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FIRE PROTECTION — TOWNSHIP TRUSTEES — NO AUTHORITY TO CONTRACT WITH MUNICIPALITY FOR SUCH MUNICIPALITY TO FURNISH FIRE PROTECTION EXCLUSIVELY TO PUBLIC SCHOOL BUILDINGS WITHIN TOWNSHIP.

SYLLABUS:

The trustees of a township are without authority to contract with a municipality for the furnishing by such municipality of fire protection exclusively to the public school buildings located within such township.

Columbus, Ohio, February 5, 1944

Hon. D. Deane McLaughlin, Prosecuting Attorney
Canton, Ohio

Dear Sir:

In your communication of January 30, 1944, you submit, with request for my opinion, the following proposition as presented to you by the township trustees of Canton Township, Stark County:

“We, the undersigned, township trustees of Canton Township, considering the advisability of entering into a contract with the City of Canton for the purpose of fire protection to the various public school buildings located within Canton Township, have had the question raised as to whether or not as such Board of Trustees we may enter into such contract for this purpose only, or whether or not any contract entered into must,

under the provisions of the present statute, contemplate such fire protection for all property generally within the township.”

There is in the statutes of Ohio abundant authority whereby the township trustees may secure fire protection for the township by contract with a municipality. With this you are doubtless familiar, but for the purpose of reference, I quote from Section 3298-60 of the General Code 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 apparatus, 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 standing alone clearly contemplates that the service to be rendered pursuant to such contract is for the protection of the subdivision contracting for it, and not for one or more properties located within the subdivision. The introductory sentence: “Any township, * * * in order to obtain fire protection * * * shall have authority” etc., certainly calls for protection for all the property in the township. But the Legislature, realizing that it might be desirable to protect a part, only, of a township, enacted another provision designed to meet that situation.

Section 3298-54, General Code, reads in part, as follows:

“The board of trustees of any township in which there is located a municipal corporation or corporations, or a part of a municipal corporation, may by resolution whenever in their opinion it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damage resulting therefrom, create a fire *district or districts* of that portion of such township not included within the corporate limits of such municipal corporation or corporations, and may purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes; or may contract for such fire protection for such fire district or districts the same as provided in section 3298-60 for other subdivisions. The fire district or districts so created shall be given a separate name by which

it shall be known and designated.”

(Emphasis added.)

In an opinion which I rendered on February 4, 1943, being No. 5798, questions closely related to the one which you present, were under consideration, and it was held:

“1. Under the provisions of Section 3298-54, General Code, the board of trustees of any township in which there is located one or more municipal corporations, may create a fire district or districts out of the portion of such township which is not included within the corporate limits of such municipal corporation or corporations, and may provide for such district or districts fire apparatus and water supply for fighting fires, or may contract with a municipality or with another township for furnishing fire protection in such fire district or districts, as provided in Section 3298-60 of the General Code.

2. In establishing such fire district or districts, the trustees are not required to cover the entire territory of the township which is outside the corporate limits of any municipality, but may include only such portion of such territory as they deem advisable.

3. The cost of acquiring and maintaining such fire equipment or of obtaining such fire protection in any such fire district cannot be paid out of the general funds of the township, but must be obtained by a levy of taxes on the taxable property in the district, pursuant to the provisions of Section 3298-55 of the General Code, or by the issuance of bonds pursuant to the provisions of Section 3298-56 of the General Code.”

You will observe on a reading of that opinion that it was found that Section 3298-54, General Code, authorizes the township trustees to establish a fire district in only a portion of a township outside of a municipal corporation, and on behalf of that district to contract with the municipal corporation for fire protection, such contract being made under the provisions of Section 3298-60, General Code which by reference is adopted for that purpose.

Accordingly, the township trustees in the case you present, would not be compelled to contract for fire protection for the entire township, but could, if they desired, establish a fire district comprising a portion of the township, and provide it with fire protection by contract in the manner above suggested. But it is also to be observed that while the township could properly pay out of its general funds for protection furnished to the township, it would be quite a different matter if it undertook to pay out of such general funds for protection for only a part of the

township. In my former opinion, in discussing this subject, it was said:

“Coming to your second question, as to allocation by the trustees of moneys out of the current general fund of the township to pay the cost payable by a fire district arising upon a contract with a village, it is my opinion that they would have no such power. There is no provision in the statute whereby general funds of the township could be used for the cost of fire protection for a fire district constituting a portion of the township. Funds raised by taxation which go to make up the general fund of the township are produced by a levy upon all the property in the township, and it would not be permissible to spend these funds for the purpose of either establishing a fire department in a portion of the township or contracting with a municipality for fire protection for such portion of the township.”

Reference was also made to a former opinion (1940 Opinions Attorney General, p. 325), where a like conclusion was announced.

The proposition advanced that the township trustees should limit the fire protection thus to be contracted for to the school buildings located in the township, seems to be quite untenable. The method which I pointed out in my 1943 opinion for payment for fire protection to be provided for a district is that set out in Section 3298-55, General Code, which provides for a special tax levy on the property in the district in question. In the proposal which you present, it appears to be contemplated that no property within the township which must bear the cost is to be protected excepting the school property, *which is exempt from taxation*. Notwithstanding the fact that the township as a whole may be interested in the schools within its boundaries, it is not a part of the duties of the township trustees to subsidize the schools. The school buildings are, of course, entitled to whatever protection from fire is provided for the subdivision in which they are located but, in my opinion, it would be unlawful for the township trustees to attempt, at the expense of the township or at the expense of a district taken out of a township, to provide fire protection exclusively for the school property.

Accordingly, in specific answer to your question I am of the opinion that the trustees of a township are without authority to contract with a municipality for the furnishing by such municipality of fire protection

exclusively to the public school buildings located within such township.

Respectfully,

THOMAS J. HERBERT
Attorney General