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1. TOWNSHIP TRUSTEES TO APPOINT FIRE CHIEF—SECTION 505.38 R. C.—NO AUTHORITY TO APPOINT CHIEF OF INDEPENDENT VOLUNTEER PRIVATE FIRE COMPANY.
2. TOWNSHIP TRUSTEES—NO AUTHORITY TO APPOINT “OVER-ALL” FIRE CHIEF—WHERE TWO OR MORE FIRE DISTRICTS WITH FIRE DEPARTMENTS IN ONE TOWNSHIP.

SYLLABUS:

1. As provided in Section 505.38, Revised Code, a board of township trustees is required to appoint a fire chief in each township or fire district in which a fire department has been established, but is without authority to appoint a fire chief of an independent volunteer private fire company with which the board has contracted for fire protection.

2. A board of township trustees is without authority to appoint an “over-all” fire chief within a township having two or more fire districts in each of which a fire department has been established.

Columbus, Ohio, September 14, 1956

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

Dear Sir:

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

“Section 505.38 of the Revised Code provides in part as follows:

“‘In each township or fire district which has a fire department, the head of such department shall be a fire chief, appointed by the Board of Township Trustees.’

“Some of the townships in Lucas County are served by two or more independent volunteer fire departments. The practice has been to select a Chief for each one of the fire departments. Our opinion has been asked as to the right of the township trustees to appoint an over-all Chief, while at the same time retaining the Chiefs of the separate departments.

“In view of the wording of the above section of the Revised Code, I would appreciate your opinion as to whether more than one fire chief may be appointed in a township which has more than one volunteer fire department.”

Your reference to “independent volunteer fire departments” suggests that you may have in mind private fire *companies* rather than fire *departments*. It should be noted initially that fire *departments* are not the same as private fire *companies*. In view of the differences between a fire department and a fire company, I should like to condense your request into three basic questions:

1. May a board of township trustees appoint a fire chief for each fire department within a township if more than one fire department has been established?
2. May a board of township trustees appoint a fire chief for each volunteer fire company within the township if the services of more than one fire company have been contracted for by the township trustees?
3. May a board of township trustees appoint an “over-all chief” and still retain the chiefs of each of two or more fire departments or fire companies if such departments or companies are entitled to a chief pursuant to Section 505.38, Revised Code?

It should be pointed out that Section 505.37, Revised Code, provides in part:

“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. * * * *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. * * **”
(Emphasis added.)

The last sentence, quoted above, authorizes the board of township trustees (1) to employ persons to maintain and operate fire-fighting equipment, or (2) the board may contract with a volunteer fire *company* for the use and operation of the fire-fighting equipment. If the first

alternative above is utilized the individual firemen are clearly employees of the township, but if the second alternative is utilized the individual firemen are township employees only for limited purposes. In this connection Section 505.41, Revised Code, provides :

“*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.*” (Emphasis added.)

Thus, for the purposes of workmen’s compensation insurance, *members of volunteer fire companies*, as well as persons *employed* by the township in a fire *department*, are entitled to benefits. This fact does not, in itself, constitute members of *volunteer companies* members of a volunteer fire *department*.

The distinction between a fire department and a private fire company is further emphasized in Section 505.44, Revised Code, by the use of these varying terms therein in referring to each.

Section 505.37, Revised Code, provides in part :

“* * * * * * * * *”

“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.

“* * * * * * * * *”

(Emphasis added.)

This section clearly provides that more than one fire district may be created within a single township, if, at the discretion of the township board, it is necessary to guard against the occurrence of fires.

Section 505.38, Revised Code, provides in part :

“*In each township or fire district which has a fire depart-*

ment, the head of such department *shall be a fire chief*, appointed by the board of township trustees. The board shall provide for the employment of such firemen as it deems best, and shall fix their compensation. * * *

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(Emphasis added.)

It appears from Section 505.38, Revised Code, that the board of township trustees shall appoint a fire chief for each township or fire district which has a fire *department*. The legislature has thus provided that when a fire department is created, the township trustee board *must* appoint a chief.

My answer then, to question one, is that a board of township trustees must appoint a fire chief for each fire department within the township if more than one such department has been established.

By looking again to Section 505.38, Revised Code, we find that there is no mention or suggestion that members of independent volunteer fire *companies* are entitled to have a chief appointed by the board of township trustees. The statute strictly limits the powers of appointment of a township board of trustees to "*each township or fire district* which has a fire *department*." (Emphasis added.) To hold that a volunteer fire company should be entitled to a fire chief would be to ignore the distinction pointed out *supra* between the status of a fire department and a fire company.

It is suggested that my answer to question three has been given above. Nowhere is there a suggestion in Section 505.38, Revised Code, that a single "over-all chief" may be appointed to supervise the various fire departments or fire companies within a particular township or fire district. The statute quite explicitly states that *each* township or fire district is to have its *own* chief, appointed by the board of township trustees. Since the volunteer fire companies are not included in a like provision it must follow that they may select a "chief," or other officers of their company as they think proper, and that the township trustees have no voice in such selection.

Therefore, in answer to the questions posed by your inquiry, it is my opinion that:

1. As provided in Section 505.38, Revised Code, a board of township trustees is required to appoint a fire chief in each township or fire district

in which a fire department has been established, but is without authority to appoint a fire chief of an independent volunteer private fire company with which the board has contracted for fire protection.

2. A board of township trustees is without authority to appoint an "over-all" fire chief within a township having two or more fire districts in each of which a fire department has been established.

Respectfully,

C. WILLIAM O'NEILL

Attorney General