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FIRE DISTRICT—CREATED UNDER PROVISIONS OF SECTION 3298-54 GC—TO COMPRISE ONLY PORTION OF TOWNSHIP—TOWNSHIP TRUSTEES NOT AUTHORIZED TO PROVIDE BY CONTRACT FOR FIRE PROTECTION TO AREAS OF TOWNSHIP NOT INCLUDED IN DISTRICT—SECTION 3298-60 GC.

SYLLABUS:

Where a fire district has been created under the provisions of Section 3298-54, General Code, so as to comprise only a portion, of a township, the trustees of such township are not authorized, under the provisions of this section and Section 3298-60, General Code, to provide by contract for fire protection services to be supplied by such fire district to areas of the township not included in such district.

Columbus, Ohio, April 7, 1953

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

Dear Sir:

Your request for my opinion reads as follows:

“General Code 3298-54 provides for the creation of fire districts by township trustees and authorizes the trustees to enter into contracts for fire protection for such fire district in the same manner as provided in Section 3298-60. The latter section authorizes contracts between townships, villages or cities for a supply

or an interchange of additional fire protection in times of emergency.

“Under the above statutes the Trustees of Providence Township in Lucas County created a fire district known as ‘Providence Township Fire District’ which comprises a portion of Providence Township. It is now the desire of the trustees of the township to enter into an arrangement whereby the fire protection services of the fire district might be made available to the areas of the township not included in the first district.

“The question which has arisen is this: Inasmuch as the township trustees are the governing body of both the district and the township, would they not in effect be entering into a contract with themselves in two different capacities, and if so would such a contract be illegal?”

I find that a question somewhat similar to that here raised was under consideration in Opinion No. 3957, Opinions of the Attorney General for 1948, p. 524, the syllabus in which is as follows:

“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.”

At the date this opinion was written, Section 3298-54, General Code, authorized the organization of fire districts only in townships “in which there is located a municipal corporation or corporations,” but was otherwise, in pertinent part, identical with the present statute. The precise question under study by my predecessor in this opinion was the authority of the township trustees to contract for fire protection to be supplied to such district by the township fire department. In the course of the opinion the writer said, p. 527:

“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.*" (Emphasis added.)

It will be observed that all of the criticisms thus pointed out are present in the instant case despite the circumstance that we are not patently concerned with the status of a municipal corporation located within the township. The arrangement which you suggest would involve a contract by the trustees with themselves, a situation which, as said in the 1948 opinion, *supra*, is not only anomalous but inconsistent with the fundamental character of a contract. Moreover, such an arrangement would result in the fire district "bearing a share of the expense on both sides of the contract," since the funds to be paid to the district thereunder would be raised by taxation on all the property within the township, including that within the fire district. This objection is clearly analogous to that pointed out in the 1948 opinion, and for this reason and because I concur in the reasoning therein set out, I am impelled to conclude, in specific answer to your inquiry, that where a fire district has been created under the provisions of Section 3298-54, General Code, so as to comprise only a portion of a township, the trustees of such township are not authorized, under the provisions of this section and Section 3298-60, General Code, to provide by contract for fire protection services to be supplied by such fire district to areas of the township not included in such district.

Respectfully,

C. WILLIAM O'NEILL
Attorney General