

Note from the Attorney General's Office:

1955 Op. Att'y Gen. No. 55-5562 was clarified by 1987
Op. Att'y Gen. No. 87-014.

5562

1. CIVIL DEFENSE—TOWNSHIP HAS AUTHORITY TO ESTABLISH LOCAL ORGANIZATION—MAY PROVIDE METHOD TO SELECT DIRECTOR—TOWNSHIP TRUSTEES MAY APPOINT DIRECTOR—SECTION 5915.06 RC.
2. TOWNSHIP HAS AUTHORITY TO MAKE APPROPRIATION FOR EXPENSES OF LOCAL CIVIL DEFENSE ORGANIZATIONS—PAYMENT OF EXPENSE—IF PART OF COUNTY WIDE CIVIL DEFENSE ORGANIZATION—CHARGEABLE TO TOWNSHIP—SECTIONS 5915.07, 5915.11 RC.

SYLLABUS:

1. Under the provisions of Section 5915.06, Revised Code, a township has authority to establish a local organization for civil defense and as an incident of such power may provide the method of selection of the director of such organization. Such authority to establish such organization is to be exercised by the township trustees who may, if they so elect, themselves appoint such director.

2. Under the provisions of Section 5915.11, Revised Code, 5298, G. C., a township has authority to make appropriation for the expenses of its local civil defense organizations, and for payment of the expense chargeable to it in case it becomes a part of a county wide civil defense organization set up pursuant to Section 5915.07, Revised Code.

Columbus, Ohio, July 30, 1955

Hon. Bernard F. McCann, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"This office would appreciate an opinion concerning the problem of civil defense in this county.

"It will be noted that your opinion 1041 A. G. O., 1952, stated that township trustees of a township included within the areas served by a civil defense organization are not authorized by the provisions of Section 5298 G. C. to make appropriations for the payment of a part of the expenses of such organization. This opinion was based on the fact that G. C. 5295 authorized only *counties* and *incorporated municipalities* to establish local organizations for civil defense, and that G. C. 5298 (R. C. 5915.11) and G. C. 5295 (R. C. 5915.06) were to be construed together.

"Since that opinion G. C. 5295 was amended that being the present R. C. 5915.06, which states '*each county or other political subdivision may establish a local organization * * **'.

"It seems that under the new R. C. 5915.06 the statute contemplates that trustees of a township may now participate in establishing a 'local' civil defense organization, and in construing that revised statute with R. C. 5915.11 that townships may make appropriations for the payment of the expenses of its 'local' organization.

"This presents two questions for the Jefferson County Civil Defense Organization:

"1st: Under R. C. 5915.06, who appoints the director of civil defense created by the township trustees?

"2nd: Assuming that a township does not have the population and facilities necessary to create an effective unit within the township, can the township trustees make an appropriation to the 'local' county unit for civil defense, particularly where the county civil defense organization creates a part or a whole of the township into a civil defense section, under section command? I might add that the section command is responsible to the county civil defense director.

"I am sure the answer to this problem will be of great value not only to our county but to other counties throughout the state as well."

1. Prior to the adoption of the Revised Code, the statutes relating to civil defense were found in Section 5291 et seq. of the General Code. These sections were codified in the Revised Code as Sections 5915.01 to 5915.14, inclusive. By an Act which became effective september 6, 1953, 125 O. L. page 419, these sections were amended and a new Section 5915.01 was introduced, thus necessitating renumbering, by adding one to the number of each of the remaining sections. The new Section 5915.01 contained a series of definitions, among others being :

“(F) ‘Political subdivision’ includes a county, *township*, city, or village.”

To avoid confusion, I shall refer to the other sections which are pertinent, by their new numbers. What is now Section 5915.06, prior to the change just noted provided in part as follows :

“Each *county and municipal corporation* of this state may establish a local organization for civil defense in accordance with the regulations promulgated by the governor. Each local organization for civil defense shall have a director who shall be appointed by the board of county commissioners *for the counties* and by the chief executive for the municipal corporations. * * *”

(Emphasis added.)

It will be observed that this section did not authorize the establishment by a township of a local organization for civil defense. It will be further observed that the county commissioners were authorized to appoint a director “for the counties.”

In the amendment of this section the sentences above quoted were changed to read :

“Each county *or other political subdivision* of this state may establish a local organization for civil defense in accordance with the regulations promulgated by the governor. Each local organization for civil defense shall have a director who shall be appointed by the board of county commissioners for the counties and by the chief executive for the municipal corporations. * * *”

(Emphasis added.)

It will be noted here that instead of “each county and municipal corporation,” authority was given to “each county or other political subdivision” to establish a local organization. In view of the provision of Section 5915.01

above noted, which was part of the same act, it seems evident that authority was thereby given to townships to establish a local organization since they were included in the definition of "political subdivision." However, it is further to be noted that no change whatever was made in the language of the section as to the appointment of a director. The section provides as it did before that the director "for the counties" should be appointed by the county commissioners.

The question thus presented is whether the expression "for the counties" is sufficient to refer to township organizations as well as county organizations for civil defense.

It may first be noted that the statute requires that "each local organization * * * shall have a director," and unless the expression above noted applies to township organizations it is clear that the statute has failed to prescribe the manner of the director's appointment in such case. As originally enacted in the statute the expression "for the counties" was clearly applicable only to county organizations, and I perceive nothing in the 1953 amendment suggestive of the notion that the meaning of such term was to be expanded.

This does not mean, however, that there is a complete lack of authority to appoint such director in the case of a township organization, for the term "organization" itself implies an authority on the part of the agency creating it, to designate the governing body, committee or officer by which the organization's executive powers are to be exercised. The word "organization" is defined by Webster, as follows:

"1. Act or process of organizing. 2. State or manner of being organized; organic structure. 3. Any vitally or systematically organic whole; as association or society. 4. *The executive structure of a business; the personnel of management.* 5. The entire body of the officials and committees, national, State, or local, of a political party." (Emphasis added.)

In view of this definition, it can be concluded that the statutory provision noted above in reference to the appointment of a director of a county or municipal organization was unnecessary as a *grant* of authority, and so must be regarded as merely restrictive of the authority implied in the grant of power to create the organization. From this it follows that the township trustees as the governing body of the township, may determine in their discretion as an incident of creation of the organization, how the director

thereof shall be chosen ; and they may if they so elect provide that such director is to be chosen by the trustees themselves.

2. Coming to your second question, I call attention to an opinion which I rendered on January 4, 1952, to wit, No. 1041, Opinions of the Attorney General for 1952, page 1, in which it was held :

“Township trustees of a township included within the area served by a civil defense organization, are not authorized by the provisions of Section 5298, General Code, to make appropriations for the payment of a part of the expenses of such organization.”

It will be observed that this opinion was rendered prior to the amendment of present Section 5915.06, Revised Code, at a time when the authority to establish a local organization was limited to counties and municipalities ; and while Section 5298 General Code, then in effect, provided that “each political subdivision” should have the power to make appropriation for the payment of the expenses of its local organization for civil defense and for the payment of the expenses chargeable to it under an agreement establishing a county wide civil defense organization, yet I was forced to the conclusion that the use of the words “political subdivision” in that section could not have been intended to include townships because at that time they had no power to establish a local defense organization, and had no power to enter into an agreement with the county and municipalities for the establishment of a county wide local civil defense organization.

In addition to the power which has now been given to townships to establish a local organization, the 1953 amendment referred to, has changed the provision of present Section 5915.07, relating to county wide local organizations for civil defense by including not only the county commissioners and the municipal corporations but also the legislative authority of “all or a majority of the other political subdivisions.” The pertinent portion of that section reads as follows :

“The board of county commissioners of any county and the legislative authority of all or of a majority of the other political subdivisions, including the municipal corporation having the largest population, within such county may enter into an agreement establishing a county-wide local organization for civil defense in accordance with such regulations as are promulgated by the governor. A director of civil defense who shall have the direct responsibility for the organization, administration, and operation of such county-wide local organization for civil defense shall be

appointed in accordance with and *shall be subject to the direction and control prescribed by the regulations promulgated by the governor. * * *.*" (Emphasis added.)

Section 5915.11, Revised Code, G. C. 5298, reads as follows:

"Each political subdivision may make appropriations for the payment of the expenses of its local organization for civil defense and for the payment of the expenses chargeable to such political subdivision by agreement or under regulations promulgated by the governor in any county wherein a county-wide civil defense organization has been established pursuant to section 5915.07 of the Revised Code."

Accordingly, in view of the provision of the law to which I have called attention, making a "political subdivision" to include a township, and the enlargement of its powers relative to the establishment of a civil defense organization, I am of the opinion that the township has authority to make an appropriation for the expenses of its own organization and for its proper proportion of the expense of a county wide civil defense organization to which it may become a party.

Accordingly, in specific answer to your questions it is my opinion:

1. Under the provisions of Section 5915.06 Revised Code, a township has authority to establish a local organization for civil defense and as an incident of such power may provide the method of selection of the director of such organization. Such authority to establish such organization is to be exercised by the township trustees who may, if they so elect, themselves appoint such director.
2. Under the provisions of Section 5915.11, Revised Code, 5298 G. C., a township has authority to make appropriation for the expenses of its local civil defense organizations, and for payment of the expense chargeable to it in case it becomes a part of a county wide civil defense organization set up pursuant to Section 5915.07, Revised Code.

Respectfully,
C. WILLIAM O'NEILL
Attorney General