

Note from the Attorney General's Office:

1952 Op. Att'y Gen. No. 52-1415 was overruled by 1961
Op. Att'y Gen. No. 61-2595.

1415

FIRE FIGHTING EQUIPMENT—TOWNSHIP TRUSTEES—NO POWER TO ISSUE FOUR-YEAR NOTES TO PURCHASE LAND AND BUILDINGS TO CARE FOR AND MAINTAIN FIRE FIGHTING EQUIPMENT—SECTION 3298-54 G.C.

SYLLABUS:

Township trustees do not have the power to use the method of financing prescribed in Section 3298-54, General Code, by issuing four-year notes of the township, to purchase land and buildings to care for and maintain fire fighting equipment, such authority being limited to the purchase of fire fighting equipment.

Columbus, Ohio, May 12, 1952

Hon. W. C. Pyers, Prosecuting Attorney
Holmes County, Millersburg, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

"I hereby request your opinion on the interpretation of a portion of Section 3298-54 of the General Code of Ohio, which section reads in part:

"* * * 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 * * *"

"Said section further provides as follows:

"The board of Trustees of any township or fire district or districts created by them under the provisions of this act * * * may purchase the necessary fire fighting equipment for such township * * * and pay for the same over a period of four years * * *"

"My question is this: Under the provisions of the aforementioned section, may township trustees acquire buildings and land, issuing notes for the same payable over a four-year period, or does the four-year period provision for payment apply only to equipment such as trucks, hose, pumps, etc.?"

With reference to the question here presented, I think it wise to first observe that boards of trustees are statutory creatures and being such possess only statutory powers.

Section 3298-54 of the General Code, as amended, provides in part as follows:

"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 and may, with the approval of the specifications by the county prosecuting attorney, purchase or otherwise provide such fire apparatus, or mechanical resuscitators, *or other equipment*, appliances, materials, fire hydrants and such water supply for fire fighting purposes as may seem to the trustees to be advisable, in which event they shall provide for the care and maintenance thereof, and, *for such purposes, may purchase, lease or construct and maintain neces-*

sary buildings; and they may establish and maintain lines of fire alarm communications within the limits of the township. * * *”
(Emphasis added.)

From this it is clear that in addition to the power to purchase fire fighting equipment township boards of trustees also possess authority to purchase, lease or construct and maintain necessary buildings for the care and maintenance of such fire fighting equipment. The power to purchase such buildings obviously includes the power to purchase the land on which such buildings are or are to be erected.

The only question presented for my opinion therefore, is whether by authority of the fourth paragraph of Section 3298-54, General Code, township boards of trustees may pay for such land and buildings over a period of four years by issuing notes of the township as provided therein. The applicable portion of Section 3298-54 of the General Code, as amended, provides as follows :

“* * * The board of trustees of any township or fire district or districts created by them under the provisions of this act or the council or other legislative authority of any municipal corporation, *may purchase the necessary fire fighting equipment for such township, fire district or districts or municipal corporation, and pay for the same over a period of four years.* Such trustees, or council or legislative authority of any municipal corporation, shall be authorized to issue the notes of the township, fire district or districts or municipal corporation, as the case may be, signed by the trustees or council or other legislative authority and attested by the signature of the township or municipal clerk, and covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed six percent per annum, and shall not be subject to the provisions of sections 2293-1 to 2293-37a, inclusive, of the General Code. The amount of such purchase shall not exceed twenty thousand dollars covered by the issuance of notes payable over a period of four years. One-fourth of such purchase price shall be paid at time of purchase. The remainder of the purchase price shall be covered by said notes maturing in two, three and four years respectively. Such notes shall be offered for sale on the open market or given to the vendor if no sale is made.”

(Emphasis added.)

As noted earlier, township boards of trustees are statutory creatures and possess only statutory powers. The second paragraph of the syllabus of State ex rel. Clarke v. Cook, 103 Ohio St., 465, reads as follows :

“2. Boards of education, and *other similar* governmental bodies, are limited in the exercise of their powers to such as are *clearly* and *distinctly* granted. (State ex rel. Locher, Pros. Atty. v. Menning, 95 Ohio St., 97, approved and followed.)”
(Emphasis added.)

In State ex rel. Locher, Pros. Atty. v. Menning, 95 Ohio St., 97, the court at page 99 said :

“* * * The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

The above rules have never been questioned by the courts and have been cited numerous times in opinions of the Attorney General, and they may in my opinion be accepted as the settled rule in Ohio.

It necessarily follows from these cases that unless the power to issue notes to purchase, lease or construct and maintain buildings for the maintenance of fire fighting equipment is clearly and distinctly granted such board of trustees is without authority to do so.

As Section 3298-54 of the General Code is worded, there is authority to purchase *fire fighting equipment* and finance the same by township notes but no clear and distinct grant to purchase or lease *buildings* to maintain equipment by the board of trustees by issuing four-year notes.

It will be noted that the first paragraph of Section 3298-54 makes specific mention of fire fighting equipment and separate mention of buildings, and, as noted before, impliedly land. In the fourth paragraph mention is made only of fire fighting equipment. By applying the maxim *expressio unius est exclusio alterius*, the legislature's express mention of one thing implies the intentional exclusion of another, and it becomes clear that the legislature intended to omit land and buildings from the provision in the fourth paragraph authorizing township trustees to purchase fire equipment by issuing four-year notes. Thus, it would appear that the financing of the acquisition of such land and buildings would be limited to the tax levy provided by Section 3298-55, General Code, or to the issuance of bonds as provided by Section 3298-56, General Code.

Therefore, in specific answer to your question, I am of the opinion that township trustees do not have the power to use the method of financing prescribed in Section 3298-54, General Code, by issuing four-year notes of the township, to purchase land and buildings to care for and maintain fire fighting equipment, such authority being limited to the purchase of fire fighting equipment.

Respectfully,

C. WILLIAM O'NEILL
Attorney General