

1238

FIRE DEPARTMENTS -- VOLUNTEER FIREMEN -- CHAPTER 3310., RC -- APPLICATION OF SUCH CHAPTER TO TOWNSHIPS, FIRE DISTRICTS, OR MUNICIPALITIES NOT "EMPLOYING" FIREMEN -- MAINTAINING A FIRE DEPARTMENT -- CONTRACT FOR FIRE PROTECTION.

SYLLABUS:

The provisions of Chapter 3310., Revised Code, apply only to those townships, fire districts, or municipalities which "employ" volunteer firemen in the sense that they are "appointed" as such by a "township, fire district, or municipality having a fire department;" and these provisions have no application to such townships, fire districts, and municipalities which maintain no fire departments of their own but which merely contract with a volunteer fire company, or with another political subdivision which does maintain a fire department, for the services of the members of such company, or the firemen employed by such department, in providing fire protection service.

Columbus, Ohio, October 30, 1957

Hon. Hugh I. Troth, Prosecuting Attorney
Ashland County, Ashland, Ohio

Dear Sir:

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

"Under Section 3310.01 *et seq.*, Revised Code of Ohio, the Ohio Legislature has created a new firemen's indemnity fund. Does a township that obtains fire protection by way of a contract with a volunteer fire department need to contribute to the fund?

"Would the answer to the above question be the same whether the volunteer fire department furnishing the services is located in the township or outside of the township?

"In answer to the above questions, would it make any difference whether the contractual basis was on so much per fire or so much per year?"

I have also for study a query from the Hon. Tom Richards, Prosecuting Attorney of Carroll County, on a somewhat similar question. This query reads:

"Section 3310.08 of the Revised Code, effective September 16, 1957, requires the Clerk of the townships, municipalities or fire

districts to file with the Auditor of State a certificate of the current assessed valuation of the township, municipality or fire district.

“The incorporated village of B has contracts to provide fire protection for C, D, E, F and G townships in this county for a stated consideration per year and also has a contract with the Carroll County Commissioners for fire protection for any of its property or equipment wherever located in the county. D township also has a contract with J township, and G township has a contract with the incorporated village of K. B also has reciprocal fire contracts with the incorporated villages of L, K and M.

“Under the above circumstances, the valuation of what municipalities and townships should be included in the certificate required by section 3310.08 to be submitted by the B village clerk?”

Section 3310.02, Revised Code, reads as follows:

“Volunteer firemen’s dependents boards are hereby established for the administration of a volunteer firemen’s dependents fund as defined in section 3310.01 of the Revised Code. Such boards shall be established in each township, fire district, or municipality having a fire department employing volunteer firemen.”

Section 3310.08, Revised Code, reads:

“Upon election of board members as provided for in section 3310.04 of the Revised Code, they shall meet forthwith and hold an organizational meeting. At such time the board shall elect a chairman and a secretary. The secretary shall keep a complete record of the proceedings of the board, which record will be maintained as a permanent file.

“The secretary shall immediately certify to the auditor of state the names and addresses of the members elected, by whom elected, and the names of the board chairman and secretary. He shall also forward a certificate or statement by the clerk of the township, municipality, or fire district of the current assessed valuation of such township, municipality, or fire district.”

Section 3310.09, Revised Code, reads in part:

“Each political subdivision or fire district maintaining in whole or in part a volunteer fire department, or which employs volunteer firemen as defined in section 3310.01 of the Revised Code, is hereby declared to be a member of the fund and shall, on or before November 1, 1957, pay to the treasurer of the state of Ohio, to the credit of the volunteer firemen’s dependents fund, the initial premiums set forth as follows: * * *.”

It will be noted in Section 3310.02, *supra*, that boards are created only in "each township, fire district, or municipality *having a fire department employing volunteer firemen.*"

In Section 3310.08, Revised Code, a certificate by the secretary of such board is required only in such political subdivision as a board has been established; and such secretary is required to procure and forward a certificate or statement of "current assessed valuation of *such* township, municipality or fire district."

Although the terms "township, municipality, or fire district" are not earlier used in this section, it is fairly clear that by the use of the word "such," emphasized above, the General Assembly intended to refer to those subdivisions in which boards are established, as provided in Section 3310.02, Revised Code.

In Section 3310.09, Revised Code, provision is made for the assessment of premiums against "each political subdivision or fire district maintaining in whole or in part a volunteer fire department, or which employs volunteer firemen as defined in Section 3310.01, Revised Code * * *." This definition is as follows:

"(B) 'Volunteer firemen' means a duly appointed fireman on either a non-pay or part-pay basis, and who is otherwise ineligible to be a member of a firemen's relief and pension fund or whose employment as a fireman does not in itself qualify him for membership in the public employees' retirement fund. It shall also include firemen drafted, requisitioned, or appointed to serve in an emergency. * * *."

Of particular significance here is the limitation of this term to include only those who are "duly appointed" and we must thus conclude that Section 3310.09, *supra*, refers only to a political subdivision or fire district which "employs" volunteers in the sense that they are "appointed" as firemen in a fire department maintained in whole or in part by the public agency concerned.

We may next observe in Section 505.37, Revised Code, the following provisions:

"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 fire-fighting purposes as seems advisable to the board. Such board shall provide for the care and maintenance of fire equipment, and, for such purposes, may purchase, lease, or construct and maintain necessary buildings, and it may establish and maintain lines of fire-alarm communications within the limits of the township. *The board may employ one or more persons to maintain and operate fire-fighting equipment, or it may enter into an agreement with a volunteer fire company for the use and operation of such equipment.* The board may compensate the members of a volunteer fire company on such basis and in such amount as it deems equitable.

“The boards of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination thereof, may, through joint action, unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in sections 505.37 to 505.44, inclusive, of the Revised Code, and may pro-rate the expense of such joint action on such terms as are mutually agreed upon.

“The board of any township may, by resolution, whenever 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 of such portions of the township as it deems necessary, and the board may purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes, or may contract for such fire protection for such fire district as provided in section 505.44 of the Revised Code. The fire district so created shall be given a separate name by which it shall be known.

“The board of any township or fire district created by such board under sections 505.37 to 505.44, inclusive, of the Revised Code or the legislative authority of any municipal corporation, may purchase the necessary fire-fighting equipment, buildings and sites for such township, fire district, or municipal corporation and pay for it over a period of four years. Such board or legislative authority may issue the notes of the township, fire district, or municipal corporation, signed by the board or legislative authority and attested by the signature of the township or municipal clerk, covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed six per cent per annum, and shall not be subject to sections 133.01 to 133.65, inclusive, of the Revised Code. One fourth of such purchase price shall be paid at time of purchase, and the remainder of the purchase price shall be covered by notes maturing in two,

three, and four years respectively. Such notes shall be offered for sale on the open market or given to the vendor if no sale is made.” (Emphasis added.)

The language emphasized above in the initial paragraph of this section quite clearly suggests that two alternates are provided the board of township trustees, *i.e.*, (1) they may “employ” firemen, or (2) they may *contract* with a volunteer company to operate township equipment.

From an examination of the third paragraph in this section, quoted above, it is clear that the *creation of a fire district* is in no sense necessarily related to a contract with a volunteer company, or with another political subdivision, and that such a contract does not *per se* effect the creation of such a district; nor can it be said that one subdivision which contracts with another for fire protection service is thereby “maintaining” in part the fire department of such other subdivision.

In Section 505.41, Revised Code, there is the following provision :

“Members of volunteer fire companies, or persons employed by a township on a part-time basis to operate or maintain fire-fighting equipment, or persons employed in any manner incidental to the operation or maintenance of such equipment, are township employees for the purposes of workmen’s compensation insurance, the same as though regularly employed as designated in section 4123.01 of the Revised Code.”

Here again there is pointed out the distinction between (1) “persons employed” and (2) members of a volunteer company, the latter being deemed township “employees” for limited purposes only.

It thus becomes clear that the provisions of Chapter 3310., Revised Code, apply only to those townships, fire districts, or municipalities which “employ” volunteer firemen in the sense that they are “appointed” as such by a “township, fire district, or municipality having a fire department;” and these provisions have no application to such townships, fire districts, and municipalities which maintain no fire departments of their own but which merely contract with a volunteer fire company, or with another political subdivision which does maintain a fire department, for the services of the members of such company, or the firemen employed by such department, in providing fire protection service.

Respectfully,
WILLIAM SAXBE
Attorney General