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FIRE PROTECTION—TWO TOWNSHIPS JOINED TOGETHER FOR FIRE PROTECTION—PURCHASES OF FIRE EQUIPMENT MUST BE BY MUTUAL AGREEMENT—PARTICULAR PURCHASES—TOWNSHIP TRUSTEES MAY NOT VOTE AS TRUSTEES OF SINGLE UNIT—SECTION 3298-54 G. C.

SYLLABUS:

Where two townships have joined together to provide fire protection under the provisions of Section 3298-54, General Code, the purchases of fire equipment for such purpose must be by mutual agreement of both townships; and in reaching such agreements as to particular purchases of equipment the trustees of such townships may not vote as the trustees of a single unit.

Columbus, Ohio, September 21, 1950

Hon. Webb D. Tomb, Prosecuting Attorney  
Seneca County, Tiffin, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Pursuant to the provisions of Section 3298-54 of the Ohio General Code, the Trustees of two townships in Seneca County met and by resolution determined to ‘join together’ for the purpose of providing fire protection and purchasing a fire truck and other equipment.

“At a subsequent joint meeting of the two boards of trustees, a resolution was passed authorizing the purchase of certain equipment, including a fire truck. However, this resolution was passed by a vote of four to two, the two trustees who voted against the resolution being from the same township.

“Your opinion is requested as to whether the second para-

graph of Section 3298-54 of the General Code, which reads as follows: 'the trustees of any two or more townships or the councils or other legislative authorities of any two or more political subdivisions or any combination thereof, are authorized through joint action to unite in the joint purchase, maintenance, use and operation of fire fighting equipment, or for any other purpose designated in this act, and to pro-rate the expense on such terms as *may be mutually agreed upon*', authorizes the joint purchase of fire fighting equipment by two townships where, as in this case, a majority of the trustees of one township vote against such purchase.

"To frame the question differently, are two such boards of trustees a single unit for the purpose of providing fire protection, or must such action be authorized by each of such boards separately?

"I would appreciate an opinion upon this question as soon as possible, inasmuch as the order for the truck and the other equipments has been placed and it will be necessary to withhold delivery until your reply is received."

While I do not have before me the text of the initial resolution by which the trustees of the two townships determined to "join together" to make certain purchases of equipment for fire protection, I assume that it contained no agreement of a concrete nature either with respect to the purchase of particular equipment nor for the terms upon which the expense of such purchase was to be shared.

It is to be observed that the second paragraph of Section 3298-54, General Code, quoted in your inquiry, authorizes the two townships "to pro-rate the expense upon such terms *as may be mutually agreed upon*." (Emphasis added.)

A mutual agreement is one which is concluded by two or more parties. Where it concerns the sharing of expense, as it does here, such parties must of necessity be those upon whom the expense will fall, in this case the two townships. Accordingly, the mutual agreement contemplated by Section 3298-54, General Code, is one to which each township separately gives its assent.

In the case you have described this has not been done with respect to the concrete proposal of sharing the expense of purchase of a particular piece of fire equipment. While there was apparently a preliminary mutual agreement of a general nature, I must conclude that this could not have the effect of binding the two parties in advance to share the expense of particular projects.

There is, of course, no statutory provision that two townships which enter into such an agreement under Section 3298-54, General Code, shall thereby be merged, for such purposes, into a single unit. The language of the statute stresses "joint action," "joint purchase," and terms "mutually agreed upon," all of which negatives a legislative intent that the subdivisions concerned shall operate thereunder in other than their separate capacities.

Additional support is given this view by the final paragraph of Section 3298-54, General Code, which reads as follows:

"The board of trustees of any township or fire district or districts created by them under the provisions of this act, may purchase the necessary fire fighting equipment for such township, fire district or districts and pay for the same over a period of four years. Such trustees shall be authorized to issue the notes of the township, fire district or districts, as the case may be, signed by the trustees and attested by the signature of the township clerk, and covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed six per cent per annum, and shall not be subject to the provisions of sections 2293-1 to 2293-37a, inclusive, of the General Code. The amount of such purchase shall not exceed ten thousand dollars covered by the issuance of notes payable over a period of four years. One-fourth of such purchase price shall be paid at time of purchase. The remainder of the purchase price shall be covered by said notes maturing in two, three and four years respectively. Such notes shall be offered for sale on the open market or given to the vendor if no sale is made."

In view of these provisions it is difficult to see how the trustees of a township, a majority of whose trustees opposed a particular purchase, could be required to take the necessary steps to finance a share of the purchase price. With respect to this question a somewhat similar question was considered by one of my predecessors in office in 1940, Opinions of the Attorney General for 1940, Opinion No. 2520, the first paragraph of the syllabus of which reads as follows:

"A township and a village cooperating under the terms of Section 3298-54, General Code, in the purchase of fire fighting equipment may not vote jointly as a unit upon the question of issuing bonds to finance the purchase of such equipment."

In the body of this opinion the following statement is found (p. 679):

"\* \* \* In addition, it should be observed that Section 3298-54 and 3298-60, General Code, although they provide for

joint action by townships and municipalities in matters relating to fire protection, do not set up or constitute the cooperating divisions a voting unit or a subdivision either in general terms or within the meaning of the word as used in the Uniform Bond Act.”

I concur in this conclusion and for reasons above stated, and in specific answer to your inquiry, it is my opinion that :

Where two townships have joined together to provide fire protection under the provisions of Section 3298-54, General Code, the purchases of fire equipment for such purpose must be by mutual agreement of both townships ; and in reaching such agreements as to particular purchases of equipment the trustees of such townships may not vote as the trustees of a single unit.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.