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A BOARD OF TOWNSHIP TRUSTEES HAS NO AUTHORITY, EITHER EXPRESS OR IMPLIED, TO ENTER INTO A CONTRACT WITH A VILLAGE IN AN ADJOINING STATE FOR THE FURNISHING OF FIRE PROTECTION TO THE TOWNSHIP—OAG NO. 292 FOR 1957 APPROVED AND FOLLOWED—§505.44, R.C.

SYLLABUS:

A board of township trustees has no authority, either express or implied, to enter into a contract with a village in an adjoining state for the furnishing of fire protection to the township. (Opinion No. 292, Opinions of the Attorney General for 1957, page 85, approved and followed.)

Columbus, Ohio, March 8, 1961

Hon. James L. Frey, Prosecuting Attorney
Fulton County, Wauseon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“For many years the Trustees of Chesterfield Township, Fulton County, Ohio, had a contract with the Village of Morenci, Michigan to furnish fire protection for part of the Township. Some time ago a State Examiner refused to allow them to make payment for this service on the basis that it was illegal. In view of this finding the Trustees have requested that I seek an Attorney General’s Opinion on this matter.

“The exact question to be determined is: Do Township Trustees have the authority to contract with a municipality, con-

tiguous with the Township but lying wholly without the State of Ohio, to furnish fire protection for the residents of the Township?

“If you have any further question concerning this matter, please feel free to contact me.”

A board of township trustees possesses only those powers which are expressly conferred by statute or which may be reasonably implied (*Hopple v. Brown Twp.*, 130 Ohio St., 411; *New London Twp. v. Miner*, 26 Ohio St., 452; Opinion No. 681, Opinions of the Attorney General for 1939, page 835). Thus, such express or implied authority must be found if the contract in question is to be considered valid.

The only authority which I can find for a township to contract with a municipal corporation for fire protection is Section 505.44, Revised Code, which provides:

“In order to obtain fire protection, or to obtain additional fire protection in times of emergency, any township may enter into a contract, for a period not to exceed three years, with one or more townships, municipal corporations, or private fire companies, upon such terms as are agreed to by them, for services of fire departments, or the use of fire apparatus, or the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivisions and private fire companies, if such contract is first authorized by the respective boards of township trustees or other legislative bodies.

* * * * * * * * *

I do not believe that this section would authorize a contract with a political subdivision of another state. Ohio statutes must relate to this state only unless otherwise expressed in the statute, and the reference to “municipal corporations” in Section 505.44, *supra*, can only refer to those incorporated under Ohio law.

Further, I do not believe that the section grants the required authority by implication as authority to contract with a subdivision of another state does not follow from the authority to contract with Ohio political subdivisions,

I note that the same question was considered by my predecessor in Opinion No. 292, Opinions of the Attorney General for 1957, page 85, although that question concerned a contract with townships in another state. Referring to Section 505.44, *supra*, it is stated, beginning on page 86 of that opinion:

“Does this statute grant township trustees the express authority to contract with a political subdivision in another state? I think not. To do so would make it necessary to give to the words ‘township’ and ‘municipal corporation’ a scope which is much broader than that which is attached to these words elsewhere in the Code. Furthermore, it would mean that the word ‘township’ has two separate meanings within the same sentence, for it is obvious that in the above quoted section the first word ‘township’ can refer only to Ohio townships. It follows then, that the same construction must be given that word throughout the sentence.

“Does the statute grant this authority by implication? Again, my response is in the negative. In order to constitute an implied grant of authority that authority must necessarily flow from the duties imposed, or authority expressly given. It does not seem that the authority to contract with political subdivisions of another state follows from the authority to contract with domestic political subdivisions.

“The key to this type of problem was succinctly stated by Weygandt, C. J., in *State, ex rel. Schramm, v. Ayers*, 158 Ohio St., 30, page 33:

“ ‘The relator contends that there is no statutory prohibition against such action by and on behalf of part of a township. One difficulty with this view is that townships are creatures of law and have only such authority as is conferred on them by law. Therefore, the question is not whether townships are prohibited from exercising such authority. Rather, it is whether townships have such authority conferred on them by law.’

“Since the statute in question grants no authorization for the action about which you inquire I must take the position that it is prohibited.”

I am in accord with the reasoning of my predecessor in this regard and conclude that the board of township trustees in the instant case is without authority to enter into a contract such as you mention in your request.

Accordingly, it is my opinion and you are advised that a board of township trustees has no authority, either express or implied, to enter into a contract with a village in an adjoining state for the furnishing of fire protection to the township. (Opinion No. 292, Opinions of the Attorney General for 1957, page 85, approved and followed.)

Respectfully,
MARK McELROY
Attorney General