

Note from the Attorney General's Office:

The syllabus paragraph 2 of 1963 Op. Att'y Gen. No. 63-270 was overruled by 2015 Op. Att'y Gen. No. 2015-007.

SYLLABUS:

1. Where a board of county commissioners undertakes to establish and operate a base radio station for fire communications between the various fire departments of the county pursuant to agreements made with political subdivisions under authority of Sections 307.15 and 307.16, Revised Code, the board may contract on that subject with private fire companies to the same extent that the participating subdivision might, if the agreement so provides.

2. Such board of county commissioners is without authority to expend county funds for the establishment and operation of such base radio station except to the extent that the funds are available as the result of payments made pursuant to the agreements with the contracting political subdivisions or as a result of contracts made under powers granted to the board in such arrangements.

Columbus, Ohio, June 7, 1963

Hon. Ralph A. Hill
Prosecuting Attorney
Clermont County
Batavia, Ohio

Dear Sir:

You have requested my opinion in supplement to Opinion No. 16, Opinions of the Attorney General for 1963, rendered on February 16, 1963, by me in answer to your prior request. The syllabus of that opinion is as follows:

“A board of county commissioners may establish and operate a base radio station to receive and transmit official fire activity messages from and to the fire departments of political subdivisions in the county which operate fire departments and which may care to join in such network, provided that agreements are entered into between the county and the political subdivisions involved, under Sections 307.15 and 307.16, Revised Code, for the furnishing of such services by the board.”

Specifically, you have requested my further opinion in answer to the following questions:

“No. 1: May the County Commissioners in the operation of such a radio communications base station contract with the various privately incorporated fire companies of the County, whose only contact with a political subdivision

is by contract to furnish fire protection to that political subdivision in the same way, or any other way, as the county can contract with the subdivision as set forth in your opinion?

“No. 2: May the Board of County Commissioners expend money from the general fund of the County to defray all or any part of the expense of a base station to furnish radio services either in political subdivisions on a contract basis or to political subdivisions for private fire communications on a contract basis?”

The affirmative nature of my answer to the question treated in Opinion No. 16, *supra*, was, as indicated by the syllabus quoted above, based upon the authority, granted in Sections 307.15 and 307.16, Revised Code, for the county to exercise by agreement various powers of other political subdivisions. Section 307.15, *supra*, delineates this authority in part as follows:

“The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, township * * * or other taxing district, and such legislative authorities may enter into agreements with the board, whereby such board undertakes and is authorized by the contracting subdivision, *to exercise any power*, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform or render.

“Upon the execution of such agreement and within the limitations prescribed by it, the board may *exercise the same powers* as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, *and all powers necessary or incidental thereto*, as amply as such powers are possessed and exercised by the contracting subdivision directly * * *.

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(Emphasis added)

Under authority of Section 717.02, Revised Code, municipal corporations are given the power to contract for fire protection with “one or more townships, municipal corporations or private fire companies upon such terms as are agreed to by them” for, among others, “the use of fire apparatus” or the “interchange of

* * * use of fire apparatus.” This same power is granted to townships in virtually identical language by Section 505.44, Revised Code. It is clear that, under authority of these sections, one or more municipal corporations and townships would have the power to contract with one or more private fire companies for fire protection, and I am of the opinion that such contracts may include provision for the use of apparatus necessary to a fire radio communication system upon such terms to cover the cost of establishment and operation thereof as are agreed to by the parties. Further, I am of the opinion that this power in municipal corporations and/or townships may, pursuant to agreement in accordance with Sections 307.15 and 307.16, Revised Code, be exercised by a board of county commissioners. In other words, it is my opinion that, pursuant to a proper agreement under authority of Sections 307.15 and 307.16, *supra*, a board of county commissioners may contract with private fire companies relative to the operation of fire radio communications system in the same way that a municipal corporation or township might so contract.

Proceeding to your second question, I note that Section 307.16, *supra*, provides in part:

“Every agreement entered into under sections 307.14 to 307.19, inclusive, of the Revised Code, shall provide, either in specific terms or by prescribing a method for determining the amounts, for any payments to be made by the contracting subdivision into the county treasury, in consideration of the performance of the agreement. In cases where it is deemed practicable, the agreement may provide that payment shall be made by the retention in the treasury of the amounts due from taxes collected from the contracting subdivision and the county auditor and county treasurer shall be governed by any such provision in settling the accounts for such taxes.

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It might be thought that this language requires payments to be made into the county treasury by a contracting subdivision where, by agreement, the county is to exercise some power on behalf of such subdivision. As to this exact language in the General Code, however the Supreme Court of Ohio has said:

“Section 2450.3, General Code, does not prescribe a mandatory form *requiring* payments to be made by the

contracting subdivision into the county treasury. It does prescribe a mandatory form to be followed in case the agreement provides for such payments." (*State ex rel Ranz v. Youngstown et al.*, 140 Ohio St., 477 (1942) Syllabus #9) (Emphasis added)

I might conclude, therefore, that payment by the contracting subdivision is not a necessary part of all agreements made under authority of Sections 307.15 and 307.16, *supra*.

In the *Ranz Case, supra*, the county had made expenditures for poor relief within a municipality pursuant to agreement and the court ruled that reimbursement therefor could not be compelled. As is apparent from the court's opinion, however, the county had ample authority to expend its funds for poor relief even in the absence of the agreement. I am of the opinion, therefore, that this case does not stand for the proposition that agreements pursuant to Sections 307.15 and 307.16, *supra*, convey general authority to expend county funds, but that if the board of county commissioners does have independent authority to make the expenditure, funds sufficient to finance the undertaking in question would have to be provided by the contracting subdivisions in the agreement.

As I indicated in Opinion No. 16, *supra*, I have found no authority for a board of county commissioners to set up and operate a base radio station for fire communications. It is true that Section 307.05, Revised Code, does provide in part as follows:

"The board of county commissioners may contract with a township or municipal corporation having a fire department or with a private fire company for the service of such department or private fire company in affording fire protection, or additional fire protection in times of emergency, for property located outside the boundaries of such township or municipal corporation belonging to such county.* * *

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As described in your letter of request, however, the base radio station here in question is purely for the service of political subdivisions. In these circumstances I believe that the ruling of one of my predecessors, with which I am in accord, is controlling. The syllabus of Opinion No. 2597, Opinions of the Attorney General for 1953, page 195, is as follows:

“Except as provided in Section 3298-60, General Code, which authorizes a county to contract with a township for fire protection service with respect to county property ‘located outside the boundaries of such township,’ a county is without authority to expend public funds in support of a township fire department.”

I am of the opinion, therefore, that the board of county commissioners is without authority to expend county funds for the establishment and operation of the base radio station which you describe except to the extent that they have become county funds as the result of payments made directly under, or as the result of contracting powers granted in, agreements made with political subdivisions under authority of Sections 307.15 and 307.16, *supra*.

In summary it is my opinion and you are advised:

1. Where a board of county commissioners undertakes to establish and operate a base radio station for fire communications between the various fire departments of the county pursuant to agreements made with political subdivisions under authority of Sections 307.15 and 307.16, Revised Code, the board may contract on that subject with private fire companies to the same extent that the participating subdivision might, if the agreement so provides.

2. Such board of county commissioners is without authority to expend county funds for the establishment and operation of such base radio station except to the extent that the funds are available as the result of payments made pursuant to the agreements with the contracting political subdivisions or as a result of contracts made under powers granted to the board in such agreements.

Respectfully,
WILLIAM B. SAXBE
Attorney General