

2292

POLICE PROTECTION—TOWNSHIP TRUSTEES—COUNTY COMMISSIONERS—§307.15 R.C.—TOWNSHIP APPROPRIATES MONEY TO COUNTY FOR SUBSEQUENT APPROPRIATION TO SHERIFF—COUNTY COMMISSIONERS CANNOT CONTRACT FOR ADDITIONAL DUTIES FOR SHERIFF.

SYLLABUS:

Under the provisions of Section 307.15, Revised Code, a board of township trustees has authority to enter into an agreement with the board of county commissioners, whereby such board will furnish to the township such police protection as the township is authorized by law to furnish for itself, and to pay for such service out of township funds; but said county commissioners would have no authority to have such police service performed by the sheriff or his deputies.

Columbus, Ohio, June 30, 1958

Hon. John S. Ballard, Prosecuting Attorney  
Summit County, Akron, Ohio

Dear Sir:

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

“Contracts have been entered into between the board of commissioners of Summit County and the township trustees of several of the townships of the county for the purpose of providing those particular townships with additional police protection.

“The contracts provide for payment by the township of sums sufficient to provide the additional police protection desired. The commissioners agree to provide the sheriff with additional funds with which to hire additional deputy sheriffs whose duties are to be confined to policing the township which by said contract provides the funds for the employment of the deputy or deputies.

“The sheriff does have the duty to provide police protection to unincorporated areas of the county. But that protection is limited by the appropriation for the operation of the sheriff’s office. In Summit County the sheriff has employed and does employ as many deputy sheriffs as the appropriation to his office will allow.

"The county commissioners have appropriated to the sheriff for the operation of that office as much money as is available. The townships have funds which they wish to use to provide additional police protection, and have by contract with the board of county commissioners attempted to provide for additional protection.

"The auditor of state has listed the funds expended by the townships for additional police protection by contract with the board of county commissioners as illegal expenditure.

"I respectfully request your opinion on the following questions:

1. May a board of township trustees enter into a contract with a board of county commissioners for additional police protection to be furnished by the sheriff through the assignment of additional deputies, whose duty it is to police that particular township?
2. May a board of township trustees legally expend money to pay for additional police protection to be furnished by the sheriff under the terms of township trustees and the board of county commissioners?"

County commissioners are authorized by Section 307.15, Revised Code, to enter into a contract with anyone of the public subdivisions named, relative to the performance by the county commissioners of part or all of the powers of such subdivision. This section, in so far as pertinent, reads as follows:

"The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil conservation district, water conservancy district, or other taxing district, or with the board of any other county, and such legislative authorities may enter into agreements with the board, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise *any power, perform any function, or render any service*, in behalf of the contracting subdivision or its legislative authority, *which such subdivision or legislative authority may exercise, perform, or render*.

"Upon the execution of such agreement and within the limitations prescribed by it, the board may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, *as amply as such powers are possessed and exercised by the contracting subdivision di-*

*rectly*. In the absence in such agreement of provisions determining by what officer, office, department, agency, or authority, the powers and duties of the board shall be exercised or performed, the board shall determine and assign such powers and duties. Sections 307.14 to 307.19, inclusive, of the Revised Code, or any agreement authorized by such sections, shall not suspend the possession by a contracting subdivision of any power or function exercised or performed by the board in pursuance of such agreement. Nor shall the board, by virtue of any agreement entered into under this section, acquire any power to levy taxes within and in behalf of a contracting subdivision unless approved by a majority of the electors of the contracting subdivisions.” (Emphasis added)

As your questions are directed to the power of the township rather than the county, I direct your attention to the explicit language of the statute giving the subdivisions named express power to enter into such contract.

It will be observed that the language of this section is very strong in describing the extent to which such transfer of the powers and duties of a subdivision may be carried. It appears to me to be all inclusive. After granting this wide authority, the legislature saw fit to emphasize it by providing when such an agreement has been made, the board of county commissioners may exercise the powers of the contracting subdivision, “as amply as such powers are possessed and exercised by the contracting subdivision directly.” It would appear, therefore, that to the extent that township trustees have authority to provide police protection for the township, they may transfer that power by contract to the county commissioners.

Township trustees, generally speaking, are not endowed with authority to exercise police powers. There is, however, one exception found in Section 509.16, Revised Code, which reads as follows:

“The board of township trustees may designate any qualified person as a police constable. The board may pay each police constable, from the general funds of the township, such compensation as the board by resolution prescribes for the time actually spent *in keeping the peace, protecting property, and performing duties as a police constable \* \* \**.” (Emphasis added)

It will be observed that this section describes very briefly the police authority of police constables. I find no other provision in the law which elaborates on this description or confers additional duties, excepting in Section 1901.32, Revised Code, which is a part of the law relating to

municipal courts, where it is provided that each constable appointed by a township is to be, *ex officio*, a deputy bailiff of said court. It would appear, therefore, that if the contract which you suggest is entered into, the county commissioners would have the right to appoint constables having the general duties described in said Section 509.16.

Your questions, however, indicate that the county commissioners will contract for additional police protection *to be furnished by the sheriff* through the appointment and assignment of additional deputies. I do not consider that the county commissioners could undertake in any degree to contract on behalf of the sheriff or agree to furnish services of the sheriff or his deputies.

The sheriff is an elected officer having prescribed duties which relate to the keeping of the peace and enforcement of the laws of the entire county. He is authorized by Section 311.04, Revised Code, to appoint one or more deputies, subject to the approval of the court of common pleas and the number which he may appoint is limited only by the amount of funds placed at his disposal by appropriation of the county commissioners. The assignment of specific duties of his several deputies would be a matter solely within his control.

In the form in which your questions are phrased, my answer would have to be in the negative for the reasons just indicated.

Your second question is directed explicitly to the right of the township trustees to expend money to pay for the service for which they contract. Where the law authorizes a public body to contract for property or services to be furnished to it, the power to pay for the same follows as a necessary inference. This appears to me so obvious that I do not deem it necessary to search for authorities.

Accordingly, it is my opinion that under the provisions of Section 307.15, Revised Code, a board of township trustees has authority to enter into an agreement with the board of county commissioners, whereby such board will furnish to the township such police protection as the township is authorized by law to furnish for itself, and to pay for such service out of township funds; but said county commissioners would have no authority to agree to have such police service performed by the sheriff or his deputies.

Respectfully,  
WILLIAM SAXBE  
Attorney General