

of House Bill No. 11 of the third special session of the 90th General Assembly. Section 4 of this act reads as follows:

"Upon receipt of the certificate of net floating indebtedness from the auditor of state each board of education having any such indebtedness shall proceed to issue the bonds of the school district in the total sum of said indebtedness less the amount of bonds which may have been heretofore issued under the provisions of any act heretofore passed by the ninetieth general assembly authorizing the issuance of bonds and which bonds are already in excess of the debt limitations which may be incurred. * * *"

The financial statement submitted to me shows that this district has bonds outstanding which have been issued under the provisions of acts formerly passed by the 90th General Assembly, authorizing the issuance of bonds, and which bonds are already in excess of debt limitations in the sum of \$24,000 00.

As this amount is greater than the amount of net indebtedness as certified by the State Auditor, I am of the opinion that this district could not issue any bonds under House Bill No. 11. It is therefore my advice that you do not purchase these bonds.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3277.

VILLAGE—UNAUTHORIZED TO ENTER INTO AGREEMENT TO RENDER FIRE PROTECTION TO PRIVATE INDIVIDUALS RESIDING OUTSIDE VILLAGE.

SYLLABUS:

A village is unauthorized to enter into an agreement to render fire protection to private individuals residing outside such village.

COLUMBUS, OHIO, October 4, 1934.

HON. ORVILLE WEAR, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"The Village of North Hampton has a regularly organized fire department and desires to make provisions to serve people outside of the village, within a radius of thirty miles, upon call, for a fee of \$18.00 a run, and desires from the money so received, to pay its fire chief and two other men a small compensation for each such chief and men prescribed by ordinance.

Reference is made to the fact that Section 3298-60 authorizes villages to enter into contracts for fire service to be rendered townships; and reference is made to the case of *Realty Company vs. Youngstown*, 118 O. S. 204, in which it is stated that the home rule provision of the Constitution confers no extra-territorial powers on municipal corporations.

Inquiry is therefore made as to whether, without an express authorizing statute, villages having regularly organized fire departments may by ordinance or otherwise provide for the rendering of fire service outside the village at a specified rate for each call, and whether if such service is rendered the stipulated charge could be collected as upon an implied contract. If such arrangement is legal then the further inquiry is made as to whether members of the fire department, receiving from the village a stated compensation, may in addition thereto be allowed an additional sum for each call of the fire department made from without the village and whether this additional compensation may be given during the present term of appointment of such chief and men."

In a subsequent communication you informed me that the proposed agreement is intended as a blanket offer to persons living outside the village, and is not a proposed contract with another township or other political subdivision.

Section 3298-60, General Code, reads as follows:

"Any township, in order to obtain fire protection shall have authority to enter into a contract for a period not to exceed three (3) years with any city, village or township, upon such terms and conditions as are mutually agreed upon, for the use of its fire department and fire apparatus, if such contract is first authorized by the trustees of such township and the council of such city or village.

A similar contract may be made between a village and any city if authorized by the council of the village and the council of the city. Such contract shall provide for a fixed annual charge to be paid at such times as may be stipulated in the contract. All expenses thereunder shall be construed as a current expense and the taxing authority of the township or village shall make an appropriation therefor from the general funds, and shall provide for the same in their respective annual tax budgets."

By virtue of the above section, it is necessary to provide for a fixed annual charge in the making of contracts for fire protection.

In an opinion to be found in Opinions of the Attorney General for 1929, Volume II, page 868, it was held as disclosed by the syllabus:

"Under the provisions of Section 3298-60, General Code, as enacted by the 88th General Assembly, it will be necessary to provide for a fixed annual charge in the making of contracts for fire protection as authorized under said section."

In the above opinion the question was whether or not a township could contract with another township for fire protection at a definite amount for each fire run. Your question relates to the authority of a village to render fire services to private individuals for a certain sum for each call. After an examination of the laws relative to this question, I am unable to find any authority whereby a village may contract with a private individual for fire protection at a certain sum for each call, or even for such protection at a fixed annual charge.

It is, of course, fundamental that political subdivisions have such powers and only such powers as are expressly given to them by statutes and the Constitution, and such implied powers as are necessary to effectuate the expressed powers, except as to home rule powers of municipalities.

In view of the above, and in specific answer to your first question, it is my opinion that a village is unauthorized to enter into an agreement to render fire protection to private individuals residing outside such village.

In view of my answer to your first question, it is unnecessary to answer your second question.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3278.

DITCH SUPERVISOR—MAY ORDER REMOVAL OF UNDERBRUSH AND WEEDS IN DITCH UNDER HIS SUPERVISION.

SYLLABUS:

A ditch supervisor may order the removal of underbrush and weeds which prevent the free flow of water in a ditch under his supervision, in accordance with the provisions of Section 6691, Et. seq., General Code.

COLUMBUS, OHIO, October 4, 1934.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“A duly authorized and appointed Ditch Supervisor in Jackson Township, Putnam County, Ohio, desires to know whether or not he is authorized by law to clean out a certain ditch which is under his supervision by ordering the cutting of brush and the mowing of weeds in said ditch. The ditches under the supervision of this man have a great amount of underbrush and small growth timber growing in them and they are also filled with weeds, which prevent the free flow of water.

Section 6693 of the General Code provides that the ditch supervisor has authority to clean out and keep ditches, drains and water courses in repair as provided by law. The question is, does this language include the right of the ditch supervisor to cause the cutting of the brush and undergrowth and the mowing of weeds? I find no previous Attorney General's opinion or any case on this point and rather than have this matter come to court after the work has been done, I will be pleased for your opinion therein.”

Sections 6691, General Code, et seq., provide the procedure for repairing and cleaning ditches and drains which have been constructed in a township. These sections provide that the repair work is to be supervised by the county surveyor or the ditch supervisor, if one has been appointed, and provide for the apportionment of the work according to the benefits among the various land owners; and if the land owners fail to perform the work, the method is provided whereby the county surveyor or ditch supervisor may perform the work. The cost of the work is paid from the general ditch improvement fund of the county, and the county commissioners certify the cost to the county auditor, who is required to collect