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1. FIRE PROTECTION PURPOSES—FUNDS DERIVED FROM TOWNSHIP TAX LEVY—MAY BE USED FOR FIRE HYDRANTS AND WATER SUPPLY—FIRE FIGHTING PURPOSES—ONLY PORTION OF TOWNSHIP MAY BENEFIT.
2. TOWNSHIP TRUSTEES, BOARD OF—LIMITED AUTHORITY TO ESTABLISH OR PROCURE WATER LINES AND PROVIDE WATER SUPPLY—MAY PROCURE SUCH WATER SUPPLY AS IS NECESSARY FOR FIRE FIGHTING PURPOSES.

SYLLABUS:

1. Funds derived from a township tax levy for fire protection purposes may be used to obtain fire hydrants and water supply for fire-fighting purposes although such hydrants and water supply will benefit only a portion of the township.
2. The authority of a board of township trustees to establish or procure water lines and to provide a water supply within the township concerned extends only to the provision of such water supply as is necessary for fire-fighting purposes.

Columbus, Ohio, May 1, 1956

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Ashtabula County has established water mains in Sewer District No. 1. The Township Trustees of Ashtabula Township have asked authority to connect with such water lines for the purpose of furnishing fire protection in a portion of the township which is included in Sewer District No. 1. Two questions have arisen:

“(1) May funds realized from a one mill levy which has been voted for fire protection in Ashtabula Township, be used for laying down of water mains and the installation of fire hydrants, when the benefited area constitutes a small fraction of the entire township upon which the one mill tax has been levied.

“(2) May the owners of property abutting upon the mains when laid down avail themselves of water supplied through such mains.”

Section 505.37, Revised Code, provides:

“The board of township trustees may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damage and accidents and may, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide such fire apparatus, mechanical resuscitators or other equipment, appliances, materials, fire hydrants, and *water supply for firefighting purposes* as seems advisable to the board. * * *” (Emphasis added.)

Section 505.39, Revised Code, provides for a tax levy for fire protection in the following manner:

“The board of township trustees may, in any year, levy a sufficient tax upon all taxable property in the township or in a fire district, to provide protection against fire, to provide and maintain fire apparatus and appliances, buildings and sites for apparatus and appliances, sources of water supply, materials for such water supply, lines of firealarm telegraph, and to pay permanent, part-time, or volunteer fire-fighting companies to operate such equipment.”

There seems to be no question but that township trustees may provide fire hydrants and a water supply for fire-fighting purposes and provide funds for the same by a tax levy.

Your first question concerns itself with whether funds raised by a levy on all property in the township for fire protection may be used to finance a project for fire protection in a portion of the township.

In *Railroad Company v. Commissioners*, 48 Ohio St., 249, the court had before it the question of whether a tax, levied on all property in a taxing district under the one-mill assessment pike law, was valid in that some of the property assessed received little if no benefit from the improvement. The court held as follows in the first paragraph of the syllabus:

“1. Where a tax is levied for a public purpose, and the rule of equality has been observed in making the levy, its payment cannot be defeated by showing that no direct, or pecuniary, benefit will accrue to either the property, or its owner, from the proposed expenditure of the funds raised by the tax.”

See also 38 Ohio Jurisprudence, Taxation, Section 134, page 886:

In *State ex rel. Bowman v. Board of Commissioners of Allen County, et al.*, 124 Ohio St., 175, the problem before the court was a mandamus action to compel county commissioners to levy a tax on all property in the county to pay for bonds issued in establishing sewer districts for part of the county. Paragraph 8 of the syllabus of that case reads:

“8. An *ad valorem* tax levy upon all the taxable property of a county to pay the principal and interest of bonds issued to provide funds to construct a sewer system for a small territory contiguous to a municipality, which improvement confers no direct benefit to property in the county remote in location from said improvement, does not violate the provisions of Section 2 of Article XII of the Ohio Constitution, requiring all real and personal property to be taxed by a uniform rule, and according to its true value in money.”

In the body of the opinion at page 199, Marshall, C. J., makes the following comment:

“The construction of water supply systems and storm and sanitary sewer systems by municipalities has long been recognized by the Legislature as a valid exercise of governmental powers in promoting the public health and welfare by municipalities, and the same may be said as to a levy of general taxes spread over the entire property of such municipalities, even though the direct benefits were confined to but a small portion of the municipality. This principle has been so often declared and so well settled that citation of authority is unnecessary. * * *”

The *Bowman* case was followed by the court in the recent case of *State ex rel. Speeth et al., v. Carney, Aud.*, 163 Ohio St., 159.

In view of the foregoing there does not appear to be any prohibition from using funds collected township-wide for an improvement for a portion of the township for fire-fighting purposes.

Your second question raises a different problem. The only authority granted by Section 505.37, Revised Code, is to provide a water supply for fire-fighting purposes. If owners of property were allowed to connect with township water supply lines laid for fire-fighting purposes then the township would be in the water supply business. The board of trustees of townships being created by statute have no authority other than that given by statute and there is no enabling statute permitting township

trustees to supply water to residents of the township. Therefore, the authority of the township trustees being limited to procuring water supply for fire-fighting purposes, they cannot supply water through lines of the township to property owners or other residents.

In specific answer to your inquiry it is my opinion, and you are advised, that :

1. Funds derived from a township tax levy for fire protection purposes may be used to obtain fire hydrants and water supply for fire-fighting purposes although such hydrants and water supply will benefit only a portion of the township.

2. The authority of a board of township trustees to establish or procure water lines and to provide a water supply within the township concerned extends only to the provision of such water supply as is necessary for fire-fighting purposes.

Respectfully,

C. WILLIAM O'NEILL
Attorney General