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VILLAGE—NO AUTHORITY TO ENTER INTO CONTRACT WITH VOLUNTEER FIRE DEPARTMENT WHICH HAS ITS OWN EQUIPMENT—INCORPORATED AS CORPORATION NOT FOR PROFIT—FIRE PROTECTION FOR VILLAGE.

SYLLABUS:

A village has no authority to enter into a contract with a volunteer fire department which has its own equipment and is incorporated as a corporation not for profit, for fire protection for the village.

Columbus, Ohio, May 23, 1950

Hon. C. J. Borkowski, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

Your request for my opinion is as follows:

“A number of villages in our county who have no fire department are desirous of entering into an agreement with volunteer fire departments for fire protection. These volunteer fire departments own their own equipment and are incorporated as corporations not for profit.

I am familiar with your opinion number 1188, which concerns the question of protection under the Workmen's Compensation Act and cites Section 3298-54 of the General Code, with reference to the right of a township to enter into a contract with a volunteer fire department.

I am also familiar with your opinion number 763 concerning an interpretation of Section 3298-54 wherein you state that the use of the words, *otherwise provided*, gives the township trustees the right to enter into a contract with a volunteer fire department other than one heretofore recognized in a political subdivision. However, in reading Section 3298-60 of the General Code of Ohio I do not find the words, 'otherwise provide' as referred to in Section 3298-54, and am unable to determine whether or not a village may enter into a contract with a volunteer fire department located in the village. Therefore, my question is: Can a village enter into a contract with a volunteer fire department which has its own equipment and is incorporated as a corporation not for profit for fire protection to the village?

Another question which I would like to have answered is as follows:

If your answer to the above is in the affirmative, we further ask, would it be correct to assume, in view of the right of the township trustees to contract with a volunteer fire department for its services to a fire district exclusive of a municipal corporation in said township, that it would be possible for one and the same fire department to contract for its services with a municipal village located in a township, and the township trustees on behalf of the fire district exclusive of said municipal corporation by way of a joint agreement between the village and township trustees on one part and the volunteer fire department on the other hand? If your answer to this latter is in the affirmative also, would the township trustees then be further empowered to purchase real estate within the municipal village for the purpose of housing the equipment of the volunteer fire department by taking title to same in the name of the trustees?

As this matter is of immediate importance to a number of villages and townships in our county at the present time, may I beg an early reply."

The only authority that I am able to find which permits a village to contract for fire protection is Section 3298-60, General Code, referred to in your request. Section 3298-54, General Code, obviously does not apply since it is limited by its terms to townships. Section 3298-60, *supra*, reads in part, 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, provided that such contracts are first duly authorized by the respective boards of trustees, councils, or other legislative bodies. * * *

"Any municipal corporation shall have the authority to enter into a contract or contracts for a period not to exceed three years with any person, group of persons, firm or corporation, owning or having an interest in property outside the limits of such municipality, who desires to obtain fire protection for such property, upon such terms as may be agreed upon, for services of the fire department of such municipality, provided such contract or contracts be first authorized by the legislative body thereof.

Twenty-five per cent of the amount received by such municipality on any such contract shall be paid into the firemen's pension fund. * * *

As you state in your letter, the language employed in Section 3298-60 differs substantially from that used in Section 3298-54, supra. Section 3298-60 states that a village may enter into a contract "with one or more townships, villages or cities, * * *." No mention is made in said section of a contract with an incorporated fire department, and since public bodies may do only those things specifically authorized by statute, I am forced to the conclusion that a village may not enter into a contract with an incorporated volunteer fire department for fire protection for the village.

You will notice that Section 3298-60 permits contracts with persons, firms or corporations owning or having an interest in property outside the limits of a municipality. However, the purpose of permitting this type of contract is that such owner may obtain fire protection for his property located outside the limits of such municipality and not to obtain fire protection for the municipality.

In summary and conclusion, it is therefore my opinion that a village has no authority to enter into a contract with a volunteer fire department which has its own equipment and is incorporated as a corporation not for profit, for fire protection for the village.

As the answer to your first question is in the negative, I do not feel that it is necessary to answer your other questions.

Respectfully,

HERBERT S. DUFFY,
Attorney General.