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BELL OWNED BY TOWNSHIP—ERECTED ON SCHOOL HOUSE WITHIN TOWNSHIP—PURPOSE—GIVE WARNING THREATENED AIR RAID OR ATTACK BY ENEMY—PRESENT WAR—TOWNSHIP TRUSTEES—AUTHORITY TO USE GENERAL FUNDS OF TOWNSHIP TO PAY PART OF COST—DEFENSE ACT, STATE COUNCIL OF—LOCAL DEFENSE COUNCIL—SECTIONS 5290, 5292, G. C.

SYLLABUS:

Where a local defense council has been created pursuant to the provisions of Section 5290, General Code, embracing a township, the trustees of such township have the authority, under Section 5292, General Code, to use the general funds of the township to pay part of the cost of erecting a bell owned by said township on top of a school house located within the township, for the purpose of giving warning in case of a threatened raid or attack by an enemy engaged in the present war.

Columbus, Ohio, July 2, 1943.

Hon. Theodore Tilden, Prosecuting Attorney,
Ravenna, Ohio.

Dear Sir:

I acknowledge receipt of your request for my opinion, reading as follows:

“Will you give me your opinion on these facts: In one of our subdivisions there is an old bell that was paid for out of public subscriptions years ago and belongs to the township. The township people are desirous of building a cupola on the top of the school building to house this bell which will be used as a warning in case of air raid and also for practice raids. The local Civilian Defense Council had some money to use toward the housing of this bell and the school board has consented to expend some money and it is now desirous to have the township trustees pay a portion of the costs.

This bell will also be used as a warning of any fires that occur in the township. The question therefore is, may the township trustees expend money from their general fund for the purpose of defraying part of the cost of erecting the housing for this bell, which will be used for civilian defense purposes and also as an alarm indicating the presence of any fire in the township?”

The "state council of defense act", so called, was passed by the 94th General Assembly and became effective August 20, 1941. It comprises Sections 5285 to 5290, inclusive, General Code. The 95th General Assembly passed Senate Bill 155, considerably amending and supplementing the original act. It became effective as an emergency act on the 8th of June, 1943.

The original act, in Section 5290, provided:

"The governor is authorized and empowered to create by proclamation local and district councils of defense and prescribe their powers and duties and whenever he deems it expedient may by proclamation dissolve or suspend such councils or re-establish them after any such dissolution or suspension."

By the terms of Section 5289, the state council of defense was authorized to utilize the services and facilities of the various officers and agencies of the state and its political subdivisions, and the section further provided:

"(b) All such offices and agencies shall cooperate with and extend their services and facilities to the council as it shall request."

Further than this there was no reference in the act to local councils or to the powers of local subdivisions to join or cooperate in providing for the national or local defense, but I found in Section 5290, above quoted, re-enforced by the home rule powers granted to municipalities by the Constitution of Ohio, sufficient authority to hold in an opinion found in 1942 Opinions of Attorney General, p. 18, as follows:

"The legislative authority of municipalities in Ohio may appropriate and expend funds from the general fund of such municipalities for the payment of the necessary expenses of local defense councils, including necessary traveling expenses and other expenses necessary to enable such local defense councils to function, as provided for in Section 5290 of the General Code."

Later in an opinion found in 1942 Opinions of Attorney General, p. 147, I held, relative to counties:

"County commissioners may expend moneys in the general revenue fund for the purpose of paying the necessary operating expenses, including office space and supplies, for a local county council of defense, created under and by virtue of the provisions of Section 5290 of the General Code (Sec. 6, Am. S. B. 178; effective 8-19-1941)."

This opinion, it will be observed, had to rest entirely on the implied powers flowing from the above quoted Section 5290, General Code, and from the statutes committing property of the county to the care of county commissioners, with the implied duty to protect it in time of war.

The reasons which formed the basis for those opinions would doubtless have been sufficient to justify their extension to the general power of a township to expend its general funds in carrying out measures which it regards as conducive to the general purposes of the defense act and to its local duties in connection therewith. But the amendments and supplementary provisions contained in Senate Bill 155 greatly clarify the matter. We are no longer left to construction and a resort to implied powers.

By Section 5285-1, a "local council" is defined as embracing one or more contiguous townships, from which it follows that a single township may have a local council. Section 5288-2 provides:

"Each local council is hereby authorized and empowered to appoint its director and prescribe his duties and authority, and each local council is further empowered and authorized to administer and regulate the civilian defense activities within its jurisdiction, to organize and maintain the citizens defense corps and citizens service corps and appoint as authorized members thereof such persons as it may deem suited therefor, and prescribe rules, orders and regulations therefor as it may deem necessary, provided that such action shall not be inconsistent with the provisions of this act, or any order, rule or regulation, promulgated by the council, nor by any county council or district council within which county or district such local council may be situated."

There is indicated an intention on the part of the Legislature to confer upon the local council a wide discretion as to the manner in which it shall proceed to accomplish what it deems a part of the national and local defense.

Section 5291 refers to appropriations by the state which are to be allocated and distributed to the district, county and local councils and be used for civilian defense.

Section 5292 is directly involved in the answer to the question you have submitted. It reads:

"For the purpose of carrying out the provisions of this act and notwithstanding any and all budget limitations and restrictions otherwise imposed by law, boards of county commissioners and the governing bodies of cities, villages, and townships are hereby authorized to appropriate and transfer funds for civilian

defense activities to county or local council or councils of the political subdivisions making such appropriations, and such funds may be used for such civilian defense purposes in any or all of any political subdivisions within the political subdivision making such appropriation; or for the interchange of man power or equipment for outside aid as in this act provided, under orders, rules, and regulations prescribed by said county or local council or councils not in any way inconsistent with or contrary to the provisions of this act or any order, rule or regulation promulgated by the council as herein provided."

Here then is express authority given to the trustees of a township to use its general funds for forwarding its civilian defense activities. If the township trustees consider that the erection of the bell in question on top of the school building would be in aid of that purpose, they have clearly the right to make an appropriation toward the cost of doing so. I do not consider the fact that the bell is to be placed on top of the school building has any limiting effect on the right of the township trustees to use the funds of the township in so placing it. If it were proposed to appropriate township funds to repair or improve a school building, an entirely different question would be presented. But here the proposed expenditure is designed to assist in the defense of the community by giving warning in case of an enemy attack.

The suggestion that the bell may also be used as an alarm in case of fire does not cast doubt on my conclusion but rather strengthens it. Fire protection is one of the services which township trustees are expressly authorized to provide. Section 3298-54 provides in part :

"Township trustees may establish all necessary regulations to guard against the occurrence of fires, * * * and may * * * purchase or otherwise provide such fire apparatus, appliances * * * as may seem to the trustees advisable", etc.

Specifically answering your question, it is my opinion that where a local defense council has been created pursuant to the provisions of Section 5290, General Code, embracing a township, the trustees of such township have the authority, under Section 5292, General Code, to use the general funds of the township to pay part of the cost of erecting a bell owned by said township on top of a school house located within the township, for the purpose of giving warning in case of a threatened raid or attack by an enemy engaged in the present war.

Respectfully,

THOMAS J. HERBERT,
Attorney General.