

## OPINION NO. 88-076

## Syllabus:

1. Unless a statute provides to the contrary, the contracts of a governmental entity are governed by the same principles that apply to contracts between individuals.
2. Unless a particular contract contains terms providing for renegotiation, one party to a contract for the provision of fire protection under R.C. 9.60 may not require another party to such a contract to renegotiate the terms of the contract.
3. A party to a contract for the provision of fire protection under R.C. 9.60 is bound by the terms of the contract with respect to charges to be paid and services to be rendered. The contract may not be changed except by mutual consent of the parties.

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To: R. David Picken, Madison County Prosecuting Attorney, London, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, October 13, 1988

I have before me your request for an opinion concerning the renegotiation of contracts for fire protection. Your letter states, in part:

Six townships in the northern part of the county have an existing contract with the village of Plain City for fire and medical squad services. The current contracts are three years in duration and continue in effect until December 31, 1989. Because of budgeting problems, Plain City is requesting the six townships to renegotiate the current contract. This renegotiation would cover the remainder of 1988 and 1989. Please note that there will be no increase of services as a result of any renegotiation. Our questions are 1) can the six townships be forced to renegotiate the contracts; 2) can the village of Plain City raise their charges to the townships without renegotiation of the contracts and; 3) can Plain City cut services if the townships refuse to renegotiate.

The contracts in question were apparently entered into pursuant to R.C. 9.60, which states, in part:

(A) As used in this section:

(1) "*Firefighting agency*" means a municipal corporation, township, township fire district, joint ambulance district, or joint fire district.

(2) "*Private fire company*" means any nonprofit group or organization owning and operating firefighting equipment not controlled by any firefighting agency.

(3) "*Governing board*" means the board of county commissioners in the case of a county; the legislative authority in the case of a municipal corporation; the board of trustees of a joint ambulance district in the case of a joint ambulance district; the board of township trustees in the case of a township or township fire district; the board of fire district trustees in the case of a joint fire district; and the board of trustees in the case of a private fire company.

(4) "*Fire protection*" includes the provision of ambulance, emergency medical, and rescue service by the fire department of a firefighting agency or by a private fire company and the extension of the use of firefighting apparatus or firefighting equipment.

(B) *Any firefighting agency* or private fire company may contract with any state agency or instrumentality, county, or political subdivision of this state or with a governmental entity of an adjoining state to provide fire protection, whether on a regular basis or only in times of emergency, upon the approval of the governing boards of the counties, firefighting agencies, political subdivisions, or private fire companies or the administrative heads of the state

agencies or instrumentalities that are parties to the contract.

(C) *Any county, political subdivision, or state agency or instrumentality may contract with a firefighting agency of this state, a private fire company, or a governmental entity of an adjoining state to obtain fire protection, whether on a regular basis or only in times of emergency, upon the authorization of the governing boards of the counties, firefighting agencies, political subdivisions, or private fire companies or administrative heads of the state agencies or instrumentalities that are parties to the contract. (Emphasis added.)*

Villages are included among municipal corporations, *see* Ohio Const. art. XVIII, §1; R.C. 703.01, and townships are included among political subdivisions, *see, e.g.,* Ohio Const. art. X, §2; R.C. 503.01; R.C. 505.01. A village and a township are, thus, authorized to enter into a contract under which the fire department of the village provides the township with fire and rescue services. *See generally, e.g.,* 1981 Op. Att'y Gen. No. 81-027.

You have informed my staff that you have no reason to believe that the contracts in question are not valid, and I am assuming for purposes of this opinion that they are valid. *See generally, e.g.,* R.C. 731.48; *Village of Moscow v. Moscow Village Council*, 29 Ohio Misc. 2d 15, 504 N.E.2d 1227 (C.P. Clermont County 1984). I note that R.C. 9.60 provides no limitation as to the period of time that such a contract may cover. Previous legislation had, however, expressly authorized a three-year contract for the provision of fire protection, and it appears, accordingly, that such a period is reasonable. *See, e.g.,* 1975-1976 Ohio Laws, Part I, 1084 (Am. Sub. S.B. 545, eff. Jan. 17, 1977) (former R.C. 505.44, amended by 1979-1980 Ohio Laws, Part I, 2481 (Am. H.B. 279, eff. Oct. 26, 1979) to eliminate the three-year limitation on duration of contracts for fire protection and repealed by 1979-1980 Ohio Laws, Part I, 328 (Am. S.B. 98, eff. Oct. 6, 1980)) ("[i]n order to obtain fire protection, or to obtain additional fire protection in times of emergency, any township may enter into a contract, for a period not to exceed three years, with one or more townships, municipal corporations, or private fire companies...upon such terms as are agreed to by them, for services of fire departments, or the use of fire apparatus, or the interchange of the service of fire departments or use of fire apparatus..."); 1966 Op. Att'y Gen. No. 66-114. *See generally* 1928 Op. Att'y Gen. No. 1896, vol. I, p. 752.

I note, further, that it is inappropriate to use a formal opinion of the Attorney General as a means for determining the rights of particular persons under specific contractual provisions. *See, e.g.,* 1983 Op. Att'y Gen. No. 83-087 at 2-342 (the Attorney General is "without authority to render an opinion interpreting a particular agreement or contract. The determination of particular parties' rights is a matter which falls within the jurisdiction of the judiciary..."). Accordingly, I am not attempting to construe and apply particular contractual provisions but am, instead, setting forth general principles of law that may be applied as appropriate to various factual situations.

Your first question raises the issue whether, when a township and a village have entered into a valid contract, the village may, during the term of the contract, force the township to renegotiate the contract. You have indicated that the contract contains no provisions calling for such renegotiation, but that the village seeks renegotiation because it is having problems providing the necessary financial support for its fire department. I note that no language of R.C. 9.60 or related statutes authorizes a village to compel renegotiation of such a contract. *Cf., e.g.,* R.C. 731.16 (providing for alterations or modifications in a contract for work for a village upon agreement between the village and the contractor); *Refreshment Services Company, Inc. v. City of Cleveland*, 63 Ohio St. 2d 89, 406 N.E.2d 1115 (1980) (concerning a contract that provided for termination by the city on thirty days notice if the city determined that termination was in the public interest); *City of Portsmouth v. Nicola Building Co.*, 106 Ohio St. 550, 140 N.E. 174 (1922) (construing a public contract that provided for changes as work progressed).

It has been established, as a general rule, that the contracts of a governmental entity, "unless limited by positive provisions of statute law, are governed by the same principles as apply to contracts between individuals." *Pheips v. Logan Natural Gas & Fuel Co.*, 101 Ohio St. 144, 148, 128 N.E. 58, 59 (1920);

see *State ex rel. Cutler v. Pike County Joint Area Vocational School District*, 6 Ohio St. 3d 138, 451 N.E.2d 800 (1983); *Ferdinand v. Hamilton Local Board of Education*, 47 Ohio App. 3d 165, 171, 478 N.E.2d 835, 842 (Franklin County 1984), *motion to certify dismissed*, No. 84-1070 (Ohio Sup. Ct. Aug. 2, 1984) ("a board of education is bound by a continuing contract under ordinary contract law..."). Since no statutory provision authorizes a village to compel renegotiation of a contract in the circumstances that you have described, and since the contract in question does not provide for such renegotiation, the general rule governing changes to a contract comes into effect: "A consent to alteration of rights under a written contract must be by agreement of the parties upon sufficient consideration." *Hinkler v. Equitable Life Assurance Society*, 61 Ohio App. 140, 143, 22 N.E.2d 451, 452 (Hamilton County 1938). Consideration for modification or abrogation of a contract may be found in mutual waivers of rights under the contract, and one party to a contract may attempt to persuade the other party that modification of the contract would be to the mutual benefit of the parties. See *Phelps v. Logan Natural Gas & Fuel Co.*, 101 Ohio St. at 148, 128 N.E. at 59; *Murrell v. Elder-Beerman Stores Corp.*, 16 Ohio Misc. 1, 239 N.E.2d 248 (C.P. Montgomery County 1968). Absent statutory or contractual terms providing for renegotiation, however, one party to a contract has no power to require another party to renegotiate the terms of the contract. See, e.g., *Fraser v. Magic Chef-Food Giant Markets, Inc.*, 324 F.2d 853, 857 (6th Cir. 1963) ("[p]arties to a contract may amend, modify or cancel a contract in such manner as is agreeable to them"). See generally *Logan Natural Gas & Fuel Co. v. City of Chillicothe*, 65 Ohio St. 186, 62 N.E. 122 (1901).

Your second question is whether the village may, without renegotiating the contracts, raise its charges to the townships. You have indicated that each contract contains a fixed dollar amount to be paid by the township to the village for fire and rescue services. Assuming that the contract is valid, that is the amount to which the village is entitled under the contract. The village has no authority to change the township's obligations under the contract without the consent of the township. See generally, e.g., *Jones v. City of Middletown*, 59 Ohio L. Abs. 329, 336, 96 N.E.2d 799, 805 (C.P. Butler County 1950) ("we know of no rule of law which gives municipalities, merely because they are such, more freedom from escaping the consequences of a bad—though legal—bargain than that accorded individuals").

Your third question is whether the village may cut the services that it renders under the contracts if the townships refuse to renegotiate. Again, the terms of the contracts define the village's obligations under the contracts. Even as each township is obligated by contract to pay such amount as it has agreed to pay, the village is obligated by contract to provide such services as it has agreed to provide. You have indicated that the contracts do not establish a particular level of service to be provided, but state simply that the village will answer fire and rescue calls within the townships. The evident intent was that the townships be provided with such fire and rescue services as are provided by the village for its own residents. See generally, e.g., Op. No. 66-114. It is, thus, possible that, in times of financial stress, the level of service provided to both the village and the contracting townships may be reduced. There is, however, no principle of contract law that would permit the village to punish the townships for refusing to renegotiate their contracts by cutting the services provided to the townships below the level provided to village residents, where that is the level that the village has agreed by contract to provide. See generally, e.g., *S & M Constructors, Inc. v. City of Columbus*, 70 Ohio St. 2d 69, 75, 434 N.E.2d 1349, 1354 (1982) (quoting, from *United States v. Spearin*, 248 U.S. 132, 136 (1918), a basic tenet of contract law: "Where one agrees to do, for a fixed sum, a thing possible to be performed, he will not be excused or become entitled to additional compensation, because unforeseen difficulties are encountered").

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Unless a statute provides to the contrary, the contracts of a governmental entity are governed by the same principles that apply to contracts between individuals.
2. Unless a particular contract contains terms providing for renegotiation, one party to a contract for the provision of fire

protection under R.C. 9.60 may not require another party to such a contract to renegotiate the terms of the contract.

3. A party to a contract for the provision of fire protection under R.C. 9.60 is bound by the terms of the contract with respect to charges to be paid and services to be rendered. The contract may not be changed except by mutual consent of the parties.