

OPINION NO. 69-014

Syllabus:

(1) The township trustees may create a fire district covering the entire township under Section 505.37, Ohio Revised Code, and a municipal corporation included within the limits of such township may be included in such fire district. Opinion No. 231, Opinions of the Attorney General for 1945, overruled.

(2) The township trustees and the council of the village may combine to buy necessary fire equipment.

(3) The township trustees may pass a levy for the purpose of purchasing fire equipment but only pursuant to Section 505.37, Ohio Revised Code.

To: Elmer Spencer, Adams County Pros. Atty., West Union, Ohio
By: Paul W. Brown, Attorney General, February 10, 1969

I have before me your request for my opinion on the following question:

(1) May the township trustees create a fire district under Section 505.37, Ohio Revised Code, covering the entire township and including therein a municipal corporation?

(2) May the township trustees and the council of the village combine to buy the necessary equipment?

(3) May the township trustees pass a levy for the purpose of purchasing such equipment?

As you pointed out in your letter, in reference to your first question, there seems to be a conflict between Section 505.37, supra, and Opinion No. 231, Opinions of the Attorney General for 1945. The 1945 Opinion was based on Section 3298-54, General Code, which was the predecessor of Section 505.37, supra. Section 3298-54, supra, provided in pertinent 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 damages 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)

The pertinent portion of Section 505.37, Ohio Revised Code, provides as follows:

"* * * * *"

"The board of any township may, by resolution, whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting therefrom, create a fire district of such portions of the township as it deems necessary, and the board may purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and water supply for fire-fighting purposes, or may contract for such fire protection for such fire district as provided in section 505.44 of the Revised Code. The fire district so-created shall be given a separate name by which it shall be known.

"* * * * *"

This section does not specifically prevent the board from creating a fire district of that portion of the township included within the corporate limits of a municipal corporation. Section 505.37, supra, permits a board to create a fire district of such portions of the township as it deems necessary.

The omission of the limitation "not included within the corporate limits of such municipal corporation or corporations", which was a part of Section 3298-54, General Code, seems to indicate that a purpose of the amendment was to change that Section and the conclusion of Opinion No. 231, Opinions of the Attorney General for 1945. The intent of the Legislature appears to be that the board of trustees could create a fire district covering the entire township and including therein a municipal corporation.

The second question in your letter is answered by Section 505.37, supra, which is provided in pertinent part as follows:

"* * * * *"

"The boards of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination thereof, may, through joint action, unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, or for any other purpose designated in sections 505.37 to 505.44, inclusive, of the Revised Code, and may prorate the expense of such

joint action on such terms as are mutually agreed upon.

"* * * * *"

Since the council of a village is a legislative authority of a "political subdivision" of the township, then pursuant to Section 505.37, supra, the township trustees and the council of the village may combine to buy the necessary fire fighting equipment. The scope or structure of such a "combination" is not defined by Section 505.37, supra.

The township trustees may pass a levy for the purposes of purchasing equipment pursuant to Section 505.37, supra:

"* * * * *"

"The board of any township or fire district created by such board under sections 505.37 to 505.44, inclusive of the Revised Code, or the legislative authority of any municipal corporation, may purchase the necessary fire-fighting equipment, buildings, and sites for such township, fire district, or municipal corporation and pay for it over a period of four years. Such board or legislative authority may also construct any buildings necessary to house fire-fighting equipment and pay for such buildings over a period of four years. Such board or legislative authority may issue the notes of the township, fire district, or municipal corporation, signed by the board or legislative authority and attested by the signature of the township or municipal clerk, covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed six per cent per annum, and shall not be subject to sections 133.01 to 133.65, inclusive, of the Revised Code. The legislation authorizing the issuance of such notes shall provide for levying and collecting annually by taxation amounts sufficient to pay the interest on and principal of such notes. Not less than one-fourth of such purchase price or construction cost shall be paid in cash at time of purchase as provided in said contract and the remainder of the purchase price or construction cost shall be paid in annual installments of not less than one-fourth of the total purchase price may be issued and, in either event, the notes shall contain an option for prepayment. Such notes shall be offered for sale on the open market or given to the vendor or contractor if no sale is made." (Emphasis added)

In conclusion, it is my opinion and you are hereby advised that:

(I) The township trustees may create a fire district covering the entire township under Section 505.37, Ohio Revised Code, and a municipal corporation included within the limits of

such township may be included in such fire district. Opinion No. 231, Opinions of the Attorney General for 1945, overruled.

(2) The township trustees and the council of the village may combine to buy necessary fire fighting equipment.

(3) The township trustees may pass a levy for the purpose of purchasing fire equipment but only pursuant to Section 505.37, Ohio Revised Code.