

2019.

FIRE FIGHTING EQUIPMENT—WHERE BOARD TOWNSHIP TRUSTEES UNITES WITH MUNICIPAL CORPORATION, JOINT PURCHASE, USE AND OPERATION SUCH EQUIPMENT—MAY NOT PAY PREMIUM ON POLICY INSURING MEMBERS, VOLUNTEER FIRE COMPANY, FOR OPERATION SUCH EQUIPMENT—SECTION 3298-54 G. C.

SYLLABUS:

*A board of township trustees which unites with a municipal corporation in the joint purchase, maintenance, use and operation of fire fighting equipment pursuant to the authority granted in Section 3298-54, General Code, may not pay the premium or any portion thereof on an insurance policy insuring the members of the volunteer fire company which operates such fire fighting equipment.*

Columbus, Ohio, March 14, 1940.

Hon. Theodore Tilden, Prosecuting Attorney,  
Ravenna, Ohio.

Dear Sir:

Your recent request for my opinion reads in part as follows:

“A township has, in accordance with the provisions of Section 3298-60 of the General Code of Ohio, entered into a contract with a municipality for the joint ownership of certain fire fighting apparatus and the question has arisen now whether the township trustees may pay half of the premium on a policy of insurance covering the members of the volunteer fire department.

I am aware of Opinion No. 3859 rendered by Gilbert Bettman in the year 1931 wherein he recites that township trustees are unauthorized to purchase group insurance for members of a volunteer company, but inasmuch as a municipality has the authority to purchase such a group insurance policy and inasmuch as the provisions of Section 3298-60 provide for the joint ownership of fire fighting apparatus and the maintenance thereof, it appears to me to be fair and just that both the municipality and township should provide insurance for the members of the volunteer fire department.”

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

“The trustees of any two or more townships or the councils or other legislative authorities of any two or more political subdivi-

sions or any combination thereof, are authorized through joint action to unite in the joint purchase, maintenance, use and operation of fire fighting equipment, or for any other purpose designated in this act, and to prorate the expense on such terms as may be mutually agreed upon."

The quoted language authorizes the board of township trustees to unite with the council of a municipality in the joint purchase, maintenance, use and operation of fire fighting equipment.

Section 3298-60, General Code, to which you refer, provides 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.

The provisions of section 3714-1 of the General Code so far as the same shall apply to the operation of fire departments, shall apply to the contracting political subdivisions and fire department members when said members are rendering service outside their own subdivision pursuant to such contracts.

Fire department members acting outside the subdivision in which they are employed, pursuant to such contracts, shall be entitled to participate in any pension or indemnity fund established by their employer to the same extent as while acting within the employing subdivision, if the rules of the board of trustees of the firemen's pension or indemnity fund provide therefor; and shall be entitled to all the rights and benefits of the workmen's compensation act, to the same extent as while performing service within said subdivision.

Such contracts may provide for a fixed annual charge to be paid at the times agreed upon and stipulated therein, or for compensation based upon a stipulated price for each run, call or emergency, or the number of members or pieces of apparatus employed or the elapsed time of service required, in such run, call or emergency; and may provide for compensation for loss or damage to equipment or apparatus while engaged outside the limits of the subdivision owning and furnishing the same; and said contracts may provide for the reimbursement of the subdivision wherein the fire department members are employed for any pension or indemnity award or premium contribution assessed against the employing subdivision for workmen's compensation benefits, for injuries or death of its fire de-

partment members occurring while engaged in rendering service in pursuance thereof."

This section authorizes townships, villages and cities to enter into contracts with one or more other townships, villages or cities for a period not to exceed three years for the services of fire departments or the use of fire apparatus or the interchange of such service or use.

Section 3298-55, General Code, provides for the levy of taxes by the township trustees to provide protection against fires, and Section 3298-56, General Code, provides for the issuance of bonds for such purposes. Section 3298-57, General Code, provides that members of township volunteer fire companies or persons employed by a township or townships on a part-time basis to operate or maintain fire fighting equipment or employed in any manner incidental thereto shall be deemed township employes for the purposes of workmen's compensation insurance. At no place in the statutes do I find any provision authorizing township trustees to expend township funds for the purpose of paying the premium or a portion thereof on a policy of insurance insuring members of the volunteer fire company.

The syllabus of Opinion No. 3859 for the year 1931, to which opinion you refer, reads as follows:

"A board of township trustees may not legally spend money for the purpose of purchasing group insurance for the members of the volunteer fire department."

The conclusion evidenced by this syllabus was based upon the well settled rule that administrative boards created by statute and public officers have only such powers as are expressly granted by law, together with such implied powers as are necessary to carry out the express powers. In said opinion the third paragraph of the syllabus in the case of *State, ex rel. The A. Bentley and Sons Company, v. Pierce, Auditor*. 96 O. S., 44, was quoted as follows:

"In the case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power."

In this case it was said by Wanamaker, J., in delivering the opinion of the court:

"In construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it. It is one of the reserved powers that the legislative body no doubt had, but failed to delegate to the administrative board or body in question."

Other cases in which the question has been considered and the same result reached are *Jones, Auditor v. Commissioners*, 57 O. S., 189; *Peter v. Parkinson*, 83 O. S., 36; *State, ex rel. Locher, v. Menning*, 95 O. S., 97.

In 1927 and again in 1928 the then Attorney General ruled that a municipal corporation might, as part of the compensation to its employes, authorize group insurance in their behalf and pay the premium therefor from public funds. See *Opinions of the Attorney General for 1927*, page 48, and *Opinions of the Attorney General for 1928*, page 1099. These two opinions were based upon the so-called home rule provisions of the Constitution of Ohio, viz., Sections 3 and 7 of Article XVIII which respectively provide as follows:

Section 3.

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Section 7.

"Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."

There is no such constitutional provision with respect to townships and the 1927 and 1928 opinions are no authority for the proposition that the township trustees have similar powers.

The power of the township trustees granted by statute to unite with a municipality for the joint purchase, ownership and operation of fire fighting equipment cannot be extended by any possible construction to include the power to pay premiums on an insurance policy insuring the members of the fire department. It will be noted that the legislature provided that such members should be considered employes of the township for the purpose of the Workmen's Compensation Act. Injury to and death of the members of such

fire department were therefore contemplated by the legislature and it has made provision for such employes and their dependents in such event. Its failure to provide for the payment of premiums on an insurance policy insuring the members of such department must therefore be regarded as studied and deliberate and I am therefore constrained to the conclusion that township trustees have no power or authority to pay premiums or a portion thereof on an insurance policy insuring the members of a volunteer fire department operating fire apparatus jointly owned, used and maintained by a township and a municipality.

I have not been unmindful of the provisions of clause (g) of subdivision (2) of Section 9426-1, General Code, which provides in part as follows:

*“Life insurance covering employees of a political subdivision or district of the state of Ohio, or an educational or other institution supported in whole or in part by public funds, or of any class or classes thereof, determined by conditions pertaining to employment, or of the state of Ohio or any department or division thereof written under a policy issued to such political subdivision, district or institution, or the proper official or board of such state department or division which shall be deemed to be the employer for the purpose of this act, the premium on which is to be paid by such employees for the benefit of persons other than the employer; provided, however, that nothing herein contained shall permit the state of Ohio or any of the political subdivisions enumerated herein to pay any premiums stated in this section; \* \* \*”* (Emphasis mine.)

This section expressly provides that nothing therein contained shall permit any political subdivision to pay premiums stated in the section.

I am therefore of the opinion that a board of township trustees which unites with a municipal corporation in the joint purchase, maintenance, use and operation of fire fighting equipment pursuant to the authority granted in Section 3298-54, General Code, may not pay the premium or any portion thereof on an insurance policy insuring the members of the volunteer fire company which operates such fire fighting equipment.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.