

3854.

## TOWNSHIP TRUSTEES—UNAUTHORIZED TO INSTALL RESERVOIR AND WATER LINES FOR FIRE PROTECTION.

## SYLLABUS:

*The statutes do not authorize the installation by a board of township trustees, of a reservoir and water lines for providing a supply of water for fire protection.*

COLUMBUS, OHIO, December 14, 1931.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—In your recent communication, you request my opinion on the following:

“Sections 3298-54 to 3298-60 of the General Code, refer to fire protection in townships.

Question: May township trustees install a water reservoir and water-lines necessary to provide an adequate supply of water for fire fighting purposes?”

Section 5, of Article X, of the Constitution of Ohio reads as follows:

“No money shall be drawn from any county or township treasury, except by authority of law.”

Boards of township trustees are created by statute, and consequently, have only such powers as are expressly granted to them by the authority creating them, together with such implied powers as are necessary to carry into effect the powers expressly granted. It therefore follows that in the determination of whether or not the trustees of a township have the authority to install a reservoir and water supply necessary to provide an adequate supply of water for fire fighting purposes, various statutes relative to their duties in relation to fire protection, must be examined. Section 3298-54, General Code, reads 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 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 purposes 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.”

An examination of this section discloses that there are three **distinct** grants of power made therein, namely: (1) the township trustees may establish all necessary regulations to guard against the occurrence of fires and protect the property and lives of the citizens against damages and accidents resulting therefrom; (2) upon the organization of a volunteer fire department,

as is described in the section, the township trustees may, in their discretion, purchase fire apparatus and appliances for the same, and provide for the care and maintenance thereof, and for this purpose the township trustees are authorized to purchase, lease or construct and maintain certain buildings; (3) they may establish and maintain fire alarm telegraph within the limits of the township.

Applying the provisions of this section to our present situation, it would seem clear that the installing of reservoirs and water lines as a permanent improvement for fire fighting purposes would not fall within the power to establish "regulations" as therein contained.

It is clear that the authority in question is not conferred upon the township trustees by the second grant of power above set forth.

It should be noted that the Legislature, by the third grant of authority in Section 3298-54, *supra*, has seen fit to expressly authorize the establishment and maintenance of fire alarm telegraph within the township. It would therefore seem that the expression of one means to secure this result negatives an implied authority to establish pipe lines for fire protection purposes throughout the township under the section under consideration.

An examination of the various sections of the Code, relative to fire protection, discloses that while there is specific provision in Section 3298-55, General Code, for the township trustees of a township to levy a tax to provide protection against fires, and to provide and maintain fire apparatus, appliances and buildings, and sites therefor, for the use of voluntary fire companies, and while Section 3298-56, General Code, provides that upon vote of the electors, bonds may be issued by the township trustees for the purpose of providing fire apparatus and appliances, buildings and sites for the use of voluntary fire companies, there is no provision which authorizes the purchase of property for the maintenance and construction of fire lines and fire hydrants such as are here in question.

In this connection, it is interesting to note that the Legislature has specifically provided in Section 3961, General Code, that the director of public service of a municipality "may make contracts for the building of machinery, waterworks buildings, reservoirs and the enlargement and repair thereof, the manufacture and laying down of pipes, the furnishing and supplying with connections all necessary fire hydrants for fire department purposes, keeping them in repair, and for all other purposes necessary to the full and efficient management and construction of water works."

It would seem that if the Legislature intended that the township trustees should have a like power in the furnishing of fire protection to townships, it would have so indicated. That it recognized the necessity of establishing fire protection by means of reservoirs and fire hydrants in territory outside of municipalities is apparent from an examination of Section 6602-17, General Code, relative to the county water supply system. Said section reads in part as follows:

"For the purpose of preserving and promoting the public health and welfare, and providing fire protection, the boards of county commissioners of the several counties of this state may by resolution, acquire, construct, maintain and operate any public water supply or water works system within their respective counties, for any established sewer district. In this act (G. C. Secs. 6602-1 et seq.) 'public

water supply, shall mean any or all of the following: Wells, springs, streams or other source of water supply, pumping equipment, treatment or purification plants, distributing mains, cisterns, reservoirs, necessary equipment for fire protection, other equipment, and lands, rights-of-way and easements, necessary for the proper development and distribution of the supply. \* \* \*

In view of the foregoing, namely, that the township trustees have only such powers as are expressly granted to them by statute, or such as are necessary to carry into effect the powers expressly granted, and since no expenditures may be made from the township treasury except when authorized by law, and since investigation discloses no authority, either express or implied, conferred upon a board of township trustees to install a reservoir and water lines for fire protection, and taking into consideration the fact that provision is made elsewhere for the furnishing of such fire protection by the county commissioners, I am of the opinion that a board of township trustees may not install a reservoir and water lines for providing a supply of water for fire fighting purposes.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3855.

APPROVAL, BONDS OF CLARK COUNTY, OHIO—\$9,946.33.

COLUMBUS, OHIO, December 15, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3856.

PROBATE COURT—DIVORCE ACTIONS PENDING IN SUCH COURT  
NOT AFFECTED BY REPEAL OF SECTION 10494, GENERAL  
CODE.

*SYLLABUS:*

*Where divorce actions are pending in Probate Courts by reason of the jurisdiction conferred on such courts under Section 10494, General Code, prior to January 1, 1932, the date upon which the repeal of said section becomes effective, such jurisdiction continues by reason of the provisions of Section 26, General Code.*

COLUMBUS, OHIO, December 15, 1931.

HON. NORMAN L. McLEAN, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads as follows:

“The Probate Judge of Fayette County has requested me to procure from you an opinion upon the following question:

Section 10494 of the General Code of Ohio gives the Probate