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SYLLABUS:

An Ohio municipality may not under Section 717.02, Revised Code, contract with individuals living outside the state to furnish the latter with fire protection.

Columbus, Ohio, October 30, 1963

Hon. John R. DeMuth
Prosecuting Attorney
Paulding County
Paulding, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Under the provisions of R. C. 717.02 can a municipal fire department enter into a contract with a person for fire protection for property outside the state of Ohio?”
Section 717.02, Revised Code, in material part is as follows:

“In order to obtain fire protection, or to obtain additional fire protection in times of emergency, any municipal

corporation, township, or township fire district may enter into a contract between or among any number of them, or with private fire companies, upon such terms as are agreed to by them, for services of fire departments, or the use of fire apparatus, or the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivisions and private fire companies, if such contract is first authorized by the respective boards of township trustees or other legislative bodies.

“Any municipal corporation may enter into a contract, for a period not to exceed three years, with any person, group of persons, firm, or corporation, owning or having an interest in property outside such municipal corporation, which desires to obtain fire protection for such property, upon such terms as are agreed upon for services of the fire department of such municipal corporation, provided such contract is first authorized by the legislative authority of the municipal corporation. Twenty-five per cent of the amount received by such municipal corporation on any such contract shall be paid into the fireman’s relief and pension fund.

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(Emphasis added)

An opinion that I rendered in 1957 is pertinent to a disposition of your question. Opinion No. 292, Opinions of the Attorney General for 1957, page 85. Under a statute very similar to the one here in issue, the question was asked whether an Ohio township had authority to contract to obtain additional fire protection with bordering townships in the State of Michigan. I held at page 86 that the Ohio township had no such authority since:

“It is well settled that township trustees possess only those powers which are (1) expressly conferred by statute or (2) by necessary implication to perform the duties so imposed upon them. * *”*

and that this statute does not:

“ * * grant township trustees the express authority to contract with a political subdivision in another state.* * *”*

The statute in that opinion (Section 505.44, Revised Code) under which I so ruled, stated:

“In order to obtain fire protection, or to obtain addi-

tional fire protection in times of emergency, any township may enter into a contract, for a period not to exceed three years, with one or more townships, municipal corporations, or private fire companies, upon such terms as are agreed to by them, for services of fire departments, or the use of fire apparatus ,or the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivisions and private companies, if such contract is first authorized by the respective boards of township trustees or other legislative bodies.

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My opinion was affirmed in whole by my successor in office. Opinion No. 2036, Opinions of the Attorney General for 1961, page 87. Like the 1957 opinion, the 1961 opinion had under consideration Section 505.44, *supra*. It was concluded in the 1961 opinion as disclosed by the syllabus:

“A board of township trustees has no authority, either express or implied, to enter into a contract with a village in an adjoining state for the furnishing of fire protection to the township. (Opinion number 292, Opinions of the Attorney General for 1957, page 85, approved and followed.)”

At page 88 of that opinion, the following was stated as a basis for the decision:

*“Ohio statutes must relate to this state only unless otherwise expressed in the statute, * * *.”*

(Emphasis added)

It is important to note the similarity between Section 717.02, Revised Code, and Section 505.44, Revised Code, as it existed during these two opinions.

It is clear, beyond the need for further argument, that the proposed contract between the Village of Antwerp, Ohio, and the several individuals living in Indiana to furnish the latter with fire protection is not authorized under existing statutes. However, further support for this conclusion is supplied by the amendment to Section 505.44, Revised Code, which occurred subsequent to the 1957 and 1961 opinions, *supra*. Section 505.44, Revised Code, effective September 1961, reads:

“In order to obtain fire protection, or to obtain addi-

tional fire protection in times of emergency, any township may enter into a contract, for a period not to exceed three years, with one or more townships, municipal corporations, or private fire companies, *regardless of whether or not such township or townships, municipal corporation or corporations, or private fire company or companies are located within or without the state*, upon such terms as are agreed to by them, for services of fire departments, or the use of fire apparatus, or the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivisions and private fire companies, if such contract is first authorized by the respective boards of township trustees or other legislative bodies.

“* * *

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(Emphasis added)

The legislature did not add any such language to Section 717.02, Revised Code, and, therefore, it must be assumed that they did not intend a municipality to contract outside the state to obtain fire protection.

Based upon the above authority and considerations I conclude that the words “person” or “group of persons” as used in Section 717.02, Revised Code, refer to persons domiciled within the state of Ohio.

It is therefore my opinion and you are accordingly advised that an Ohio municipality may not under Section 717.02, Revised Code, contract with individuals living outside the state to furnish the latter with fire protection.

Respectfully,
WILLIAM B. SAXBE
Attorney General