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1. TOWNSHIP TRUSTEES, BOARD OF—TAX LEVY UNDER SECTION 3298-55 G. C. “UPON ALL THE TAXABLE PROPERTY IN THE TOWNSHIP”—INCLUDES PROPERTY IN VILLAGE LOCATED WITHIN TOWNSHIP IRRESPECTIVE OF LEGISLATIVE ACTION OF VILLAGE COUNCIL.
2. WHERE VILLAGE, EMBRACED WITHIN TOWNSHIP, DESIRES FIRE PROTECTION, TRUSTEES, WITHOUT AUTHORIZATION FROM VILLAGE COUNCIL MAY ENTER INTO CONTRACT FOR FIRE PROTECTION WITH ANY OTHER VILLAGE, TOWNSHIP OR CITY — SECTION 3298-60 G. C.

SYLLABUS:

1. *The levy of a tax by a board of township trustees under authority of Section 3298-55, General Code “upon all the taxable property in the town-*

Columbus, Ohio, November 8, 1941.

Hon. J. Dale McNamar, Prosecuting Attorney,  
Newark, Ohio.

Dear Sir:

This is to acknowledge receipt of the recent communication from your office, requesting my opinion concerning certain matters submitted to you by the County Superintendent of Schools of the Licking County School District. The Superintendent's letter to you, submitting this matter, reads as follows:

"Section 7690-1 states that for purposes of this act a 'year' means actual service of not less than 120 days within a school year. We have several music supervisors in the county who have taught one or two days per week in certain school districts in the county. Since their services have been for only 36 days, or more, and less than 120 days, per year, are we to assume that even though they have been employed by a particular board of education for 5 years yet they have not served that board for five consecutive years?"

We have a case, also, where a vocational agriculture teacher in 1935 and 1936 served two boards of education on a half-day basis with each board. Since that year, this teacher has been employed as a full time teacher by one of these boards. Shall we assume that this teacher has served one board of education for five consecutive years although he has given that board only four and one-half years of service during the five years?"

House Bill No. 121 of the 94th General Assembly, effective September 1, 1941, was enacted for the purpose, as recited in its title, of providing for the use of limited and continuing contracts in the employment of teachers in the public schools. To that end Section 7690-1, General Code, was amended therein and supplemental sections 7690-2 to 7690-8, General Code, inclusive, were enacted. Section 7690-1, General Code, as so amended, contains definitions of certain terms used throughout the Act, as follows:

"The term 'teacher' as used in this act shall be deemed to mean and include all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents, or in any other educational position for which the employing board requires certification.

'Year' as applied to terms of service for the purposes of this act means *actual service* of not less than one hundred and

“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.”

By force of the clear provisions of this section, a board of township trustees is authorized to levy a tax sufficient to purchase fire equipment for the use and benefit of said township. It will be noted that such levies shall be “upon all the taxable property in the township.” We must now consider whether or not the property of an incorporated village which lies within a township is subject to such levies without the approval of the village council.

In Opinion No. 1213, Opinions of the Attorney General for 1924, Vol. II, page 82, the then Attorney General had occasion to consider the precise question. His holding is set forth in the first branch of the syllabus of that opinion as follows:

“A levy of a tax ‘on all the taxable property of a township’ includes the property of a village within such township unless the property of the village is expressly excepted by statute from such levy.”

See also Opinions of the Attorney General for 1931, Vol. I, page 147; Opinions of the Attorney General for 1932, Vol. II, page 699.

It is apparent that Section 3298-55, *supra*, does not exempt the property of an incorporated village which lies within a township from the operation of a levy by the township trustees and in line with the above citations, it is accordingly my opinion that such village property is subject to the tax irrespective of any legislative action by the village council.

Your second question is concerned with Section 3298-60, General Code, which reads in part as follows:

“Any township, village or city, in order to obtain fire protection or to obtain additional fire protection in times of emergency, shall have the authority to enter into a contract or contracts for a period not to exceed three years, with one or more townships, villages or cities, upon such terms as may be agreed upon, for services of fire departments or the use of fire apparatus or for the interchange of the service of fire departments or use of fire ap-

paratus, within the several territories of the contracting subdivisions, if such contracts are first authorized by the respective boards of trustees, councils, or other legislative bodies.”

This section, under the conditions therein prescribed, authorizes a township to enter into a contract with other townships or municipal corporations for services of fire departments or the use of fire apparatus, etc. within the several territories of the contracting subdivisions. The terms of each such contract are fixed by the contracting parties and as a condition precedent the statute requires authorization by the respective boards of trustees, councils or other legislative bodies.

In entering into these contracts a board of township trustees is acting on behalf of the entire township, including the villages therein located. It, therefore, follows that on behalf of a contracting township only the approval of the trustees to this type of contract is required. The statute does not provide for the approval of the council of a village situated within a contracting township and it is accordingly my opinion that no such approval is necessary. In addition to the authorization of the trustees, of course, the approval of the other contracting subdivision, through its trustees or legislative body, is necessary to constitute a binding contract.

Answering your question specifically, it is my opinion that: (1). The levy of a tax by a board of township trustees under authority of Section 3298-55, supra, “upon all the taxable property in the township” includes the property in a village located within said township, irrespective of any legislative action of the council of said village. (2). When a village is embraced within a township which desires to obtain fire protection, the township trustees of such township may, under the provisions of Section 3298-60, General Code, enter into a contract with any other village or any township or city, for fire protection, without first securing authorization to enter into such contract from the council of such village lying within said township.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.