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TOWNSHIP TRUSTEES—TOWNSHIP INCLUDED WITHIN AREA SERVED BY CIVIL DEFENSE ORGANIZATION—NOT AUTHORIZED TO MAKE APPROPRIATIONS FOR PAYMENT OF PART OF EXPENSES OF ORGANIZATION—SECTION 5298 G. C.

SYLLABUS:

Township trustees of a township included within the area served by a civil defense organization, are not authorized by the provisions of Section 5298, General Code, to make appropriations for the payment of a part of the expenses of such organization.

Columbus, Ohio, January 4, 1952

Hon. C. Watson Hover, Prosecuting Attorney
Hamilton County, Cincinnati, Ohio

Dear Sir:

This will acknowledge receipt of your letter of recent date which reads as follows:

"Your opinion is requested concerning the following:

"Section 5295, Ohio General Code, authorized counties and incorporated municipalities to establish local organizations for civil defense.

"Section 5295-1, Ohio General Code, authorizes the establishment of county-wide local organizations for civil defense by agreement.

"Section 5298, Ohio General Code reads as follows:

'Each political subdivision shall have the power to make appropriations for the payment of the expenses of its local organization for civil defense, and for the payment of the expenses chargeable to such political subdivision by agreement or under regulations promulgated by the governor in any county wherein a county-wide civil defense organization has been established pursuant to the provisions of Section 5295-1 of the General Code.'

"Heretofore this office, in construing the above sections at the request of certain township trustees, was of the opinion that there is no authority for township trustees to organize or appro-

priate funds for civilian defense purposes. However, a careful study of Section 5298, as amended by the last legislature, raises certain questions.

“Obviously the term ‘political subdivision’ as used in Section 5298 may be applied to townships, or even school districts, as well as to counties or incorporated municipalities. Consideration must then be given to the meaning of the word ‘its’ as used in said section which provides that each political subdivision has the power to make appropriations for the payments of the expenses of ‘its’ local organization for civil defense.

“Since no authority to establish civil defense organizations is given to political subdivisions, other than counties and incorporated municipalities, it would seem that ‘its’ cannot relate to a civil defense organization set up by a township. If a county-wide civil defense organization is set up, however, the question arises as to whether ‘its’, as used in Section 5298, means the civil defense organization of which the township is a part, so that the township may make appropriations to pay a portion of the expenses of said organization.

“Our question, therefore, is as follows:

“Can the township trustees of a township included within the area served by a civil defense organization make appropriations for the payment of a part of the expenses of such organization?”

To facilitate a better understanding of the problem you have presented, I will set out the provisions of Sections 5295 and 5295-1, General Code, in full. Section 5295 is the legislative authorization for the organization of local civil defense organizations. It provides:

“Each county and incorporated municipality of this state is hereby authorized to establish a local organization for civil defense in accordance with such regulations as shall be promulgated by the governor. Each local organization for civil defense shall have a director who shall be appointed by the county commissioners for the counties and by the chief executive for the incorporated municipalities, and who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of such county commissioners and chief executive and not inconsistent with regulations promulgated by the governor. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to regulations promulgated by the governor.”

Section 5295-1, General Code, is authority for the creation, by agreement, of a county-wide local organization for civil defense. This section became effective on June 5, 1951, and by its terms it is provided that:

“The board of county commissioners of any county and the legislative authority of all or of a majority of the municipalities, including the municipality having the largest population, within such county may enter into an agreement establishing a county-wide local organization for civil defense in accordance with such regulations as shall be promulgated by the governor. A director of civil defense who shall have the direct responsibility for the organization, administration and operation of such county-wide local organization for civil defense shall be appointed in accordance with and shall be subject to the direction and control prescribed by the regulations promulgated by the governor.”

After a careful consideration of the above provisions of Sections 5295 and 5295-1, and Section 5298, General Code, which you have quoted in your letter, I am of the opinion that Section 5298 does not authorize appropriations by a township to pay a portion of the expenses of a county-wide local civil defense organization created under authority of Section 5295-1.

The difficulty arises over the use of the term “political subdivisions,” found in Section 5298. Your interpretation of this section assumes that “political subdivisions,” as used therein, includes townships, and you reason from this premise. While this term is broad enough to include a township if used unrestrictedly, it is my opinion that such term was used in a limited sense, referring to those political subdivisions authorized by Section 5295, to establish local civil defense organizations, or those subdivisions authorized to create a county-wide organization by agreement, under Section 5295-1. This interpretation excepts townships which are not so authorized in either instance. Section 5298 was amended June 5, 1951, at the same time Section 5295-1 was enacted to authorize county-wide defense organizations; the amendment of Section 5298 being necessary to allow appropriations for a county-wide defense organization. Prior to amendment, Section 5298, read as follows:

“Each *political subdivision* shall have the power to make appropriations for the payment of the expenses of *its* local organization for civil defense.”
(Emphasis added.)

As used in this section, before its amendment, "political subdivisions" could only have meant counties or municipalities, as these were the only subdivisions authorized to create a local civil defense organization. Section 5298 (prior to amendment,) could not be held impliedly to authorize townships to create local organizations for civil defense where Section 5295 expressly limited the establishment of such local organizations to counties and incorporated municipalities. The word "its" is also found in Section 5298 prior to the 1951 amendment and could only have had reference to local defense organizations set up by a county or municipality.

The provision of Section 5298, prior to its amendment, set out above, is retained with the 1951 amendment and a provision was added authorizing appropriations by counties and municipalities entering agreements creating county-wide local civil defense organizations under Section 5295-1. Thus in its present form Section 5298, General Code, in one instance allows those political subdivisions authorized to create local defense organizations to make appropriations for expenses incurred in relation thereto. In the second instance, those political subdivisions viz., counties and municipalities authorized to establish a county-wide organization for civil defense by agreement, are given authority to make appropriations for expenses chargeable to them by agreement. A township having no authority to create a local defense organization or to enter an agreement to establish a county-wide organization would therefore have no statutory authority to make appropriations in either case under these provisions.

This does not mean that residents of townships will not contribute to the expenses of civil defense organizations on a county-wide scale of which they have the benefit, but merely means that direct appropriations are channeled through the county, of which the township forms a part.

In specific answer to your question, therefore, it is my opinion that township trustees of a township included within the area served by a civil defense organization, are not authorized by the provisions of Section 5298, General Code, to make appropriations for the payment of a part of the expenses of such organization.

Respectfully,

C. WILLIAM O'NEILL
Attorney General