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1. TOWNSHIP TRUSTEES—IN ABSENCE OF CONTRACT, WITHOUT AUTHORITY TO PROVIDE FIRE PROTECTION TO VILLAGES—SECTION 3298-60 G. C.
2. FIRE DEPARTMENT, MEMBERS OF TOWNSHIP—IN ABSENCE OF CONTRACT, WHILE PERFORMING DUTIES AS FIREMEN OUTSIDE OF DISTRICT OF EMPLOYMENT, IF KILLED OR INJURED, NOT ENTITLED TO ANY RIGHTS OR BENEFITS UNDER WORKMEN'S COMPENSATION ACT.

SYLLABUS:

1. Township trustees are without authority to provide fire protection to villages in the absence of a contract as provided for in Section 3298-60, General Code.

2. Members of a township fire department, where there is no contract as provided for in Section 3298-60, General Code, while performing duties as firemen outside the district employing them, in absence of other facts to the contrary, if killed or injured, are not entitled to any rights or benefits under the Workmen's Compensation Act.

Columbus, Ohio, December 14, 1949

Hon. Myron A. Rosentreter, Prosecuting Attorney
Ottawa County, Port Clinton, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Clay Center is a village located in Allen Township, Ottawa County, Ohio.

“Allen Township has a fire department, known as The Allen Township Fire Department; the equipment for which was purchased by popular subscription prior to the time that the Village of Clay Center was incorporated. At the time of the purchase of the equipment, all of Allen Township was incorporated in the Fire District. The only change has been that since then Clay Center has become an incorporated Village within the Township.

“All of the general taxes of the Township are levied on the residents of the Village of Clay Center, the same as on the other

tax payers living outside of the Village of Clay Center in the Township of Allen.

“1. The question has been raised as to whether or not it would be necessary for the Village of Clay Center to enter into a contract with Allen Township for fire protection.

“2. Are the firemen of the Allen Township Voluntary Fire Department covered by Workmen’s Compensation, if they fight a fire in the Village of Clay Center, if there is no such contract?”

It is noted that your request is not too clear as to the ownership of this fire equipment. However, for the purposes of answering your questions, I must assume that Allen Township owns the same and such equipment is being operated pursuant to proper authority of the township trustees.

In 39 O. Jur., at pages 275 and 276, it is said:

“Generally speaking, the function of the township is to serve as an agency or instrumentality of the state for purposes of political organization and local administration. * * * it has been said that townships are employed by the legislature as mere instrumentalities to raise a tax for a public object and to effect its equitable distribution among those for whom it was intended. * * * Townships, therefore, possess only such powers and privileges as may be delegated to, or conferred upon, them by statute. These powers and privileges must be strictly construed and may, it would seem, be modified and taken away.”

The powers and privileges granted to township trustees relative to fire protection are provided for in Section 3298-54 to Section 3298-63, inclusive, of the General Code. The pertinent statutes to the instant questions read in part as follows:

Section 3298-54, General Code:

“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 resulting therefrom and may, with the approval of the specifications by the county prosecuting attorney, purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes as may seem to the trustees to be advisable, in which event they shall provide for the care and maintenance thereof, and, for such purposes, may purchase, lease or construct and maintain necessary buildings; and they may establish and maintain lines of fire alarm tele-

graph within the limits of the township. Such township trustees may employ one or more persons to maintain and operate fire fighting equipment; or they may enter into an agreement with a volunteer fire company for the use and operation of such equipment. The trustees are empowered to compensate the members of a volunteer fire company on such basis and in such amount as the trustees deem fair and equitable.

“The trustees of any two or more townships or the councils or other legislative authorities of any two or more political subdivisions or any combination thereof, are authorized through joint action to unite in the joint purchase, maintenance, use and operation of fire fighting equipment, or for any other purpose designated in this act, and to pro-rate the expense on such terms as may be mutually agreed upon.

“The board of trustees of any township in which there is located a municipal corporation or corporations, or a part of a municipal corporation, may by resolution whenever in their opinion 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 or districts of that portion of such township not included within the corporate limits of such municipal corporation or corporations, and may purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes; or may contract for such fire protection for such fire district or districts the same as provided in section 3298-60 for other subdivisions. The fire district or districts so created shall be given a separate name by which it shall be known and designated.

“The board of trustees of any township or fire district or districts created by them under the provisions of this act, may purchase the necessary fire fighting equipment for such township, fire district or districts and pay for the same over a period of four years. Such trustees shall be authorized to issue the notes of the township, fire district or districts, as the case may be, signed by the trustees and attested by the signature of the township clerk, and 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 the provisions of sections 2293-1 to 2293-37a, inclusive, of the General Code. The amount of such purchase shall not exceed ten thousand dollars covered by the issuance of notes payable over a period of four years. One-fourth of such purchase price shall be paid at time of purchase. The remainder of the purchase price shall be covered by said 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.)

Section 3298-55, General Code :

“The trustees of a township are authorized to levy in any year or years a sufficient tax upon all taxable property in the township or in a fire district, or districts, to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor and sources of water supply and materials therefor, and the establishment and maintenance of lines of fire alarm telegraph and the payment of permanent, part-time or volunteer fire fighting companies to operate same.”

Section 3298-57, General Code :

“Members of volunteer fire companies or a person or persons employed by a township, or townships, on a part-time basis to operate or maintain fire fighting equipment or employed in any manner incidental thereto shall be deemed township employees for the purposes of workmen’s compensation insurance the same as though regularly employed as designated in section 1465-60 of the General Code.”

Section 3298-60, General Code :

“Any township, village or city, in order to obtain fire protection or to obtain additional fire protection in times of emergency, shall have the authority to enter into a contract or contracts for a period not to exceed three years, with one or more townships, villages or cities, upon such terms as may be agreed upon, for services of fire departments or the use of fire apparatus or for the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivisions, provided that such contracts are first duly authorized by the respective boards of trustees, councils, or other legislative bodies.

* * *

“The provisions of section 3714-1 of the General Code so far as the same shall apply to the operation of fire departments, shall apply to the contracting political subdivisions and fire department members when said members are rendering service outside their own subdivision pursuant to such contracts.

“Fire department members acting outside the subdivision in which they are employed, pursuant to such contracts, shall be entitled to participate in any pension or indemnity fund established by their employer to the same extent as while acting within the employing subdivision, if the rules of the board of trustees of the firemen’s pension or indemnity fund provide therefor; and shall be entitled to all the rights and benefits of the workmen’s compensation act, to the same extent as while performing service within said subdivision. * * *”

Section 3298-6J, General Code:

“Wherever it is used in this act: the term ‘political subdivision’ shall include municipal corporation, village, township and taxing district. * * *”

It is observed that the foregoing statutes provide the methods by which township trustees may furnish fire protection for citizens of a township in which there is located a municipal corporation; the first prerequisite being to establish a fire district, then they may either (a) contract with a volunteer fire department within the fire district or, (b) contract with legislative authorities of another political subdivision for fire protection or mutual exchange of equipment. At this point, I wish to direct your attention to a recent opinion of mine, No. 763, dated July 23, 1949, in which I stated that:

“Township trustees, after having created a fire district, may enter into a contract with a volunteer fire department which owns its own apparatus for fire protection for the entire township exclusive of a municipal corporation under the provisions of Section 3298-54.”

It is further observed that Section 3298-55, General Code, provides for the levying of a tax for fire protection. What is meant by “upon all the taxable property in the township” as provided for in said section? I am well aware of an opinion of a former Attorney General, Opinions of the Attorney General for 1940, No. 2807, at page 891. The first branch of the syllabus reads as follows:

“The levy of a tax by a board of township trustees under authority of Section 3298-55, General Code ‘upon all the taxable property in the township’ includes the property in a village located within said township, irrespective of any legislative action of the council of said village.”

However, since the rendering of the above opinion, Section 3298-55, General Code, was amended by the introduction in the paragraph of a provision relating to the creation of the fire districts in that portion of a township not included within the corporate limits of a municipal corporation (119 O. L. 315, 316). Sections 3298-54 and 3298-56, General Code, were, by the same act, amended only by the insertion of the words “create a fire district or districts of that portion of such township not included within the corporate limits” and “in a township, a fire district or districts,” respectively.

These amendments have not only supplied the power which was heretofore lacking to provide fire protection for a portion of the township, but by the same token have limited the powers of the township trustees as to levying a tax "upon all the taxable property" in that the taxable property for fire protection is that property within a fire district under the control of township trustees.

In Opinion No. 5798, Opinions of the Attorney General for 1943, page 44, at page 49, it was said:

"* * * as to allocation by the trustees of moneys out of the current general fund of the township to pay the cost payable by a fire district arising upon a contract with a village, it is my opinion that they would have no such power. There is no provision in the statute whereby general funds of the township could be used for the cost of fire protection for a fire district constituting a portion of the township. Funds raised by taxation which go to make up the general fund of the township are produced by a levy upon all the property in the township, and it would not be permissible to spend these funds for the purpose of either establishing a fire department in a portion of the township or contracting with a municipality for fire protection for such portion of the township."

In view of the foregoing, it is my opinion that:

1. Township trustees are without authority to provide fire protection to villages in the absence of a contract as provided for in Section 3298-60 of the General Code.

2. Members of a township fire department, where there is no contract as provided for in Section 3298-60, General Code, while performing duties as firemen outside the district employing them, in absence of other facts to the contrary, if killed or injured, are not entitled to any rights or benefits under the Workmen's Compensation Act.

Respectfully,

HERBERT S. DUFFY,
Attorney General.