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VOLUNTEER FIREMEN'S DEPENDENTS FUND—JOINT ACQUISITION OF FIRE FIGHTING EQUIPMENT DOES NOT MAKE PARTICIPATING SUBDIVISIONS SUBJECT TO §3310.01 R.C.—SUBDIVISION ACTUALLY OPERATING AND MAINTAINING SUCH FIRE DEPARTMENT—CONTRACT WITH INDEPENDENT FIRE COMPANY, NO LIABILITY UNDER SUCH FUND—1238 OAG 1957, APPROVED AND FOLLOWED.

SYLLABUS:

1. The acquisition by joint agreement between a township and a village of fire fighting equipment does not in itself bring either of said subdivisions within the purview of Section 3310.01, *et seq.*, Revised Code, relating to the volunteer firemen's dependent fund.

2. Where a township and a village have, pursuant to Section 505.37, Revised Code, entered into an agreement for joint action in the maintenance and operation of a fire department and one or the other of the parties to said agreement is to provide

the firemen for the operation of jointly owned equipment, that subdivision alone is amenable to the provisions of Section 3310.09, Revised Code, providing for a contribution to the volunteer firemen's dependent fund.

3. Where a township and a village have entered into a contract for the joint purchase of fire fighting equipment and have entered into a contract with an independent volunteer fire company to operate such equipment, neither of said subdivisions is subject to the provisions of Section 3310.09, Revised Code. Opinion No. 1238, Opinions of the Attorney General for 1957, p. 41, approved and followed.

Columbus, Ohio, February 8, 1958

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

Dear Sir:

Your request for my opinion reads as follows:

"Under Revised Code 3310.01 et seq., a Volunteer Firemen's Dependents Fund is created. Where a village and a township jointly pass a fire levy and the proceeds thereof are used to help maintain a jointly owned and operated Volunteer Fire Company, do said sub-divisions jointly make one contribution to the Volunteer Firemen's Dependents Fund, their contribution being based upon the joint valuation of the two sub-divisions.

"Would your answer to the above be the same if the two sub-divisions were adjoining townships."

In a subsequent letter you stated:

"The village and the township have entered into a contract to *purchase and maintain fire equipment*. This equipment is operated by a volunteer fire company. *The fire company furnishes the manpower and the township and village supply the equipment.*" (Emphasis added)

Accompanying your letter you submitted a form of contract between the Village of Mifflin and the Township of Mifflin in Ashland County, which recites that said township and village "have heretofore passed a one mill levy for the purpose of purchasing a used fire truck, maintenance and equipment," and that said bodies intend to jointly purchase, operate and maintain said fire equipment. It is further recited that the clerk of the township is to pay all of said bills out of the said township fire fund, and on the 15th day of November of each year hereafter he shall submit a bill to the Village of Mifflin for its proportionate share of the bills there-

tofore paid for fire equipment and maintenance. The contract makes no provision whatever for providing the personnel for the operation of such equipment or for the appointment of firemen.

In answer to my further inquiry you state in a later communication:

“I have been advised by the Vermillion Township Trustees that only two people are appointed to handle the fire equipment, and they are a fire chief and an assistant fire chief. They are appointed by the joint board of trustees and village council.”

This correspondence leaves some doubt as to the character of the plan and the provisions for the personnel of the fire department. If, as stated in your second letter, “the equipment is to be operated by a volunteer company, the township and village merely supplying the equipment,” then there appears to be no fireman appointed by or in the employment of either the village or the township. If, however, as stated in your final letter, there are two firemen “appointed by the joint board of trustees and village council,” one of whom, the fire chief, is paid \$100.00 per year and the other as assistant fire chief is paid \$50.00 per year, then these firemen would appear to be employees of either the township or the village, but not of both acting jointly. I do not consider that there is any legal authority for a “joint board of trustees and village council” or that there can be public employees of such a joint board, nor in my opinion is there any legal authority for a “joint fund of the two subdivisions.” One or the other of these two subdivisions should assume responsibility for these two appointments, or if they prefer, each may sponsor one of the two firemen.

In Section 505.37, Revised Code, which is a part of the chapter relating to township trustees and their powers, there is the following provision:

“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 prorate the expense of such joint action on such terms as are mutually agreed upon.*" (Emphasis added)

In my opinion the paragraph last quoted does not give authority to the township trustees and municipal officers to form a joint political body capable as such of raising or maintaining funds or hiring employees for any purpose. There is authority for joint action by contract, in which one or the other should act as custodian of the fund contributed in part by the other and one or the other should employ such persons as are necessary to carry out the joint agreement although as I have already indicated, they may, if they insist, each employ one or more firemen. The unwisdom of that course will be evident when we come to consider the provisions of the volunteer firemen's dependents law. I call particular attention to the last phrase, "and may prorate the expense of such joint action on such terms as are mutually agreed upon."

Inasmuch as the above provision for joint action is found in the chapter relating to the powers of *township trustees*, and particularly as a part of the statute which authorizes the board of township trustees to provide for fire protection, it would seem to me to be the most natural and logical course for the township to carry the prime responsibility for the maintenance of the fire department and the appointment of the necessary firemen, with an agreement for a proper contribution from the municipality of a fair portion of the entire expense.

Coming then to the main point in your inquiry, to-wit, the responsibility of the parties to such a contract as you have referred to for the contribution to the fund for the support of the "volunteer firemen's dependent fund" as set forth in Section 3310.01, *et seq.*, Revised Code, I call your attention to Section 3310.01, Revised Code, where "volunteer fireman" is defined as follows:

"(B) 'Volunteer fireman' 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." (Emphasis added)

You will observe that such volunteer firemen in order to be within the purview of the law, must be duly appointed as a fireman, and it is

manifest that he must be duly appointed by some public body, either township or municipal. Coming then to Section 3310.09, Revised Code, which fixes the responsibility of the political subdivision for contribution to the fund, we find this provision:

“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:” (Emphasis added)

There follows a schedule of the amount of the payment based upon the total assessed property valuation of the subdivision. Section 3310.12, Revised Code, provides for subsequent assessments against each such member for the continued maintenance of the fund.

It is evident that the mere purchase of fire equipment by a political subdivision does not bring the subdivision within the operation of the firemen’s pension fund law because it is only the appointment or employment of firemen which can have that effect. If, as stated in your earlier communication, the township and village are to furnish the equipment and are to make a contract with a volunteer company to operate the same, then there would be no such relation of employer and employee as would bring the subdivision within the purview of the pension law. See my Opinion No. 1238, Opinions of the Attorney General for 1957, p. 41.

If, however, as indicated by your later communication, the two firemen who are employed are appointed by either the township or the village, or one by each, then each of these subdivisions, or at least the one which makes the appointments, would become subject to the provision of Section 3310.09, *supra*, and would be liable for payment to the Treasurer of State of the premium set forth in the statute. If one of these firemen is appointed by the village and one by the township, it would appear that they would each make themselves responsible for such contribution. This rather absurd result could certainly be obviated by the terms of the contract between the village and the township, whereby one or the other would appoint the members of the fire department, and become a member of the “fund”, while the other would contribute a proper amount to take care of its fair share of that expense.

In the light of the foregoing it is my opinion and you are advised:

1. The acquisition by joint agreement between a township and a village of fire fighting equipment does not in itself bring either of said subdivisions within the purview of Section 3310.01, *et seq.*, Revised Code, relating to the volunteer firemen's dependent fund.

2. Where a township and a village have, pursuant to Section 505.37, Revised Code, entered into an agreement for joint action in the maintenance and operation of a fire department and one or the other of the parties to said agreement is to provide the firemen for the operation of jointly owned equipment, that subdivision alone is amenable to the provisions of Section 3310.09, Revised Code, providing for a contribution to the volunteer firemen's dependent fund.

3. Where a township and a village have entered into a contract for the joint purchase of fire fighting equipment and have entered into a contract with an independent volunteer fire company to operate such equipment, neither of said subdivisions is subject to the provisions of Section 3310.09, Revised Code. Opinion No. 1238, Opinions of the Attorney General for 1957, p. 41, approved and followed.

Respectfully,

WILLIAM SAXBE

Attorney General