

2520.

1. FIRE FIGHTING EQUIPMENT—TOWNSHIP AND VILLAGE—WHEN THEY CO-OPERATE UNDER SECTION 3298-54 G. C.—MAY NOT JOINTLY VOTE AS UNIT TO ISSUE BONDS TO FINANCE SUCH EQUIPMENT.
2. VOLUNTEER FIRE DEPARTMENT, VILLAGE — MEMBERS, EMPLOYES OF VILLAGE—SECTION 1465-61 G. C.—WHEN THEY ACT UNDER CONTRACT FOR FIRE PROTECTION, IN ANOTHER SUBDIVISION, OUTSIDE OF VILLAGE—SUBJECT TO AND ENTITLED TO BENEFITS WORKMEN'S COMPENSATION ACT.

SYLLABUS:

1. *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.*

2. *Members of a volunteer fire department of a village, who are employes of the village under Section 1465-61, General Code, acting outside such village and in another subdivision pursuant to a contract providing fire protection for said subdivision, are subject to and are entitled to the benefits of the Workmen's Compensation Act while so engaged.*

Columbus, Ohio, July 12, 1940.

Hon. Ferdinand E. Warren, Prosecuting Attorney,  
Ottawa, Ohio.

Dear Sir:

This will acknowledge your recent letter wherein you inquire as follows:

“A Board of Township Trustees and an incorporated Village in our county are attempting to purchase jointly a fire truck under Section 3298-54 to 60, inclusive. Neither body has sufficient money in its general fund to pay for the truck and it will be necessary to vote on a bond issue for that purpose.

I have been asked to secure your opinion as to whether or not it would be possible for the Township and the Village to vote jointly on the amount required for the truck and equipment at the next November election.

I should also like your opinion on the following: One of the Villages in this county has entered into a contract to furnish fire equipment and firemen for the protection of an adjoining township under Section 3298-60. Do the provisions of the Workmen's Compensation Act, Ohio General Code 1465-1, et seq. cover the volunteer firemen of the Village when they are making a run in the ship and outside of the corporate limits of the Village?"

The first question you present therein is whether or not a township and a village cooperating in such purchase may vote jointly as a unit on the bond issue necessary to finance such purchase.

Under Section 3298-54, General Code, as amended by House Bill No. 442, 93rd General Assembly, it is now provided:

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The trustees of any two or more townships or the councils of 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."

By the permissive terms of that section, it is now possible for two or more subdivisions to unite in the purchase and maintenance of fire fighting equipment.

By the next succeeding section, Section 3298-55, General Code, the township trustees are authorized to levy a sufficient tax on all taxable property within the township to "provide protection against fire and to provide and maintain fire apparatus." By Section 3298-56, General Code, it is provided that no bonds shall be issued by the township trustees for such purposes unless approved by vote of the people "in the manner provided by law."

The provisions of the Uniform Bond Act, Sections 2293-1, et seq., General Code, grant, limit and regulate the right of subdivisions of the State to submit to the electorate the matter of the issuance of bonds. Under Section 2293-19, General Code, it is provided:

“The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which said subdivision has power to issue. \* \* \* ”

The word “subdivision” as used in the last quoted section is defined under Section 2293-1 (a), General Code, as follows:

“‘Subdivision’ shall mean any county, school district except the county school district, municipal corporation or township in the state.”

Viewing all of the above, it becomes apparent that the issuance of bonds to finance the purchase of fire fighting equipment shall be in the manner provided by law and that the specific sections of the Uniform Bond Act providing for the submission of such matters contemplate that such matters shall be submitted by subdivisions and further that the legislative definition of the word “subdivision” does not include, as a voting unit, a township and a village which may be cooperating in the purchase of fire fighting equipment under the terms of Section 3298-54, supra. 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.

To illustrate the complete fallacy of an attempt to submit such matters to the township and village as a voting unit, it is only necessary to pose the following questions: If, in the combined voting unit, a requisite number of voters approved the issuance of the bonds and yet in one of the cooperating subdivisions there is lacking the requisite number of affirmative votes, by what authority would the latter subdivision proceed with the issuance of bonds? In what name would the bonds of such combined unit be issued: Who would act as the fiscal officer of such unit? And, what would be the proportionate share of the debt charges to be borne by each subdivision?

The lack of an answer provided by existing law to such questions leads to but one conclusion which is, and it is my opinion, that no authority of law exists to permit subdivisions, cooperating in the purchase of fire fighting equipment under the terms of Section 3298-54, supra, to vote jointly as a unit upon the issuance of bonds to finance such purchase.

The second inquiry you present for answer is whether or not volunteer

firemen of a village operate under the protection of the Workmen's Compensation Act while engaged in fire fighting duties outside of such village and in a township cooperating with the village in the matter of fire protection under the terms of Section 3298-60, General Code.

Your letter does not state whether the village concerned maintains a firemen's pension fund. It should be pointed out in that connection that the existence of a firemen's pension fund, by the terms of Section 1465-61, General Code, qualifies the right of a fireman to participate in workmen's compensation. However, it is clear that volunteer firemen, on the basis of whatever compensation they may receive, are village employes under the terms of Section 1465-61, General Code, and may be compensated under the Workmen's Compensation Act if injured in the course of their duty. See *State, ex rel. Smith vs. Industrial Commission*, 127 O. S. 217; 1930 Opinions of the Attorney General, No. 1536; 1929 Opinions of the Attorney General, No. 937.

It having been determined that volunteer firemen are employes of a village within the meaning of Section 1465-61, for the purposes of workmen's compensation, the provisions of Section 3298-60, General Code, are directly applicable and provide a complete answer to your second inquiry. The pertinent portion of such section is as follows:

"Fire department members acting outside the subdivision in which they are employed pursuant to such contracts, shall be entitled to participate in any pension or indemnity fund established by their employer to the same extent as while acting within the employing subdivision, if the rules of the board of trustees of the firemen's pension or indemnity fund provide therefor; and shall be entitled to all the rights and benefits of the workmen's compensation act, to the same extent as while performing service within said subdivision."

You are accordingly advised, and it is my opinion that: (1) 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; (2) Members of a volunteer fire department of a village, who are employes of the village under Section 1465-61, General Code, acting outside such village and in another subdivision pursuant to a contract

providing fire protection for said subdivision, are subject to and are entitled to the benefits of the Workmen's Compensation Act while so engaged.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.