

**Note from the Attorney General's Office:**

1945 Op. Att'y Gen. No. 45-231 was overruled by 1969 Op. Att'y Gen. No. 1969-014.

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1. FIRE DISTRICTS—BOARD OF TRUSTEES OF TOWNSHIP IN WHICH THERE IS MUNICIPAL CORPORATION—MAY CREATE ONE OR MORE FIRE DISTRICTS OUT OF PORTION OF TOWNSHIP NOT INCLUDED WITHIN CORPORATE LIMITS OF MUNICIPALITY—NO AUTHORITY FOR CREATION OF FIRE DISTRICT COMPRISING PARTS OF TWO OR MORE TOWNSHIPS OR INCLUDING A MUNICIPALITY—SECTION 3298-54 G. C.
2. AGREEMENT WITH ANOTHER TOWNSHIP OR A MUNICIPALITY — JOINT PURCHASE, MAINTENANCE, USE, OPERATION OF FIRE FIGHTING FACILITIES—PORTION OF EXPENSE—TAX LEVY.
3. BOARD OF EDUCATION OF SCHOOL DISTRICT—WITHOUT AUTHORITY TO ENTER INTO AGREEMENT WITH ANY OTHER POLITICAL SUBDIVISION FOR JOINT PURCHASE, MAINTENANCE OR OPERATION OF FIRE FIGHTING FACILITIES OR FOR FIRE PROTECTION.
4. NO AUTHORITY IN LAW TO SUBMIT TO VOTERS OF FIRE DISTRICT, CREATED PURSUANT TO SECTION 3298-54 G. C., PROPOSITION TO LEVY TAX UPON PROPERTY OF DISTRICT TO AFFORD FIRE PROTECTION.

## SYLLABUS:

1. Under the provisions of Section 3298-54, General Code, the board of trustees of a township in which there is a municipal corporation may create one or more fire districts out of the portion of such township not included within the corporate limits of such municipality, but there is no authority for the creation of a fire district comprising parts of two or more townships or including a municipality.

2. The board of trustees of a township in which a fire district has been created pursuant to Section 3298-54, General Code, may, on behalf of such fire district enter into an agreement with another township or with a municipality for the joint purchase, maintenance, use and operation of fire fighting facilities, the portion of the expense thereof belonging to such district to be provided by a tax levied on the property in such district.

3. The board of education of a school district is without authority to enter into an agreement with any other political subdivision for joint purchase, maintenance or operation of fire fighting facilities or for fire protection.

4. There is no authority in law for the submission to the voters of a fire district created pursuant to Section 3298-54, General Code, of a proposition to levy a tax upon the property of such district for the purpose of affording it fire protection.

Columbus, Ohio, April 16, 1945

Hon. Richard P. Faulkner, Prosecuting Attorney

Urbana, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"A fire department in the village of North Lewisburg has served the village and portions of the surrounding territory including parts of Rush, Wayne townships in Champaign County and Allen and Zane townships in Logan and Union counties; the fire equipment, bought several years ago by subscription, is now practically worn out, and the territory is anxious to provide new equipment. They have been discussing the possibilities of joint action under Sections 3298-54 to 3298-63, but inasmuch as the fire equipment has never served the entire townships involved, and the more distant portions are more nearly adjacent to other communities with fire equipment, the group is afraid it may run into difficulties if it tries to impose tax levies covering the townships in full.

The questions on which an opinion is sought are:

1. Have boards of trustees of townships authority to establish fire districts covering *portions of townships* and present a tax levy for approval to the voters only of such fire districts?

(In other words it is desired to establish a fire district or districts comprising the north half of Rush township, the northeast portion of Wayne township, the southeast portion of Zane township (Logan County), and the southwest portion of Allen township (Union County), together with the village of North Lewisburg, and issue bonds for the new equipment to be paid by a levy only on the residents of the fire district.)

2. Could the boards of trustees of the townships in which portions are set up as a fire district or districts act jointly with the council of a village in providing for purchase of and maintenance of fire equipment?

3. Could a board of education as the legislative authority of a school district act jointly with township trustees and/or a village council in proposing a levy for the purchase and maintenance of fire equipment?

4. Or must the joint actions cover only existing political subdivisions and the tax levies be approved by the voters of the entire subdivisions?"

Section 3298-54, General Code, after providing that township trustees may adopt measures to guard against the occurrence of fires and protect the property and lives of the citizens by organizing and equipping a fire department, proceeds as follows:

"The trustees of any two or more townships or the councils or other legislative authorities of any two or more political subdivisions 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 pro-rate the expense on such terms as may be mutually agreed upon.

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.)

It will be noted that the township trustees of any township in which there is located a municipal corporation are authorized to create a fire district or districts out of that portion of such township not included within the limits of such municipal corporation, and may purchase for such fire district or districts apparatus and appliances and install fire hydrants and provide a water supply for fire fighting purposes; or may contract for such fire protection for such fire district or districts, as

provided in Section 3298-60, General Code, for other subdivisions. Any such fire district is to be given a separate name by which it shall be known and designated.

There is nothing, however, in this section which constitutes such fire district as a separate political subdivision or gives it any organization of its own. It is also to be noted that such district may be only a part of that portion of the township which is outside a municipality. See 1943 Opinions Attorney General, page 44. Furthermore, there is nothing in this or any other section of the statutes so far as I can find, which contemplates the creation of a fire district composed of portions of two or more townships.

Section 3298-54a, General Code, further carries out the idea that the governing body of such fire district is the board of township trustees. They are authorized by this section to appoint a fire chief and to employ and discharge firemen for such district.

Section 3298-55, General Code, reads as follows:

“The trustees of a township are authorized to levy in any year or years a sufficient tax upon *all taxable property in the township or in a fire district*, or districts, to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor and sources of water supply and materials therefor, and the establishment and maintenance of lines of fire alarm telegraph and the payment of permanent, part-time or volunteer fire fighting companies to operate same.”

It will be noted that by the terms of this section, when a fire district has been created as provided in Section 3298-54, supra, the trustees of the township are authorized to levy a tax upon the taxable property in such fire district alone, to provide protection against fire and to provide and maintain fire apparatus, buildings, etc., in such district.

Section 3298-56, General Code, authorizes the trustees to issue bonds for such fire district for the purposes mentioned in the next preceding section when approved by a vote of the people in such district.

Section 3298-60, General Code, authorizes contracts between municipalities and townships, not for joint purchase or maintenance of fire fighting facilities, but for *fire protection service* or for the use by one of

the apparatus of another, and since Section 3298-54, supra, expressly provides that the township trustees may contract for fire protection for any fire district established by them as provided in Section 3298-60, there can be no doubt but that any of the townships in the territory described in your letter might contract with any one of their number having a fire department or with the village of North Lewisburg for fire protection service to be furnished to the several fire districts in their respective townships, regardless of the fact that they may be located in different counties.

As to your first question, as interpreted by your parenthetical note, my answer must be in the negative. There is no provision in the statute authorizing the establishing of a fire district comprising portions of two or more townships. Each fire district authorized to be created must be located in a township containing a municipality. It would of course follow that no bonds of any such joint district could be issued for the purchase of equipment.

Coming to your second question, as to the authority of boards of trustees of the townships in which fire districts have been set up, to act jointly with the council of a village in providing for the purchase and maintenance of fire equipment, it appears to me that the intent of Section 3298-54 supra, is to authorize joint arrangements between township trustees and municipalities for the purchase, maintenance, use and operation of fire fighting equipment either for the entire area of such townships or for such fire districts as the trustees may have carved out. While the language of said Section 3298-54 does not specifically state that a township may contract for such joint purchase and operation in behalf of a fire district in such township, yet the whole purpose of the section is to permit a joint arrangement for fire protection and the entire section indicates an intention to give the trustees discretion in providing such protection either for the entire township or for a certain portion thereof. Furthermore, unless it may make such contract, it would seem that a township would be unable to avail itself of the power conferred by the section in contracting with a village within its own boundaries for joint installation, since the portion of the township outside the village would have to be set up as a fire district, to avoid imposing a double burden upon the taxpayers of the village.

The expense incident to such joint arrangement would be borne by each contracting subdivision in the proportion agreed upon, and in the event any township is a party to such agreement and is providing such equipment and fire protection for only that portion of its area which is embraced within a fire district, then its portion of such expense would be charged to the fire district and covered by the levy of a tax on the taxable property therein, as provided in Section 3298-55, General Code. It was held by my immediate predecessor in an opinion rendered February 4, 1943 and found in 1943 Opinions Attorney General, page 44, that:

“The cost of acquiring and maintaining such fire equipment or of obtaining such fire protection in any such fire district cannot be paid out of the general funds of the township, but must be obtained by a levy of taxes on the taxable property in the district, pursuant to the provisions of Section 3298-55 of the General Code, or by the issuance of bonds pursuant to the provisions of Section 3298-56 of the General Code.”

As to your third question, I find no authority in the statutes of Ohio whereby the board of education of a school district is authorized to contract for joint action between the school district and any other subdivision for the purchase or maintenance of fire equipment. Inasmuch as school boards are creatures of statute and their powers are strictly limited to those expressly granted or necessarily implied from the granted powers, it seems clear that no such arrangement could legally be made. The failure of the statute in question to mention school districts or boards of education would seem to eliminate any possibility of including them in such arrangement as is proposed.

Your fourth inquiry is substantially answered in what has been said. As to tax levies to be submitted to and approved by the voters the only authority for such submission is found in Section 5625-15, General Code, which provides in part, as follows:

“The taxing authority of any subdivision at any time prior to September 15, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount *for the necessary*

*requirements of the subdivision*, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

1. Current expenses of *the subdivision*. \* \* \*

6. For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue. \* \* \*.”

Section 5625-17, General Code, provides that the proposal must be submitted “to the electors of *the subdivision*.” Section 5625-18, General Code, provides that if sixty-five per cent of the electors vote in favor thereof, “the taxing authority of said subdivision may levy a tax *within such* subdivision at the additional rate,” etc.

These sections relating to the levy of a tax by vote of the people clearly contemplate the submission of such question only to the electors of a political subdivision, which is defined by Section 5625-1, General Code, to mean any county, school district, municipal corporation or township. The legislature, as will be noted from the statutes which I have quoted, did provide for submitting to the electors of a fire district the question of issuing bonds, but has failed to make any similar provision for submission to the electors of such district of the question of levying a tax, and for want of such provision, I must hold that there is no such authority.

Specifically answering your questions, it is my opinion:

1. Under the provisions of Section 3298-54, General Code, the board of trustees of a township in which there is a municipal corporation may create one or more fire districts out of the portion of such township not included within the corporate limits of such municipality, but there is no authority for the creation of a fire district comprising parts of two or more townships or including a municipality.

2. The board of trustees of a township in which a fire district has been created pursuant to Section 3298-54, General Code, may, on behalf of such fire district enter into an agreement with another township or with a municipality for the joint purchase, maintenance, use and operation



of fire fighting facilities, the portion of the expense thereof belonging to such district to be provided by a tax levied on the property in such district.

3. The board of education of a school district is without authority to enter into an agreement with any other political subdivision for joint purchase, maintenance or operation of fire fighting facilities or for fire protection.

4. There is no authority in law for the submission to the voters of a fire district created pursuant to Section 3298-54, General Code, of a proposition to levy a tax upon the property of such district for the purpose of affording it fire protection.

Respectfully,

HUGH S. JENKINS

Attorney General