

OPINION NO. 81-027

Syllabus:

A joint fire district may enter into a contract pursuant to R.C. 9.60 with one or more of the political subdivisions of which it is formed, whereby said subdivision or subdivisions pay the joint fire district for fire protection and/or emergency rescue services provided by the joint fire district. However, a township trustee or municipal council member who serves on the joint fire district board of trustees may not discuss, or vote upon, a contract entered into between the fire district and his own political subdivision.

To: Lynn C. Slaby, Summit County Pros. Atty., Akron, Ohio
By: William J. Brown, Attorney General, May 5, 1981

I have before me your request for my opinion concerning whether a joint fire district may enter into a contract with one or more of the political subdivisions of which it is formed, whereby said subdivision or subdivisions pay the joint fire district for fire protection and/or emergency rescue services provided by the joint fire district. Although you also make reference in your request to "single" fire districts, it is my understanding, based on conversations with your office, that the situation currently before you involves a joint fire district. Therefore, I am limiting my discussion to that subject. Your concern is apparently whether the legality of a contract between a joint fire district and a political subdivision in the district is affected by the fact that a particular individual is a member of the governing bodies of both the political subdivision and the joint fire district that negotiated the contract. In other words, the concern is this: Does the fact that a particular individual is both a member of the board of fire district trustees and a member of the board of township trustees or the legislative authority of a municipal corporation in the district prevent the consummation of a contract between the same joint district and the particular township or municipal corporation?

The Ohio statute that deals with the issue raised by your question has been substantially affected by the enactment of Am. S.B. 98, 113th Gen. A. (1980) (eff. Oct. 6, 1980). One consequence of Am. S.B. 98 is the consolidation of the statutory authorization for contracts between firefighting agencies and state agencies or political subdivisions. The act repeals, among other sections, R.C. 9.60 and R.C. 505.44, and by the use of certain definitions, it consolidates the contents of these sections into a new R.C. 9.60. The pertinent definitions under R.C. 9.60(A) are as follows:

(1) "Firefighting agency" means a municipal corporation, township, township fire district, joint ambulance district, or joint fire district.

. . . .

(3) "Governing board" means the board of county commissioners in the case of a county; the legislative authority in the case of a municipal corporation; the board of trustees of a joint ambulance district in the case of a joint ambulance district; the board of township trustees in the case of a township or township fire district; the board of fire district trustees in the case of a joint fire district; and the board of trustees in the case of a private fire company.

(4) "Fire protection" includes the provision of ambulance, emergency medical, and rescue service by the fire department of a firefighting agency or by a private fire company and the extension of the use of firefighting apparatus or firefighting equipment. (Emphasis added.)

Divisions (B) and (C) of R.C. 9.60 utilize these definitions in the following manner:

(B) Any firefighting agency or private fire company may contract with any state agency or instrumentality, county, or political subdivision of this state or with a governmental entity of an adjoining state to provide fire protection, whether on a regular basis or only in times of emergency, upon the approval of the governing boards of the counties, firefighting agencies, political subdivisions, or private fire companies or the administrative heads of the state agencies or instrumentalities that are parties to the contract.

(C) Any county, political subdivision, or state agency or instrumentality may contract with a firefighting agency of this state, a private fire company, or a governmental entity of an adjoining state to obtain fire protection, whether on a regular basis or only in times of emergency, upon the authorization of the governing boards of the counties, firefighting agencies, political subdivisions, or private fire companies or administrative heads of the state agencies or instrumentalities that are parties to the contract. (Emphasis added.)

R.C. 9.60(B) permits a firefighting agency, such as a joint fire district, to contract with political subdivisions, including townships and municipal corporations, for the provision of fire protection, which includes emergency rescue services. R.C. 9.60(C) conversely permits townships or municipal corporations to contract with a joint fire district to obtain fire protection. Clearly, then, the answer to your question is yes, a joint fire district may enter into a contract for fire protection and emergency rescue services with one or more of the political subdivisions of which it is formed.

You indicate that 1948 Op. Att'y Gen. No. 3957, p. 524 and 1953 Op. Att'y Gen. No. 2459, p. 132 are the source of your concern that a contract between a fire district and a political subdivision may not be proper where there is an individual serving on the governing boards of both entities. At the time these two opinions were written the statutory provisions governing a joint fire district were not yet enacted. See 1969-1970 Ohio Laws 2204, Book II (Am. H.B. 454, eff. Oct. 30, 1969). The fire districts under consideration in 1948 Op. No. 3957 and 1953 Op. No. 2459 were created pursuant to G.C. 3298-54 (now R.C. 505.37), which did not establish a separate board of trustees for a fire district composed simply of portions of a township. Under either G.C. 3298-54 or the current R.C. 505.37, a board of township trustees is the governing body for a township fire district. Thus, in the situations considered in 1948 Op. No. 3957 and 1953 Op. No. 2459, a board of township trustees was the governing body of both the township fire district and the township. In each of these Opinions an attempt was made by the board of township trustees to execute a contract pursuant to G.C. 3298-54 (now R.C. 505.37) and G.C. 3298-60 (later R.C. 505.44 and now repealed) on behalf of the fire district and the township. In both Opinions, my predecessors opined that there is no authority for such a contract because it is basically a contract by the township trustees with themselves which "is not only anomalous but inconsistent with the fundamental character of a contract." 1953 Op. No. 2459 at 134.

1948 Op. No. 3957 and 1953 Op. No. 2459 do not have any apparent applicability to the contract capabilities of joint fire districts. As noted previously, R.C. 9.60(B) grants a joint fire district specific contract capabilities. R.C. 505.371 governs the creation and the authority of a joint fire district. Unlike a fire district created under R.C. 505.37, a joint fire district has a distinct and separate governing body known as a board of fire district trustees. This board "shall include one representative from each board of township trustees and one representative from the legislative authority of each municipal corporation in the district." R.C. 505.371. The board of fire district trustees is to "exercise the same powers as are granted to a board of township trustees in sections 505.37 to 505.45, inclusive, of the Revised Code." R.C. 505.371. The Franklin County Court of Common Pleas has stated that a joint fire district is a separate legal entity. In re Temeer, 52 Ohio Misc. 101, 369 N.E.2d 819 (C.P. Franklin County 1977); see also

1979 Op. Att'y Gen. No. 79-039. It is this separate entity status that permits a joint fire district to contract pursuant to R.C. 9.60 without concern for the problems that are concomitant with a contract between a township fire district created under R.C. 505.37 and the board of township trustees which governs such district as discussed in 1948 Op. No. 3957 and 1953 Op. No. 2459. As noted above, since you are not currently faced with a situation involving a township and its fire district, I am not considering those problems herein.

Although I have concluded that a political subdivision and joint fire district may enter into a contract pursuant to R.C. 9.60, it is my opinion that a township trustee or member of a municipal legislative authority who serves on the joint fire district board may not participate in the discussion of, or vote upon, the contract entered into between the fire district and his own subdivision. It is a well-established common law principle that a public officer may not deal with himself, directly or indirectly. See *State ex rel. Taylor v. Pinney*, 13 Ohio Dec. 210 (C.P. Franklin County 1902). By participating on both sides of a contract, a public officer would be exposed to conflicting loyalties and to the potential temptation of acting in a manner not in the best interest of the public. See 1979 Op. Att'y Gen. No. 79-111. A public officer may not be in a position to control services delivered pursuant to contract, while at the same time passing upon the adequacy of the services delivered. See 1979 Op. Att'y Gen. No. 79-055. Thus, a township trustee or municipal council member who is also on the board of a joint fire district should abstain from any discussion of, or vote upon, a contract entered into between the fire district and his own subdivision. See Op. No. 79-111; 1979 Op. Att'y Gen. No. 79-049.

It is arguable that because R.C. 505.371 specifically mandates that a representative from each political subdivision be on the joint fire district board, and because a subdivision and fire district are statutorily empowered to contract, the General Assembly intended for the representative serving on the fire district board to participate in contract matters between the fire district and his own subdivision. However, the authority of a political subdivision to contract and the ability of a particular officer to participate in a contract are two distinct issues. While the General Assembly has legislated with regard to the former issue, it has remained silent with regard to the latter. Thus, it must be assumed that the common law rule was meant to remain in effect, in the absence of any indication to the contrary.

In answer to your question, then, it is my opinion, and you are so advised, that a joint fire district may enter into a contract pursuant to R.C. 9.60 with one or more of the political subdivisions of which it is formed, whereby said subdivision or subdivisions pay the joint fire district for fire protection and/or emergency rescue services provided by the joint fire district. However, a township trustee or municipal council member who serves on the joint fire district board of trustees may not discuss, or vote upon, a contract entered into between the fire district and his own political subdivision.