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1. POWERS OF BOARD OF TOWNSHIP TRUSTEES ARE ONLY THOSE EXPRESSLY OR IMPLIEDLY CONFERRED BY STATUTE.
2. BOARDS OF TOWNSHIP TRUSTEES HAVE *NO* AUTHORITY, EXPRESS OR IMPLIED, UNDER 505.44 RC TO CONTRACT FOR EMERGENCY FIRE PROTECTION WITH A BOARD OF TOWNSHIP TRUSTEES OF ANOTHER STATE.

SYLLABUS:

1. Township trustees possess only such powers as are expressly or by necessary implication conferred upon them by statute.
2. Township trustees have no authority either express or implied, under the provisions of Section 505.44, Revised Code, to enter into a contract for emergency fire protection with a township in an adjoining state.

Columbus, Ohio, April 1, 1957

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

I have your request for my opinion, which reads as follows:

"We have recently had an inquiry from the Township Trustees of Washington Township as to whether under Section 505.44 of the Revised Code, it would be permissible for the Township Trustees to enter into a contract to obtain additional fire protection in times of emergency with bordering townships located in the State of Michigan.

"We have examined this statute and while it does not specifically limit contracts by the Boards of Township Trustees or other legislative bodies to the State of Ohio, we would be pleased to have your opinion as to whether the contract with an authorized body of a neighboring state would be valid. It would, of course, be understood that in such contracts the necessary provisions for insurance and compensation would be included."

It is well settled that township trustees possess only those powers which are (1) expressly conferred by statute or (2) by necessary implication to perform the duties so imposed upon them. *Hopple v. Brown Twp.*, 13 Ohio St., 411; *New London Twp. v. Miner*, 26 Ohio St., 452. See also Opinion No. 681, Opinions of the Attorney General for 1939, page 835.

Section 505.44, Revised Code states in pertinent part:

"In order to obtain fire protection, or to obtain additional fire protection in times of emergency, any township may enter into a contract, for a period not to exceed three years, with one or more townships, municipal corporations, or private fire companies, upon such terms as are agreed to by them, for services of fire departments, or the use of fire apparatus, or the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivision and private fire companies, if such contract is first authorized by the respective boards of township trustees or other legislative bodies."

Does this statute grant township trustees the express authority to contract with a political subdivision in another state? I think not. To

do so would make it necessary to give to the words "township" and "municipal corporations" a scope which is much broader than that which is attached to these words elsewhere in the Code. Furthermore, it would mean that the word "township" has two separate meanings within the same sentence, for it is obvious that in the above quoted section the first word "township" can refer only to Ohio townships. It follows then, that the same construction must be given that word throughout the sentence.

Does the statute grant this authority by implication? Again, my response is in the negative. In order to constitute an implied grant of authority that authority must necessarily flow from the duties imposed, or authority expressly given. It does not seem that the authority to contract with political subdivisions of another state follows from the authority to contract with domestic political subdivisions.

The key to this type of problem was succinctly stated by Weygandt, C. J., in *State, ex rel. Schramm, v. Ayers*, 158 Ohio St., 30, at page 33:

"The relator contends that there is no statutory prohibition against such action by and on behalf of part of a township. One difficulty with this view is that townships are creatures of law and have only such authority as is conferred on them by law. Therefore, the question is not whether townships are prohibited from exercising such authority. Rather, it is whether townships have such authority conferred on them by law."

Since the statute in question grants no authorization for the action about which you inquire I must take the position that it is prohibited.

Therefore, in specific answer to your inquiry, it is my opinion that:

1. Township trustees possess only such powers as are expressly or by necessary implication conferred upon them by statute.
2. Township trustees have no authority either express or implied, under the provisions of Section 505.44, Revised Code, to enter into a contract for emergency fire protection with a township in an adjoining state.

Respectfully,
WILLIAM SAXBE
Attorney General