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TOWNSHIP IN WHICH VILLAGE SITUATED—MAY JOIN IN ACQUISITION AND MAINTENANCE OF LANDS AND BUILDINGS — HOUSING, ROAD MACHINERY OF TOWNSHIP, STREET EQUIPMENT OF VILLAGE—SECTIONS 3399 TO 3402 G. C.

SYLLABUS:

Under the provisions of Sections 3399 to 3402, inclusive, of the General Code, a township in which a village is situated, and such village, may join in the acquisition and maintenance of lands and buildings for housing the road machinery of the township and the street equipment of the village.

Columbus, Ohio, September 5, 1946

Honorable Julian E. Clark, Prosecuting Attorney
Eaton, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“A board of township trustees in our county is anticipating the purchase of a building jointly with a municipality for the purpose of housing road machinery of the township as well as street equipment of the municipality.

Both the township trustees and the municipality are given power under the statutes to purchase real estate for the benefit of the township and the municipality, but in as much as I am unable to find legal authority for joint ownership sanctioned by statute for this purpose and since I can foresee possible future difficulties in the event of change of membership in the personnel of the respective governing bodies of the township and the municipality I am asking you whether or not it is possible for a township and a municipality to own real estate jointly for housing equipment of these respective political subdivisions.”

A township has, by virtue of the statutes, unquestionable authority to provide a building for the purpose of housing its road machinery. In Section 3373 of the General Code we find provisions relating to maintenance and repair of roads by township trustees, and particularly to

the purchase of machinery and tools for that purpose. A portion of that section reads as follows :

“Township trustees are hereby authorized to purchase or lease such machinery and tools as may be deemed necessary for use in constructing, reconstructing, maintaining and repairing roads and culverts within the township. The township trustees shall provide *suitable places for housing and storing machinery and tools owned by the township.*” (Emphasis supplied.)

As to municipalities, it is not necessary to look to the statutes for legislative authority to provide and house street equipment. The municipality is by Section 3714, General Code, given full control of the streets and highways within its limits and by mandate of the general assembly is charged with their maintenance and repair. There has been a sharp difference of opinion on the part of the judges of the Supreme Court as to whether this authority and responsibility is within the power of the general assembly to confer and impose, or whether municipalities have the right to such control independently of legislative action. It is unnecessary to discuss those differences of opinion because from either standpoint the municipality has such control.

Every municipality in Ohio receives by direct grant of the people, through the constitution, full authority to exercise all powers of local self-government. This power is specifically conferred in Section 3 of Article XVIII of the Constitution, the only limitation therein contained being that in the enactment of police and sanitary regulations a municipality must not contradict laws of the state on the same subject. The only further limitations upon the full and complete exercise of municipal power in matters of local concern are those contained in Article XIII, Section 6, and Article XVIII, Section 13, by the provisions of which the general assembly is authorized to pass laws to “limit the power” of municipalities in levying taxes and incurring debts. The only limitations which the general assembly has seen fit to impose as to expenditures relate to the necessity of advertising for bids in matters involving considerable expenditure, and the requirement that funds are available to cover the costs.

Accordingly, we may start with the proposition that both a municipality and a township within which it is located have authority to provide

for housing their road and street machinery either by purchase or erection of a suitable building. The only serious question involved in your inquiry appears to be whether they may enter into a joint arrangement to accomplish this purpose.

We find in Section 3399 of the General Code the following provisions :

“The electors of a township in which a village is situated, and the electors of such village may if both so determine, as hereinafter provided, unite in the enlargement, improvement or erection of a public building.”

It will be noted that this statute undertakes to confer such authority only on a township in which a village is situated and on a *village* itself. This would seem to exclude the application of the statute to a proposed arrangement between a township and a city located within the township, and it was held in an opinion of a former attorney general found in 1916 Opinions of the Attorney General, page 1293, that the statute does not authorize such joint action by a city and a township.

Section 3400, General Code, provides as follows :

“For such purpose an application shall be made to and filed with the trustees of the township, signed by not less than twenty-five resident free-holders of such township, who are not residents of the village, and application shall also be made to and filed with the mayor of the village, signed by not less than twenty-five resident freeholders of the village.”

Section 3401, General Code, provides :

“At the next general township and municipal election after such applications have been so filed, the question as to whether or not a tax shall be levied upon all the property subject to taxation in such township and village for the enlargement, improvement or erection of a public building, shall be submitted to the electors of such township and of such village. Ten days' notice that the question will be submitted to the electors, shall be given by the trustees of the township and the mayor of the village in a newspaper of general circulation in such township and village, which notice shall state the maximum amount of money proposed to be used for such purpose, and the rate of tax proposed to be levied.”

Section 3402, General Code, reads as follows :

“If at such election two-thirds of the electors of the township and of the village voting, vote in favor of such improvement, the trustees of such township and the council of the village shall jointly take such action as is necessary to carry out such improvement.”

These four sections comprise an act found in 97 Ohio Laws, page 383. They appear in a chapter of the General Code entitled “Halls,” and the other sections in the chapter which were enacted at different times and appear to be unrelated to each other, all relate to “town halls” so-called. Those words apparently are used in those statutes as referring to township halls rather than to municipal buildings.

It is worthy of note however that Sections 3399 to 3402 are not limited to “town halls” or “township halls” as these words are generally understood, but refer by their express language to a “public building.” I see no reason why we have not a right to consider these special provisions for joint ownership and operation of “public buildings” as including any and all buildings designed for the convenience or proper operation of the functions of a township and a village. Accordingly, it appears to me that the authority given for joint action may apply just as readily to a building for housing the equipment owned and used by these public bodies as to a building intended for housing the officials. Both types of building are equally public buildings.

It may further be noted that these statutes in their terms do not mention the *purchase* of a building already erected, but in their terms refer only to the “enlargement, improvement or erection” of a public building. The erection of a public building would certainly involve the acquisition of a site therefor, and therefore the power to provide such site seems necessarily to be implied. If a site may be procured, it is certainly consistent with the statute that it might have on it a building which would be capable of “enlargement” or “improvement,” and if that building is suitable for present use without alteration there would be no good reason for holding that it could not be purchased and used. I recognize the principle that granted powers given to governmental agencies such as a township are to be strictly construed. But that principle ought not be carried to an absurd and destructive extreme. The late

Justice Cardozo, speaking of a doctrine of equity which he held was vital but over emphasized, said:

“We may not suffer it to petrify at the cost of its animating principle.” (Epstein v. Gluckin, 232 N. Y. 490.)

Accordingly it is my opinion that the statute in question is broad enough, taken in connection with the other powers of townships and municipalities to which I have referred, to authorize recourse thereto for the purpose of acquiring jointly a building to be used for the purpose suggested in your letter.

In an opinion found in 1928 Opinions of the Attorney General, page 1924, it was held:

“The control, management and duty of maintenance of a town hall or public building erected by a township and a village jointly are vested in the board of township trustees and in the council of the village.”

This language fairly implies a recognition that the statute applied not only to a town hall, but to any public building.

Specifically answering your inquiry it is my opinion that under the provisions of Sections 3399 to 3402, inclusive, of the General Code, a township in which a village is situated, and such village, may join in the acquisition and maintenance of lands and buildings for housing the road machinery of the township and the street equipment of the village.

Respectfully,

HUGH S. JENKINS
Attorney General