

3054

1. FIRE DEPARTMENT—TOWNSHIPS A AND B—NEITHER HOUSES A FIRE DEPARTMENT — THEY PARTICIPATE WITH TOWNSHIP C AND VILLAGE X IN JOINT PURCHASE AND MAINTENANCE OF FIRE FIGHTING EQUIPMENT HOUSED WITHIN VILLAGE X — VOLUNTEER FIREMEN FROM VILLAGE X AND TOWNSHIP C OPERATE FOR PROTECTION OF TOWNSHIPS A, B, C AND VILLAGE X — TOWNSHIPS A AND B DO NOT HAVE AND MAINTAIN A FIRE DEPARTMENT WITHIN MEANING OF SECTION 4647-1 GC—SECTION 741.81 RC.
2. TOWNSHIP TRUSTEES OF A AND B TOWNSHIPS MAY CONTRACT TO REIMBURSE TOWNSHIP C FOR ANY PENSION OR INDEMNITY AWARD ASSESSED AGAINST TOWNSHIP C FOR INJURIES OR DEATH OF FIRE DEPARTMENT MEMBER — SECTION 3298-60 GC — SECTION 505.44 RC.

## SYLLABUS:

1. Where neither township "A" nor township "B" houses a fire department, but participate with township "C" and village "X" (located within township "C"), in the joint purchase and maintenance of fire fighting equipment housed within village "X" and operated by volunteer firemen from village "X" and township "C," for the protection of townships "A," "B," and "C" and village "X," neither township "A" nor township "B" is a township "having and maintaining therein a fire department within the meaning of Section 4647-1, General Code, Section 741.81, R.C.
2. By virtue of Section 3298-60, General Code, Section 505.44, R.C., the township trustees of townships "A" and "B" may, by contract, provide for reimbursement of township "C," for any pension or indemnity award assessed against township "C" for injuries or death of a fire department member.

Columbus, Ohio, September 18, 1953

Hon. Gale B. Weller, Prosecuting Attorney  
Morrow County, Mt. Gilead, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"I respectfully submit the following facts and questions for consideration by you and your staff:

## “FACTS :

The townships of Peru and Westfield, Morrow County, Ohio, township of Oxford in Delaware County, Ohio, and the village of Ashley, Ohio, said village being entirely contained within the township of Oxford, have for some years maintained fire-fighting equipment at their mutual expense as provided by General Code Section 3298-54. The equipment has been and is manned by volunteer firemen of the Ashley fire department, who reside either in the village of Ashley, Ohio, or in the township of Oxford in Delaware County, Ohio. The equipment is housed permanently within the corporate limits of the village of Ashley.

## “QUESTIONS :

(1) Under the above facts is there a mandatory duty existing wherein the trustees of Peru and Westfield Townships, Morrow County, Ohio, must establish a ‘Firemen’s Indemnity Fund’ as provided by General Code Section 4647-1 et seq.?

“(2) If such a duty exists, is it possible for the trustees to act jointly with the trustees and council of the other interested subdivisions, and establish one fund to which all parties would contribute on a pro rate basis?

“(3) If a joint fund may be established, what formula must be used in computing each corporation’s contributory share, i.e., should they contribute in equal fractions of the whole, or in relation to their total tax valuation?

“(4) If said corporate entities cannot act to establish a joint fund, is there a duty on each participating group to establish their own ‘Firemen’s Indemnity Fund’?

“(5) Even if there exists no mandatory duty under these facts, is it permissible for the township of Peru and/or township of Westfield to voluntarily establish such a fund and provide for assessment of taxes to service said fund?

“(6) Assuming that all the foregoing questions may be answered in a manner favorable to the establishment of a fund, in what manner is the ‘total’ amount of said fund, as referred to in Section 4647-4 to be determined?

“I will appreciate any and all considerations you may be able to give this matter, as it is submitted on behalf of this office, the office of the Delaware County Prosecutor, and the solicitor from the village of Ashley, Ohio.

I understand that all of the political subdivisions mentioned united in the purchase of the fire fighting equipment. I am also given to under-

stand that the equipment is not manned by a private fire company, so that your reference to "volunteer firemen of the Ashley fire department" signifies only that the fire department is manned by part-time employees.

Section 4647-1, General Code, Section 741.81, RC, relative to the established of a "Firemen's Indemnity Fund" reads as follows:

"That in all municipalities or townships having no firemen's pension fund created under the provisions of Chapter I, title 12, division 6 of the General Code of Ohio (GC Section 6400 et seq., and *having and maintaining therein* a fire department supported in whole or in part at public expense, a firemen's indemnity fund shall be created and disbursed as herein provided."

(Emphasis added.)

Section 4600, General Code, applies to municipalities employing two or more full-time firemen. Section 4615-2, General Code, enacted in 1947, applies to townships which employ two or more full-time employees. These two sections, therefore, do not apply to the facts you present.

Section 4647-1, General Code, it will be noted, imposes a duty upon townships "having and maintaining therein" a fire department, where that fire department is supported to some extent at public expense. The legislature inserted the word "townships" in this statute in 1937, 117 Ohio Laws, 158, at which time there was no authorization to be found in the law for several townships or villages, or a combination of both, to purchase fire fighting equipment through joint action. A township having no fire department of its own could, nevertheless, contract with another township or village for fire protection.

In my opinion Section 4647-1 et seq., General Code, was not enacted with a view toward requiring or allowing a township to establish a firemen's indemnity fund for the benefit of firemen housed in, and operating from, a village in another township, even though the township thus protected against fire by service from without, participates in the purchase and maintenance of the fire-fighting equipment.

Only by referring to other statutes enacted subsequent to Section 4647-1, General Code, do I gain any insight into the legislative solution to the problem. I refer to certain parts of Sections 3298-54, General Code, Section 505.37, RC and 3298-60, General Code, Section 505.44, RC.

The following provision was added to Section 3298-54, General Code, in 1939 in 118 Ohio Laws, 273, 274 :

“\* \* \* The trustees of any two or more townships or the council 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. \* \* \*”

In 1939 the following was added to Section 3298-60, General Code, which section deals with contracts between townships, villages or cities for fire protection :

“\* \* \* and said contracts may provide for the reimbursement of the subdivision, or private fire company wherein the fire department members are employed *for any pension or indemnity award* or premium contribution assessed against the employing subdivision, or private fire company, for workmen's compensation benefits, or casualty insurance premiums, for injuries or death of its fire department members occurring while engaged in rendering service in pursuance thereof.” (Emphasis added.)

Reading these provisions alongside Section 4647-1, General Code, it is my conclusion that the townships of Peru and Westfield, in Morrow County, are authorized to contract with the township of Oxford, Delaware County, for the reimbursement of the township for any pension or indemnity fund for injury or death occurring to a member of its fire department.

It might well be asked why Oxford Township is the proper subdivision to establish the indemnity fund, or why the Village of Ashley, located therein, is not also under a duty to establish a fund. It must be admitted that the Township of Oxford and the Village of Ashley *together* “have and maintain a fire department therein.” The township, in levying the three-tenths of a mill tax, provided for in Sections 4647-3 and 4647-4, General Code, would levy on property within the Village of Ashley, which of course, is entirely within the township. Were Ashley also to levy the tax upon village property, in pursuance of a separate indemnity fund for the village, the result would be a double taxation of the villagers. In order to avoid such an unreasonable result, it would appear that substantial compliance with the law would be met were the township to levy the tax, taxing all of the property within its bounds. Thus, the township establishes

the fund, even though the Village of Ashley might also be looked upon as having and maintaining a fire department within its village limits. The legislative intent is still carried out, in this instance, by allowing the larger political subdivision to include the lesser.

At this point I would call to your attention Opinion No. 6603, Opinions of the Attorney General for 1944, page 11, where at page 15 I find the following statement:

“\* \* \* it seems quite clear that where a village is furnishing fire protection to adjoining townships under a contract authorized by law, the members of its fire department, whether employed on a part time or volunteer basis or on full time, are entitled to the benefit of the indemnity fund established by the village and also to the benefit of the workmen’s compensation law in case of injury, *although such injury is suffered outside the municipality by which they are employed.*” (Emphasis added.)

The quoted language would seem to indicate that the township of Oxford must meet its indemnity fund obligation no matter where the injury to the fireman actually takes place. It then becomes a matter of contract to be worked out among the various political subdivisions which are within the orbit of the fire department’s protection, as to how and in what manner reimbursement shall be made. It is not the purpose of this opinion to dictate or suggest the contractual terms.

I should point out in passing, and with particular reference to your fifth question, that not only is there no duty resting upon the township trustees of Peru and Westfield Townships, Morrow County, to establish the fund provided for by Section 4647-1, General Code, there is also no authorization in law for the township trustees to voluntarily establish such a fund and provide for assessment of taxes to service said fund. Public officers have only such powers as are expressly delegated to them by statute, and such as are necessarily implied from those so delegated. 32 Ohio Jurisprudence, Public Officers, Section 74, page 934. The township trustees most emphatically would not have authority on their own volition to levy the three-tenths of a mill tax provided for in Section 4647-4, General Code.

Accordingly, it is my opinion that:

1. Where neither township “A” nor township “B” houses a fire

department, but participates with township "C" and village "X" (located within township "C"), in the joint purchase and maintenance of fire fighting equipment housed within village "X" and operated by volunteer firemen from village "X" and township "C," for the protection of townships "A," "B," and "C" and village "X," neither township "A" nor township "B" is a township having and maintaining therein a fire department" within the meaning of Section 4647-1, General Code, Section 741.81, RC.

2. By virtue of Section 3298-60, General Code, Section 505.44, RC, the township trustees of townships "A" and "B" may, by contract, provide for reimbursement of township "C," for any pension or indemnity award assessed against township "C" for injuries or death of a fire department member.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General