219.

FIRE APPARATUS—MUNICIPALITIES MAY PURCHASE JOINTLY—COMPETITIVE BIDDING NECESSARY WHEN COST EXCEEDS $500—JOINT ADVERTISING FOR BIDS—EXCEPTION.

SYLLABUS:

1. *Two or more municipalities may jointly purchase and operate fire apparatus.*

2. *Inasmuch as Sections* 4221 *and* 4371, *General Code, require competitive bidding upon contracts involving the expenditure of* $500.00 *or more, if the total amount which municipalities participating are required to pay exceeds such sum, competitive bidding is required.*

3. *In the event that the cost of purchasing fire apparatus exceeds* $500.00, *bids must be advertised for by such municipalities jointly, unless in the contract of agreement it has been provided that one of such municipalities shall act in making such purchase for and on behalf of both or all, as the case may be.*

COLUMBUS, OHIO, March 20, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent communication reads:

"Section 3615-1, General Code, provides in part that two or more municipalities may enter into an agreement for the joint exercise of any power conferred on municipalities by the Constitution or Laws of Ohio in which each of such municipalities is interested.

Question 1: May two or more municipalities jointly purchase and operate fire apparatus?

Question 2: If the cost of such apparatus exceeds $500.00 but each municipality's portion of such cost does not exceed $500.00, must bids be advertised for as provided in Section 4221 and 4371, General Code?

Question 3: If each municipality's portion of the cost of purchasing fire apparatus exceeds $500.00, must bids be advertised for by such municipalities jointly or severally?"

Section 3615-1, General Code, which was enacted by the 86th General Assembly in 111 O. L. 508, provides:

"Two or more municipalities may enter into an agreement for the joint construction or management, or construction and management, of any public work, utility or improvement, benefiting each municipality, or for the joint exercise of any power conferred on municipalities by the constitution or laws of Ohio, in which each of such municipalities is interested. Any such agreement shall be approved by ordinance passed by the legislative body of each municipality party thereto, which ordinance shall set forth the agreement in full, and when so approved shall be a binding contract between such municipalities. Any agreement so entered into, shall provide (a) for the method by which the work, utility or improvement specified therein shall be jointly constructed or managed; (b) for the method by which any specified power or powers shall be jointly exercised; and (c) for apportioning among the contracting municipalities any cost or expense of jointly constructing, maintaining or managing any work, utility or improvement or jointly exercising any power; and any such agreement may provide, (a) for assessing the cost,

or any specified part of the cost; of the joint construction, maintenance or management of any public work, utility or improvement upon abutting property specially benefited thereby, or (b) for assessing the cost, or any specified part of the cost, of constructing, maintaining or managing any public work, utility or improvement upon the property within any district clearly specified in such agreement, in proportion to benefits derived by such property from such work, utility or improvement. Each such municipality may issue bonds for its portion of the cost of any such public work, utility or improvement, where the provisions of the general law would authorize the issuance of such bonds in the event such municipality alone were undertaking the construction of such public work, utility or improvement, and, subject to the same conditions and restrictions which would then apply to such municipality."

The foregoing section clearly provides that two or more municipalities may enter into an agreement for the joint exercise of any power conferred on municipalities by the Constitution or laws of Ohio in which each of such municipalities is interested. In order to make such an agreement it appears that each municipality must approve the same by an ordinance which sets forth the agreement in full. The section, among other things, provides that the agreement shall set forth the method by which any specified power shall be jointly exercised and the apportioning of the cost or expense of a given undertaking. The section further authorizes the issuance of bonds to meet its portion of the cost of any public work, utility or improvement when such bond issues are authorized.

The power of an individual municipality to purchase necessary fire equipment is so well known as to require no citation of authority. Since the enactment of Section 3615-1, supra, there seems to be no doubt but that two or more municipalities may enter into an agreement to jointly purchase the fire apparatus for the use and protection of both municipalities. The section further clearly authorizes such municipalities to provide in such an agreement for the apportioning of the cost of exercising any power to each municipality involved. While apparently there have been no decisions construing said section, it would appear that there is nothing in said section requiring each municipality to pay an equal sum for any given undertaking. On the other hand there is authority for agreeing as to the amount that each municipality is to assume, which apparrently is to be determined in view of the proportionate benefits derived.

When such an agreement is properly entered into the amount each municipality agrees to pay would seem to become an individual obligation resting upon such municipality. In other words, while it is in the nature of a joint project the contract, if made in pursuance of the statute, fixes the liabilities of each municipality, and one municipality is not liable for the obligation of the other.

As I have just stated, an undertaking, made pursuant to the authority contained in Section 3615-1, is a joint enterprise and accordingly it would seem logical that, in so engaging, the municipalities must be treated as one and be governed by the same regulatory provisions of the Code, so far as pertinent, as would be applicable to a single municipality engaging in a like enterprise. Sections 4221 and 4371 of the Code are statutes requiring competitive bidding upon certain classes of contracts involving the expenditure of $500.00 or more. In my opinion these sections are applicable to contracts entered into by municipalities jointly under authority of Section 3615-1, supra, and the $500.00 limitation applies to the total expenditure and not to the individual contributions of the municipalities, since in an enterprise of this character the municipalities must be treated as one.

In view of the foregoing, and in specific answer to your inquiries, it is my opinion that:

1. Two or more municipalities may jointly purchase and operate fire apparatus.
2. In as much as Sections 4221 and 4371 require competitive bidding upon contracts involving the expenditure of $500.00, or more, if the total amount which all municipalities participating are required to pay exceeds such sum, competitive bidding is required.
3. In the event that each municipality's share of the cost of purchasing fire apparatus exceeds $500.00, bids must be advertised for by such municipalities jointly, unless in the contract of agreement it has been otherwise specifically agreed as to the manner in which such power shall be exercised. That is to say, it is probably within the powers of said municipalities in determining to make such purchase, to stipulate by agreement that one municipality may proceed to make the purchase for and on behalf of the other, as well as itself. Under such cimcumstances, however, competitive bids must be taken.

Respectfully,
GILBERT BETTMAN,
Attorney General.

220.

APPROVAL, ABSTRACT OF TITLE TO LAND OF FOREST E. ROBERTS, IN BENTON TOWNSHIP, PIKE COUNTY, OHIO.

COLUMBUS, OHIO, March 20, 1929.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date submitting for my examination and approval a corrected abstract relating to two tracts of land in Benton Township, Pike County, Ohio, owned by Forest E. Roberts of said county.

The tracts of land above referred to are more particularly described in former Opinion No. 36 of this department directed to you under date of January 30, 1929.

The corrected abstract, in my opinion, quite effectually corrects the objections which were noted as exceptions to the title of Mr. Roberts in said former opinion. These exceptions, which were three in number, were first, that it was not shown by the abstract then submitted that any patent had ever been issued on the surveys of which the tracts here in question are a part. This exception has been corrected by the production of an exemplified copy of a patent issued on said surveys, which copy has been made a part of the corrected abstract.

The second objection noted in said former opinion was that the abstract then submitted did not show the history of the title to the second tract of land here in question prior to the conveyance thereof by one Andrew L. Speakman to Samuel Griffith under date of January 6, 1883. This objection has been corrected by an abstract of former deeds showing the history of this tract of land back to E. P. Kendrick for whom the original surveys were made and entered.

The third objection before noted was that the abstract did not show that the taxes for the last half of the year 1928 were paid. This has been corrected by a certificate signed by the abstracter showing that the whole of the taxes for the year 1928 have been paid.

I am therefore of the opinion that Forest E. Roberts has a good and merchantable fee simple title to the two tracts of land here in question, free and clear of all en-