

1349.

LEASE—STATE GAME REFUGE TO STATE BY E. T. AND
C. E. SCARR, DESIGNATED LAND, TUSCARAWAS TOWN-
SHIP, COSHOCTON COUNTY.

COLUMBUS, OHIO, October 27, 1939.

HON. DON G. WATERS, *Commissioner, Division of Conservation and
Natural Resources, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease executed by E. T. and C. E. Scarr to the State of Ohio, on a parcel of land in Tuscarawas Township, Coshocton County, Ohio, containing 323 acres of land. By this lease, which is one for a term of five (5) years, this land is leased and demised to the state solely for state game refuge purposes; and it is noted in this connection that acting under the provisions of Section 1435-1 and other related sections of the General Code, the Conservation Council, acting through you as Commissioner, Division of Conservation and Natural Resources, has set this property aside as a state game and bird refuge during the term of said lease.

Upon examination of this lease, I find that the same has been properly executed and acknowledged by said lessor and by the Conservation Council acting on behalf of the state through you as Commissioner, Division of Conservation and Natural Resources.

I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1350.

TOWNSHIP TRUSTEES, BOARD OF—MAY PROVIDE WATER
MAIN FOR FIRE PROTECTION—USE MONEYS IN GEN-
ERAL FUND NOT OTHERWISE APPROPRIATED, EVEN
THOUGH NO SPECIFIC LEVY MADE THEREFOR—SEC-
TION 3298-54 G. C.

SYLLABUS:

The board of township trustees of a township may, under authority of Section 3298-54, General Code, provide a water main for fire protection purposes from moneys in the general fund of the township not

otherwise appropriated, even though the township has not made a specific levy for such purpose.

COLUMBUS, OHIO, October 27, 1939.

HON. LESTER W. DONALDSON, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR: I am in receipt of your request for opinion reading:

“We respectfully request your opinion with reference to the following questions in the interpretation of Sections 3298-54 to 3298-58, inclusive, of the General Code.

Section 3298-55 provides as follows:

‘The trustees of a township are authorized to levy in any year or years a sufficient tax upon all the taxable property in the township to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor, and sources of water supply and materials therefor, and the establishment and maintenance of lines of fire alarm telegraph and the payment of permanent, part-time or volunteer fire fighting companies to operate same.’

If the Trustees of a Township have not made a levy specifically for fire protection, but have a sufficient amount in the general fund to provide for the construction of a water main for fire protection, may they use up to the sum of \$20,000.00 or more from the general fund in the construction of a water main for fire protection?

Section 3298-56 of the General Code provides as follows:

‘No bonds shall be issued by township trustees for the purpose of providing fire apparatus, appliances, buildings or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time or volunteer fire fighting companies to operate the same unless approved by vote of the people in the manner provided by law; and in no event in an amount exceeding \$20,000.00.’

Under this section are the trustees of a township permitted to spend the sum of \$20,000.00 each year for fire protection? Or having once spent, after the passage of the act, the sum of \$20,000.00 are they prohibited from making further expenditure for fire protection in subsequent years?”

The power and authority of boards of township trustees to provide for protection of the property of the citizens of the township against fires

is set forth in Sections 3298-54 to 3298-60, both inclusive, of the General Code. Section 3298-54, General Code, in so far as is material to your inquiry, reads:

“Township trustees may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damages and accidents resulting therefrom, and may with the approval of the specifications by the county prosecuting attorney, purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes as may seem to the trustees to be advisable, in which event they shall provide for the care and maintenance thereof, and, for such purposes, may purchase, lease or construct and maintain necessary buildings; and they may establish and maintain lines of fire alarm telegraph within the limits of the township. Such township trustees may employ one or more persons to maintain and operate fire fighting equipment; or they may enter into an agreement with a volunteer fire company for the use and operation of such equipment. The trustees are empowered to compensate the members of a volunteer fire company on such basis and in such amount as the trustees deem fair and equitable.”

I am not unmindful of the fact that a former Attorney General during the year 1931 rendered an opinion to the effect that *under the then existing statutes* a board of township trustees was not authorized by law to provide a reservoir and water lines for the purpose of providing water supply for fire protection purposes. (Opinions of the Attorney General for 1931, Vol. III, p. 1505.) It must be remembered that the then existing Section 3298-54, General Code, only authorized the acquisition of “fire apparatus and appliances,” the establishment and maintenance of “lines of fire alarm telegraph” and the acquisition of buildings for such purpose. House Bill No. 442, as enacted by the Ninety-third General Assembly, amended such section by adding the authority to acquire “materials, fire hydrants and such water supply for fire fighting purposes.” Such former Attorney General limited his opinion to the then existing statutes and it cannot be construed as interpreting the existing statutes.

Section 3298-55, General Code, quoted in your request, grants to boards of township trustees the authority to levy a tax sufficient in amount to pay not only for equipment and buildings for the purpose of protecting property from fire, but also to provide “sources of water supply” for the purpose of such protection. Such sections are a part of the same enactment of the legislature. They, in terms, authorize boards of township trustees to supply water “for fire fighting purposes.” I am unable to find

in such act any limitation upon the amount which may be expended for the purpose of providing fire apparatus, appliances, materials, fire hydrants and water supply for fire fighting purposes. It is true that the Constitution places limitations upon the amount of taxes which may be levied for all purposes (see Section 2, Article XII of the Constitution); the amount to be levied for a specific purpose is left to the discretion of the levying authority within constitutional limitations.

The general fund of the township is a fund created under direction of Section 5625-9, General Code, into which is placed all moneys belonging to the township to be used for the current operating expenses of the subdivision and excluding those funds which are derived from levies made for specific purposes. In the absence of specific provision in the statutes requiring the payment of the purchase price of fire fighting equipment from a specific fund, the purchase price could be paid only from the general funds of the township.

Section 3298-56, General Code, quoted in your request, places a limitation on the amount of bonds that may be issued to acquire funds for such purpose. It provides that bonds for such purpose may not be issued without a vote of the people. It further provides that when approved by a vote of the people they may be issued for such purpose only to the extent of \$20,000. Such section does not purport to place a limitation upon the amount of the expenditure; it merely limits the amount of bonds which may be issued to provide such funds.

It seems to me that if Section 3298-56, General Code, were to be repealed, the board of township trustees would retain the power to acquire and otherwise provide water supply, appliances and equipment for fire fighting purposes.

You will note that Section 3298-55, General Code, in terms, authorizes the levy of a tax upon the taxable property in the township to provide for protection against fire. This section contains no limitation upon the amount of the tax which may be so levied. You should also note that Section 3298-56, General Code, does not purport to authorize the township to issue bonds for the purpose of acquiring fire apparatus, etc. Such authority is contained in "The Uniform Bond Act" (Sections 2293-1 to 2295-15, both inclusive, General Code). See specifically Sections 2293-1, subparagraph "(c)" and 2293-9, subparagraph "Class (E)."

Section 3298-56, General Code, is but a proviso or savings provision limiting the effect of the Uniform Bond Act with respect to the issuance of bonds by boards of township trustees for the purpose of acquiring fire preventing equipment and facilities. It is fundamental that a proviso or savings provision may not be extended by interpretation so that such proviso may restrict, modify or extend to other matters than that to which it is attached. Black, Interpretation of Laws, Section III; United States v. Maryland Casualty Company, 49 Fed. 2d, 827.

It therefore seems to me that the limitation set forth in Section

3298-56, General Code, applies only to the quantum of bonds that may be issued for the purpose of acquiring fire apparatus, etc., by a board of township trustees.

Specifically answering your inquiry, it is my opinion that the board of township trustees of a township may under authority of Section 3298-54, General Code, provide a water main for fire protection purposes from moneys in the general fund of the township not otherwise appropriated, even though the township has not made a specific levy for such purpose.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1351.

BONDS—CITY OF CLEVELAND, CUYAHOGA COUNTY, \$3,000.

COLUMBUS, OHIO, October 27, 1939.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of the City of Cleveland, Cuyahoga County, Ohio,
\$3,000.00.

The above purchase of bonds appears to be part of one or more of four issues of refunding bonds in the amounts of \$174,000, \$405,000, \$452,000 and \$469,000, respectively, of the above city dated September 1, 1939.

The transcript relative to these issues was approved by this office in an opinion rendered to the State Teachers Retirement Board under date of September 7, 1939, being Opinion No. 1146.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.