* and supported by the township.

The next paragraph of this section reads as follows :

“The trustees of any two or more townships or the councils or other legislative authorities of any two or more political subdivisions or any combination thereof, are authorized through joint action to unite in the joint purchase, maintenance, use and operation of fire fighting equipment, or for any other purpose designated in this act, and to pro-rate the expense on such terms as may be mutually agreed upon.”

It will be noted that the provision last above quoted contemplates cooperative action between two or more *political subdivisions* and does not include in its terms any contracts by a fire district with any political subdivision.

The same section then proceeds to authorize the organization of fire districts comprising a part of the township. This matter is covered by the following provision of the statute :

“The *board of trustees of any township* in which there is located a municipal corporation or corporations, or a part of a municipal corporation, may by resolution whenever in their opinion it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting therefrom, *create a fire district or districts of*

that portion of such township not included within the corporate limits of such municipal corporation or corporations, and *may purchase* or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes; or *may contract* for such fire protection for such fire district or districts the same as provided in Section 3298-60 for other subdivisions. The fire district or districts so created shall be given a separate name by which it shall be known and designated.” (Emphasis added.)

Further provision is made in the next following paragraph for the purchase by the trustees of any township or fire district or districts created by them, of fire fighting equipment for such township or fire district or districts on the installment plan, and for that purpose the trustees are authorized to issue the notes of the township or the fire district as the case may be, signed by the trustees and covering the deferred payments.

Attention is called to the provision of the paragraph last above quoted relative to contracts for fire protection for fire districts. It will be noted that such contract is to be made by the township trustees on behalf of the fire district. There is no provision in the law establishing any separate board of trustees for the fire district. The purpose of authorizing these fire districts to be organized only when there is located in the township one or more municipal corporations, is manifestly to give the opportunity for fire protection to the portion of the township which is outside of a city or village located in the township, without taxing the property in the city and village for such outside protection. It is safe to assume that such city or village has its own fire department, but since it is a part of the township its inhabitants would be subject to township taxes, and if a *township* department were organized to protect this outlying territory the people of the municipality would suffer double taxation.

Accordingly, we find in Section 3298-55, General Code, authority given to the trustees of the township to levy a tax upon all property in a *fire district or districts* to provide protection against fire, and to maintain the fire department of such district. Furthermore, there is provision found in Section 3298-56, General Code, for the issuance by the township trustees of bonds for the purpose of fire protection upon the approval of such issue by a vote of the people in a fire district.

You will note a provision in Section 3298-54 *supra*, to the effect that where the township trustees have established one or more fire districts in

the part of a township outside of a municipality they are authorized to contract for fire protection for such fire district as provided in Section 3298-60, General Code, "for other subdivisions." A reference to Section 3298-60 supra, shows the following provision relative to such contracts between the political subdivisions:

"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, provided that such contracts are first duly authorized by the respective boards of trustees, councils, or other legislative bodies."

As has already been pointed out, such contract if made on behalf of a fire district must be made by the township trustees acting for it. Accordingly, if we are to consider a contract to be made between a township having a township fire department and a fire district located within the same township, then we would have the township trustees contracting with themselves.

It appears to me that such a contract would be not only an anomaly, but quite inconsistent with the fundamental character of a contract, and quite out of accord with the manifest intention of the legislature in making the provisions to which I have called attention. I cannot escape the conviction that the General Assembly had in mind the fact that the city located within the township would have its own fire department and that the outlying territory of the township would need protection which could hardly be furnished by the city. If it were possible for the city to furnish protection, it ought not to be by contract with the whole township because in such case the city would be bearing a share of the expense on both sides of the contract. The law furnishes an opportunity whereby the outlying portion of the township can be set up as one or more fire districts and they are given power to contract with the city or with any other subdivision either for joint use of fire apparatus or for direct service by a fire department established and operated by such other subdivision. Plainly, this procedure would accomplish the purposes intended and distribute the cost equitably.

It is accordingly my opinion and you are advised that the portion of a township outside of a municipality located therein may be organized into one or more fire districts and that such fire districts may contract with such municipality or with some other municipality or political subdivision for fire protection. It is further my opinion that the township trustees organizing such fire district may not contract on behalf of the district with themselves as representing the fire department owned and operated by the entire township for furnishing such fire protection to the district.

Respectfully,

HUGH S. JENKINS,
Attorney General.