

1188

FIRE DEPARTMENT, VOLUNTEER—MEMBERS EMPLOYED UNDER CONTRACT BY TOWNSHIP DEEMED TOWNSHIP EMPLOYEES—SECTIONS 3298-54, 3298-57 G. C.

SYLLABUS:

Members of a volunteer fire department, who are employed under contract by a township pursuant to Section 3298-54, General Code, are deemed township employees within the meaning of Section 3298-57 of the General Code.

Columbus, Ohio, November 10, 1949

Hon. Ray Bradford, Prosecuting Attorney,
Clermont County, Batavia, Ohio

Dear Sir:

Your letter requesting my opinion reads as follows:

"We have a fire department in our county which is given \$500.00 each year by the trustees of one of our townships for protection. The fire department consists of sixteen volunteer firemen working under a charter and being lawfully organized. Their fire equipment is neither owned by the township or by any municipality, and was bought and maintained by donations given to said fire department by the people in the vicinity who were seeking fire protection.

"The question arises whether or not under Section 3298-57 the members of this volunteer fire department are employed by the township which gives them \$500.00 per year under a contract, and whether or not the sixteen firemen who are members of this fire department can be deemed township employees for the purpose of the workmen's compensation as set up under General Code 3298-57."

The legal authority for such a contract, as referred to in your request, is found in Section 3298-54 of the General Code and it reads in part as follows:

"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 may, with the approval of the specifications by the county prosecuting attorney, purchase or *otherwise provide* such

fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes as may seem to the trustees to be advisable, in which event they shall provide for the care and maintenance thereof, and, for such purposes, 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. Such township trustees may employ one or more persons to maintain and operate fire fighting equipment; *or they may enter into an agreement with a volunteer fire company for the use and operation of such equipment.* The trustees are empowered to compensate the members of a volunteer fire company on such basis and in such amount as the trustees deem fair and equitable. * * * (Emphasis added.)

This section was discussed by me recently in an Opinion of the Attorney General, No. 763, dated July 23, 1949, in which I said:

“Thus the authority is clear that with the approval of the prosecuting attorney the township trustees may purchase or otherwise provide fire fighting equipment, and under the term ‘or otherwise provide’ the legislature left nothing for the imagination when it provided as above emphasized, ‘or they may enter into an agreement with a volunteer fire department for the use and operation of such equipment.’”

Having once established the legal authority for such a contract, it is possible now to look to Section 3298-57, General Code, relative to the instant question. This section provides that:

“Members of volunteer fire companies or a person or persons employed by a township, or townships, on a part-time basis to operate or maintain fire fighting equipment or employed in any manner incidental thereto shall be deemed township employees for the purpose of workmen’s compensation insurance the same as though regularly employed as designated in section 1465-60 of the General Code.”

Section 3298-54 and Section 3298-57, *supra*, are in *pari materia* and should be construed together; however, Section 3298-57 is clear, and in so construing I can come to only one conclusion and that is, that members of a volunteer fire department, by virtue of a contract with the township trustees, are “employed in any manner incidental” to operating or maintaining fire fighting equipment, and as such employees are entitled to participate in workmen’s compensation insurance as provided for in said section.

In Southerland, Statutory Construction, Vol. 2, p. 316, Section 4502, it is said :

“The most common rule of statutory interpretation is the rule that a statute clear and unambiguous on its face need not and cannot be interpreted by a court and only those statutes which are ambiguous and of doubtful meaning are subject to the process of statutory interpretation. * * * ”

In view of the foregoing, and in specific answer to your question, you are advised that members of a volunteer fire department, who are employed under contract by a township pursuant to Section 3298-54, General Code, are deemed township employees within the meaning of Section 3298-57 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.