

authority therein conferred and there is no authority to so designate more than one duly elected and qualified constable.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2376.

VOLUNTEER FIRE COMPANY—TOWNSHIP TRUSTEES MAY ENTER INTO CONTRACT WITH SUCH COMPANY TO FURNISH FIRE PROTECTION TO THE TOWNSHIP—MAY NOT MAKE DONATION TO SUCH VOLUNTEER FIRE COMPANY TO HELP CONSTRUCT BUILDING.

SYLLABUS:

1. *There is no authority whereby a board of township trustees may make a donation to a village volunteer fire company for the purpose of assisting in the construction of a building.*

2. *The board of township trustees may lawfully enter into a contract and pay a volunteer fire company for its services in furnishing fire protection to the township.*

COLUMBUS, OHIO, September 26, 1930.

HON. LESLIE S. WARD, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“The Volunteer Fire Department of Wauseon, Ohio, has in the past, through the giving of dances, banquets and carnivals, accumulated \$3500.00 for a fund to be used in the construction of a rest room in the Village of Wauseon, Ohio, for the benefit of the traveling public, Clinton Township and the Village of Wauseon, Ohio. The fire company has commenced the construction of the building and have the building partially completed. The total cost of the same amounts to approximately \$5,000.00. The Clinton Township trustees know the value of the building and the good it will do their township and wish to pay for the tiling of the floors in the building, which amounts to \$550.00. They have asked the writer to tell them how this expenditure can be legally made.

The Clinton Township trustees have a fire apparatus for the protection of their township in the event of fire. The Volunteer Fire Department of Wauseon, Ohio, has organized out of the Wauseon Volunteer Fire Department of Wauseon, Ohio, the Clinton Township Volunteer Fire Department and fights fires anywhere in the township without cost to the township trustees or to the township.

Will you kindly advise if there is any way possible that this expenditure can be made by way of legislation on their part or by way of the township trustees paying the fire department for the fighting of their fires which have occurred in the past three years. This the trustees are willing to do and the money which is received by the members of the department is to be turned over to the Fire Department's Rest Room Building Fund.

You will plainly see that the people of Clinton Township are practically

all that are benefited by the construction of this rest room which was built primarily for their benefit and any travelers that might drive through the village.

Kindly consider this problem from any angle so that the township trustees might make this expenditure in a legal and lawful way."

In an opinion rendered by my immediate predecessor, found in Opinions of the Attorney General for the year 1928, page 2736, it was held:

"Township trustees may lawfully pay from township funds for the use of a fire department maintained by a neighboring political subdivision for the purpose of protecting the lives and property of citizens of the township against damages resulting from fires. Payment may be made therefor at an agreed price per year or per month, or for each fire as it occurs."

Since the rendition of the opinion above mentioned, Section 3298-60, General Code, was enacted by the 88th General Assembly. That section reads:

"Any township, in order to obtain fire protection shall have authority to enter into a contract for a period not to exceed three (3) years with any city, village or township, upon such conditions as are mutually agreed upon, for the use of its fire department and fire apparatus, if such contract is first authorized by the trustee of such township and the council of such city or village.

A similar contract may be made between a village and any city if authorized by the council of the village and the council of the city. Such contract shall provide for a fixed annual charge to be paid at such times as may be stipulated in the contract. All expenses thereunder shall be construed as a current expense and the taxing authority of the township or village shall make an appropriation therefor from the general funds, and shall provide for the same in their respective annual tax budgets."

While the above section expressly authorizes a township to enter into a contract with a city, village or township and prescribes the terms of the contract in certain respects, the general power to make such a contract is merely declaratory of what had already been held to be the law.

It has been frequently held that a township may not jointly purchase and own fire equipment.

Opinions of the Attorney General, 1920, page 1065.

Opinions of the Attorney General, 1924, page 82.

In my opinion found in the Opinions of the Attorney General for the year 1929, page 1106, it was held as disclosed by the syllabus that:

"A municipal corporation may legally contract for fire protection with a volunteer company which is a private organization and pay for such protection from public funds, unless such municipality in pursuance of its constitutional authority, has adopted a charter and other regulations inconsistent with the provisions of the general law with respect to such power."

Without an extended discussion of the subject, it may be stated that no reason is seen why the principle in the opinion last above mentioned does not apply by analogy to a township as well as to a municipality. It will therefore be seen that

there is no authority for the township trustees to make a donation to the volunteer fire department, nor to become joint owner in the purchase of property. Moreover, there would seem to be nothing in view of the facts stated to justify payment for services already past upon the theory of moral obligations or otherwise. However, there seems to be no inhibition against the township entering into a contract for the volunteer company to furnish future service upon such terms as are agreed upon. Of course, the compensation to be paid by the township should be commensurate with the service to be rendered, and the amount paid becomes the property of the department and may be used as it sees fit.

In view of the foregoing, it is my opinion:

1. There is no authority whereby a board of township trustees may make a donation to a village volunteer fire company for the purpose of assisting in the construction of a building.

2. The board of township trustees may lawfully enter into a contract and pay a volunteer fire company for its services in furnishing fire protection to the township.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2377.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND P. C. O'NEILL, COLUMBUS, OHIO, FOR HEATING AND VENTILATING SYSTEM IN CENTRAL UNIT OF CHEMISTRY BUILDING, MIAMI UNIVERSITY, OXFORD, OHIO, AT AN EXPENDITURE OF \$16,533.00—SURETY BOND EXECUTED BY THE CONTINENTAL CASUALTY COMPANY, CHICAGO, ILLINOIS.

COLUMBUS, OHIO, September 26, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of Miami University, Oxford, Ohio, and P. C. O'Neill, of Columbus, Ohio. This contract covers the construction and completion of contract for combined heating system and ventilating system in a building known as Central Unit of Chemistry Building, Miami University, Oxford, Ohio, as set forth in Item M-8, Item M-27 Alternate AB, and Item M-33, Alternate MG of the Form of Proposal dated June 24, 1930. Said contract calls for an expenditure of sixteen thousand five hundred and thirty-three dollars (\$16,533.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent of the Controlling Board to the expenditure has been obtained as required by Section 2 of House Bill No. 513 and Section 11 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond, upon which the Continental Casualty Company of Chicago, Illinois, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to