

4354.

BONDS—ISSUED BY TOWNSHIP FOR FIRE PROTECTION PURPOSES—  
LEVY INCLUDES TAXABLE PROPERTY OF AN INCORPORATED  
VILLAGE WITHIN SUCH TOWNSHIP.

SYLLABUS:

*Where bonds are issued by the trustees of a township, in which an incorporated village is located, for the purposes of providing fire apparatus or appliances, or buildings or sites therefor, the levy annually of a tax on all the taxable property of such township for the purpose of paying the interest and providing a sinking fund for the redemption at maturity of such bonds includes the taxable property within such village.*

COLUMBUS, OHIO, May 23, 1932.

HON. GEORGE S. MIDDLETON, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“Sections 3298-54-55-56 of the General Code provide for the creating of a fire department in townships and the assessments against the real estate of the township to raise funds necessary to provide for such protection.

The question presented to you is this: Can real estate within a village located in said township be assessed to pay the bonds issued to pay for such protection? The village located in the township has no fire protection.”

Sections 3298-54, 3298-55 and 3298-56, General Code, read as follows:

Section 3298-54. “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 resulting therefrom, and, when a volunteer fire company has been organized for service in the township, of such character as to give assurance of permanency and efficiency, may purchase and provide, for the use of such company, such fire apparatus and appliances as may seem to the trustees advisable, in which event they shall provide for the care and maintenance thereof, and, for such purpose, may purchase, lease or construct and maintain necessary buildings; and they may establish and maintain lines of fire alarm telegraph within the limits of the township.”

Section 3298-55. “The trustees of a township are authorized to levy in any year or years a sufficient tax upon all the taxable property in the township to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of volunteer fire companies.”

Section 3298-56. “No bonds shall be issued by township trustees for the purpose of providing fire apparatus and appliances and buildings and sites therefor, for the use of volunteer fire companies, unless approved by vote of the people in the manner provided by law; and in no event in an amount exceeding \$20,000.00.”

Section 3298-55, General Code, provides for the levy of a tax upon all taxable property and not only on the real estate in the township. As this section authorizes a levy upon all the taxable property in the township, this would include the taxable property in a village that is located within the township, in the absence of a statutory provision exempting the property in the village therefrom.

In the Opinions of the Attorney General for 1924, Vol. I, page 82, it was held that:

"A levy of a tax 'on all the taxable property of a township' includes the property of a village within such township unless the property of the village is expressly excepted by statute from such levy."

In this opinion it is said:

"'All the taxable property in the township' includes the taxable property of a village in the township. The practice is and seems always to have been to make the general levies of the township to cover all property within the township. Because some part of the territory of a township becomes a village does not seem to operate to take the area within the village out of the township for voting or for taxing purposes. Village electors vote for township officers and are often elected as such officers. In *State ex rel. vs. Ward*, 17 O. S., 543, the opinion says:

'The statutes nowhere provide, either expressly or by just implication, that on the organization of a city within the limits of a township or townships, the territory within the city limits shall cease to be a part of the township or townships from which the same was taken, but there are clear indications of a contrary legislative intent.'

The same principle is set forth in my opinion No. 2898, dated February 2, 1931, in which I held that:

"When a truck is purchased according to the provisions of Section 7201, General Code, and notes are issued in payment thereof, a tax must be levied on all the taxable property located within an incorporated territory situate in the township for the payment of such notes and interest."

Article XII, section 11 of the Ohio Constitution requires that provision be made for levying and collecting annually by taxation an amount sufficient to pay the interest on, and to provide a sinking fund for the redemption at maturity of all bonds issued by the state or any political subdivision thereof, and since section 3298-55 provides for the levy of a tax for the purposes mentioned in section 3298-54 upon all the taxable property in the township, I am of the opinion that where bonds are issued for such purposes by the trustees of a township, in which an incorporated village is located, the levy annually of a tax on all the taxable property of such township for the purposes of paying the interest and providing a sinking fund for the redemption at maturity of such bonds includes the taxable property within such village.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*