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1. TOWNSHIP TRUSTEES—NO AUTHORITY TO LET CONTRACT FOR CONSTRUCTION OF FIRE HOUSE UNLESS CERTIFICATE CAN BE SUPPLIED—PRESENT AVAILABILITY OF FUNDS— SECTIONS 3298-54, 5625-33 GC.
2. COST OF CONSTRUCTING FIRE HOUSE—WHERE IN EXCESS OF \$1,000.00—TRUSTEES MAY NOT SPLIT PROJECT INTO NUMBER OF SMALLER CONTRACTS TO AVOID REQUIREMENTS OF COMPETITIVE BIDDING— SECTIONS 3298-54, 3298-59, 4221 GC.

SYLLABUS:

1. A board of township trustees is without authority to let a contract for the construction of a fire house as provided in Section 3298-54, General Code, unless a certificate as to the present availability of funds therefor can be supplied in conformity with the requirements of Section 5625-33, General Code.

2. Where it is anticipated that the cost of constructing a township fire house under authority of Section 3298-54, General Code, will be many times in excess of \$1,000.00, the trustees may not split such project into a number of smaller contracts so as to avoid the necessity of complying with the statutory requirements of competitive bidding, as set out in Sections 3298-59 and 4221, General Code.

Columbus, Ohio, July 17, 1953

Hon. James K. Leedy, Prosecuting Attorney
Wayne County, Wooster, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“At the general election in 1952, the voters of Chippewa Township, Wayne County, Ohio, voted a levy for the purchase of fire equipment and the construction of a new fire house. The Board of Township Trustees of said township have received the

sum of \$6,000.00 from said levy, and by the end of August, 1953, they will have received the sum of \$12,000.00. It is anticipated that the entire cost of the new fire house and equipment will amount to \$48,000.00. The Board of Township Trustees of said township have asked me whether they can commence the construction of said fire house before they have realized the entire \$48,000.00. They plan to construct said building as the money comes in, thereby dispensing with any indebtedness on their part.

“Would you please give me your informal opinion concerning the following questions:

“Can the Board of Township Trustees of Chippewa Township, Wayne County, Ohio, commence construction of a fire house which will cost approximately \$30,000.00 when only \$12,000.00 of the \$30,000.00 is actually on hand in the general fund?

“Can said Board of Township Trustees let contracts for said construction without advertizing for bids if each contract is less than \$1,000.00? (Said Board is of the opinion that they can contract for the construction of this building by letting individual contracts not to exceed \$1,000.00. The purchase of said building and equipment is forthcoming pursuant to Section 3298-54 of the General Code of Ohio.)”

It would appear that your first inquiry may be disposed of by reference to Section 5625-33, General Code, which provides in part:

“No subdivision or taxing unit shall: * * *

“Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon.” * * *

In the situation you have described above, it would appear that the subdivision concerned has only \$6000.00 of the amount required “in the treasury,” and a like amount “in process of collection.” As to the amounts which are expected to be collected in the future, under authority

of the favorable vote of the electors in the 1952 election, it will be observed that such amounts will actually be levied by resolution of the taxing authority of the township in each succeeding year as provided in Section 5625-25, General Code, and such amounts could not, therefore, be deemed presently to be "in process of collection." Accordingly, I conclude that your first question must be answered in the negative.

In reaching this conclusion I have proceeded on the assumption that the board is proposing to accomplish a piecemeal construction of a single integrated structure. I may point out, however, that if the proposed structure is so planned that it can be divided into units each of which is sufficiently complete in itself to be used and useful "for the care and maintenance" of fire apparatus, and if one of such units can be constructed within the limits of funds presently in the treasury or in process of collection, there would appear to be no legal objections to such procedure. Whether such a division into several self-sufficient units is practicable in the instant case is, of course, a question of fact to be decided by the trustees.

In consideration of your second question, we may first note the provisions in Section 3298-59, General Code:

"The proceeds of such bonds, other than any premium and accrued interest which shall be credited to the sinking fund, shall be placed in the township treasury to the credit of a fund to be known as 'the fire equipment fund.' Such fund shall be paid out upon the order of the township trustees. The township trustees shall have power to enter into contracts for the purpose set forth in this act, but shall be subject to the provisions of law in reference to competitive bidding as to village councils in regard to the purchase of fire apparatus and appliances in so far as they are applicable."

The words "this act" in the language above have reference to House Bill No. 332, Eighty-third General Assembly, 108 Ohio Laws, Part II, 1152, enacted in 1920. Sections 1 and 2 of this act, afterward codified as Sections 3298-54 and 3298-55, General Code, read as follows:

"Section I. 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, when a volunteer fire company has been organized for service in the township, of such character as to give assurance of permanency and efficiency, may purchase and provide, for the use of such company, such fire apparatus

and appliances as may seem to the trustees advisable, in which event they shall provide for the care and maintenance thereof, and, for such purpose 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."

"Section 2. 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 for the use of volunteer fire companies."

These sections have since been amended so as to eliminate that provision which makes the authority of the trustees dependent upon the organization of a volunteer fire company, and authority is now given either to employ a force of township firemen or to utilize the services of a volunteer fire company, Thus, Section 3298-55, General Code, now reads :

"The trustees of a township are authorized to levy in any year or years a sufficient tax upon all taxable property in the township or in a fire district, or districts, 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."

Our preliminary question remains, in view of the purpose of the original act and in view of the subsequent amendments, whether the competitive bidding provision in Section 3298-59, supra, is applicable to contracts for the construction of a fire house under authority of Section 3298-54, General Code. Although the precise language involved is far from a model of clarity, I am unable to concede that it was the legislative intent, at the time of the original enactment, to make the competitive bidding provision applicable only to purchases made with the proceeds of a bond issue, or only to the purchase of "fire apparatus and appliances." At most, it is necessary to conclude that this language is ambiguous, and that the authority of the trustees to contract for the construction of a fire house without competitive bidding is subject to serious doubt. In this situation the doubt must be resolved in favor of the public and against the grant of power. *State ex rel. Bentley Co. v. Pierce*, 92 Ohio St., 44. I conclude, therefore, that the limitations on the contracting powers of village councils,

as set out in Section 4221, General Code, are applicable in the case at hand.

Coming now to the second specific question you present, I may say that I am unable to conceive how it would be possible, as a practicable matter, in the erection of an integrated structure at an expected cost of \$30,000.00, so as to divide the project that thirty or more separate contracts would be awarded for the whole. But even if such a division were practicable, such a course of procedure would, in my opinion, represent such an apparent circumvention of the requirements of the statute as to be clearly invalid. See 33 Ohio Jurisprudence, 637, Section 13, and *Soeder v. Cleveland*, 16 O.C.C. (N.S.) 260.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. A board of township trustees is without authority to let a contract for the construction of a fire house as provided in Section 3298-54, General Code, unless a certificate as to the present availability of funds therefor can be supplied in conformity with the requirements of Section 5625-33, General Code.

2. Where it is anticipated that the cost of constructing a township fire house under authority of Section 3298-54, General Code, will be many times in excess of \$1,000.00, the trustees may not split such project into a number of smaller contracts so as to avoid the necessity of complying with the statutory requirements of competitive bidding as set out in Sections 3298-59 and 4221, General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General