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FEDERAL GRANTS — FEDERAL AND STATE CIVIL DEFENSE ASSISTANCE — TOWNSHIP HAS AUTHORITY TO RECEIVE FEDERAL GRANTS TO PROVIDE FIRE FIGHTING EQUIPMENT FOR CIVIL DEFENSE — MAY USE GRANTS IN CONNECTION WITH ITS OWN FUNDS — MAY USE ITS EQUIPMENT IN COOPERATION WITH CIVIL DEFENSE ORGANIZATIONS IN CASE OF ENEMY ATTACK — FIRE FIGHTING EQUIPMENT.

SYLLABUS:

A township has authority to receive federal grants for the purpose of providing fire fighting equipment for civil defense, and may use such grants in connection with its own funds for such purpose, and may use its equipment in cooperation with civil defense organizations in case of enemy attack.

Columbus, Ohio, July 24, 1952

Hon. William E. Warner, Executive Director of Civil Defense
Adjutant General's Department
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"We request an opinion concerning the eligibility of townships to appropriate funds for the purchase of fireproofing equipment on a matching fund basis, with Federal and State Civil Defense assistance.

"For your information, certain funds have been made available by the Federal Civil Defense Administration, and the State of Ohio, to Primary Target Areas, on a matching basis for the purchase of various items essential to the development of a local civil defense program. In Franklin county, a county organization has been formed in accordance with State laws, with all municipalities and the county commissioners participating. These municipalities and the county commissioners (representing the unincorporated areas of the county) have shared the expenses involved on a basis of property and public utility tax valuation and their respective population in so far as Administration, Education and Training, Rescue Tools and Equipment, and Medical Supplies are concerned. Any other future expenditure of this

nature will be shared by this same group in accordance with existing agreement.

"Most recently there has been made available by FCDA a limited amount of funds to be used on a matching basis for the purchase of fire fighting equipment. The county civil defense organization is most anxious to participate in these funds and this is presently possible in so far as the various municipalities are concerned. However, a great majority of the municipalities receive fire protection on a contract basis with the township in which they are located. These townships and municipalities concerned, have a mutual aid agreement and render assistance to each other whenever necessary. As such they have developed one of the most outstanding systems of fire protection in the State of Ohio for the entire county.

"In the procurement of fire fighting equipment we have asked interested political subdivisions to individually match funds rather than to pool funds as was done for other supplies. This appears to be more practical and will insure proper responsibility for the maintenance and operation of the equipment, and at the same time provide the respective communities with additional fire fighting equipment. Inasmuch as the townships are not being asked to share in the expenses of the civil defense program, and will receive considerable federal financial assistance toward the purchase of much needed fire fighting equipment, it is believed that such action should be permitted under existing State laws.

"Your attention is invited to the enclosed copy of Civil Defense Mutual Aid Agreement, financial participation data, and the Franklin County Fire Fighters Association Mutual Aid Agreement."

The statutes relative to civil defense include Sections 5291 to 5303, General Code. Under the provisions of Section 5295, General Code, each county and each incorporated municipality of the state is authorized to establish a local organization for civil defense, in accordance with regulations to be promulgated by the Governor. No provision is made for a township to establish for itself a local organization.

Section 5295-1, General Code, as enacted by the 99th General Assembly makes specific provision for the establishment of a county-wide civil defense organization embracing the county commissioners and the legislative authority of all or a majority of the municipalities within the county, including the municipality having the largest population. It is notable that municipalities but not townships are eligible for participation in this organization.

As I read your letter, I understand that a county-wide civil defense organization has been established in Franklin County and I assume that other like organizations have been or may be organized in other counties.

Your question calls for an examination of the law as to the manner and extent to which a township may cooperate with or assist in the work of such county-wide civil defense organization.

By the provisions of Section 3298-54, General Code, townships have been given abundant authority to establish fire departments and to acquire fire apparatus and other equipment for fire fighting purposes. This section provides in part:

“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 and may, with the approval of the specifications by the county prosecuting attorney, *purchase or otherwise provide such fire apparatus, or mechanical resuscitators, or other equipment, appliances, materials, fire hydrants and such water supply for fire fighting purposes as may seem to the trustees to be advisable,* * **” (Emphasis added.)

I call particular attention to the language used, “purchase or *otherwise provide.*”

In Section 3298-60, General Code, townships are given wide authority to arrange by contract with other subdivisions for an interchange of services or the use of fire apparatus, thus evidencing a legislative intent to grant wide discretion for the purpose of making fire protection as effective as possible.

Coming back to the civil defense act, I note the provisions of Section 5300, General Code, reading as follows:

“In carrying out the provisions of this act (G.C. Secs. 5291 to 5315), the governor is directed to utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the state and of the *political subdivisions thereof* to the maximum extent practicable, and the officers and personnel of all such departments, offices and agencies are *directed to cooperate with and extend such services and facilities* to the governor and to the state director of civil defense upon request.”

(Emphasis added.)

Here, not only is the Governor given authority to utilize the fire fighting facilities of "the political subdivisions" of this state (which certainly includes townships) but the officers of each such subdivision are expressly directed to cooperate with and extend such services to the Governor and to the State Director of Civil Defense, upon request. In this section, townships are not excluded, but by plain inference are included, and while they may not become members of the county defense organization yet they are authorized and required to use all their facilities for the common purpose of civil defense.

Coming specifically to the question of the right of townships to appropriate funds for the purpose of purchasing fire fighting equipment on a matching basis with federal and state assistance, it appears to me that we may find abundant authority for the receipt of such assistance in Section 18, General Code, which reads:

"The state, a county, a *township* * * * *may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes.*"
(Emphasis added.)

Having, therefore, the express authority by statute to "receive by gift * * * moneys * * * for their benefit or the benefit of any of those under their charge * * *," and having furthermore explicit authority to purchase or otherwise provide fire apparatus, I have no hesitancy in concluding that townships have authority to use funds received from the federal government or the state in connection with their own funds, for the purchase of fire fighting equipment. Furthermore, it appears clear to me that they have the right to use such equipment, together with any other equipment which they may possess, in cooperation with a county-wide civil defense organization.

I am informed by your office that it is not contemplated that any of the funds appropriated by the General Assembly are to be used for the purpose suggested in your letter. Accordingly, I do not think it necessary to consider the authority of a township to receive grants from state funds. The entire subsidy toward the purchase of additional equip-

ment by the townships is to come from the federal government through the Civil Defense Administration set up by the 81st Congress, in Public Law 920. An examination of that Act shows authority granted to the Administrator to "make financial contributions" to the states on a matching basis, but no direct authority to make such contributions direct to the political subdivisions. However, I do not consider it necessary to inquire closely into the powers of the Administrator. We are concerned with the powers of a township under the laws of the State.

The question may be raised as to whether the federal government or the Administrator of Civil Defense retains any interest in or control over the fire apparatus which it proposes to assist the township in purchasing. What information I have been able to obtain on this subject is contained in Form 191, which in its entirety reads as follows:

"A. The equipment purchased pursuant to this request will be used and maintained in accordance with the following:

"1. The apparatus with basic pumper equipment and hose will be maintained in effective operating condition as a complete unit ready for emergency dispatch at all times.

"2. 1,000 feet of 2½ inch hose and 200 feet of 1½ inch hose will be maintained on the apparatus, and a like amount kept in reserve. All hose will be maintained in accordance with accepted local fire department standards.

"3. The apparatus will be used to combat emergencies caused by an attack, or for the training of personnel to be utilized in the event of an attack.

"4. Normally, the apparatus will not be used for non-civil-defense purposes except to combat multiple alarm fires, or to prevent the destruction of important military or defense properties.

"5. Only adequately trained personnel will be permitted to serve as motor and pump operators.

"B. The equipment purchased pursuant to this request will be distributed and manned in accordance with the following: * * *

Outside of the provisions as to the use of such apparatus, which contains a very nebulous restriction, I cannot see any serious flaw in the complete ownership and control which the township would have in the purchased equipment. I am assuming for the purpose of this opinion that the apparatus would be purchased by, and the title to the same taken

in the name of the township. It is my opinion that there is nothing in Form 191 which indicates any reservation of title or control in the federal government.

While there is no specific language in the law authorizing or requiring cooperation by townships with the several civil defense organizations, yet in view of the manifest purpose of the law to secure the utmost in cooperation in case of enemy attack, I consider that we are justified in the conclusions above stated. Furthermore, in construing a law such as one relating to civil defense, we may give it a liberal construction tending to accomplish its purpose. Sutherland Statutory Construction, Sections 7212, 7216.

On January 4, 1952, I rendered Opinion No. 1041, in which it was held as shown by the syllabus:

“Township trustees of a township included within the area served by a civil defense organization, are not authorized by the provisions of Section 5298, General Code, to make appropriations for the payment of a part of the expenses of such organization.”

There is nothing in the present opinion which is intended, or which appears to me to contradict that conclusion. Section 5295, General Code, authorizes counties and municipalities to form themselves into civil defense organizations, and Section 5295-1, General Code, authorizes them to join in forming a county-wide civil defense organization. In neither section are townships mentioned. Therefore, they are without power either to form or join such organization, and it follows that they cannot appropriate funds to pay a part of the expense of such county-wide organization.

But there is nothing in that conclusion which would prevent a township from *cooperating* with such organization or with any other public body in meeting a threat to the lives and property of its citizens in case of an extreme emergency, such as an attack by a foreign power. This is particularly true by reason of the provision of Section 5300, General Code, to which I have called attention, which does not deal with the organization or membership of civil defense organizations, but commands cooperation by all of the political subdivisions of the state.

Specifically answering the question submitted it is my opinion that a township has authority to receive federal grants for the purpose of

providing fire fighting equipment for civil defense, and may use such grants in connection with its own funds for such purpose, and may use its equipment in cooperation with civil defense organizations in case of enemy attack.

Respectfully.

C. WILLIAM O'NEILL

Attorney General