

726.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE CROSSING  
OVER B. & O. R. R. IN BUTLER COUNTY.

COLUMBUS, OHIO, August 12, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter under date of August 5, 1929, enclosing a copy of a contract providing for the elimination of grade crossing over the tracks of the B. & O. Railroad in Butler County on (I. C. H.) No. 43 near Schenk's Crossing.

I have carefully examined the agreement, and find it correct in form, and hereby approve the same.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

727.

MUNICIPALITY—RIGHT TO CONTRACT FOR FIRE PROTECTION WITH  
PRIVATE VOLUNTEER COMPANY—EXCEPTION NOTED.

SYLLABUS:

*A municipal corporation may legally contract for fire protection with a volunteer company which is a private organization and pay for such protection from public funds, unless such municipality in pursuance of its constitutional authority, has adopted a charter and other regulations inconsistent with the provisions of the general law with respect to such power.*

COLUMBUS, OHIO, August 12, 1929.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“May a municipal corporation legally contract for fire protection with a volunteer company, which is a private organization, and legally pay for such protection from public funds?”

It is a cardinal rule, as established by judicial interpretation in this state, that municipalities have only such powers as are expressly granted by the constitution or legislative enactments, and such implied power as is essential to carry into effect the express powers so granted.

Section 4393 of the General Code, which is a part of Chapter 9, under the sub-heading of Cities and Villages, provides:

“The council may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damages and accidents resulting therefrom, and for such purpose may establish and maintain a fire department, provide for the establishment and organization

of fire engine and hose companies, establish the hours of labor of the members of its fire department, but after the first day of January, nineteen hundred and eleven, council shall not require any fireman to be on duty continuously more than six days in every seven, and provide such by-laws and regulations for their government as is deemed necessary and proper."

While the above section relates to both cities and villages, Sections 4389 to 4392, inclusive, relate to the fire department in villages. In the latter sections mention is made of "all firemen other than volunteers." Therefore, by implication, the conclusion is justified that a volunteer fire department of some sort is recognized in said statutes. Section 4391 provides that the council may purchase for its own use or for the use of such companies certain fire engines and other equipment and apparatus as it is deemed necessary for the extinguishment of fires.

Section 4392 provides that council may provide suitable buildings for fire engines and apparatus and "provide for the meetings of fire and hose companies." It therefore appears that in so far as villages are concerned, there is a recognition of the establishment of volunteer fire organizations aside from the power to establish such departments as a part of the municipal government. In Section 4393, *supra*, which relates to both cities and villages, it does not appear to be so clearly established that a volunteer company is contemplated in cities. In any event, a rather broad power is granted in said section authorizing municipalities to "establish all necessary regulations to guard against the occurrence of fires." Said section further apparently clearly authorizes such municipalities to protect the property and lives of the citizens against damages and accidents resulting from fire, and in addition to the power of establishing a department, authorizes the organization of fire hose companies.

In an opinion of my predecessor, No. 2955, issued to Hon. J. R. Pollock, Prosecuting Attorney, Defiance, Ohio, under date of November 30, 1928, a comprehensive discussion was given to the question of whether or not the township trustees could, under the provisions of Section 3298-54 of the General Code, enter into an agreement with a village whereby the village would be required to furnish fire protection to the township at an agreed price per year or per month, to be paid out of the township funds. The then Attorney General, after a thorough consideration of the question, gave an affirmative answer.

In this connection, it will be observed that Section 3298-54 contains very similar language with reference to authorizing the trustees to establish all necessary regulations to guard against occurrences of fires and to protect the property and lives of the citizens against damages and accidents resulting therefrom as it contained in Section 4393, *supra*. In fact, it would appear that the Legislature in the enactment of Section 3298-54, in so far as the broad powers are concerned, apparently used the former section as a guide because in certain instances the language is identical.

It is therefore believed that by analogy what the then Attorney General said in his opinion above referred to with reference to the powers of the trustees under the provisions of said Section 3298-54 will be equally applicable to the general powers granted to municipalities under Section 4393, *supra*. The following is quoted from said opinion of the Attorney General:

"The language of the first clause of Section 3298-54, General Code, is a distinct grant of authority and is independent of the succeeding provisions of the statute as is also the first clause of Section 3298-55. It cannot be presumed that the Legislature in delegating authority to statutory boards and similar governmental agencies delegates in express language and in minute detail each and every act which it is necessary for the board to do in order to accomplish the ends which the authority in general terms seeks to accomplish.

The delegation of a power to accomplish a certain end necessarily carries with it the power to do all things necessary to consummate that purpose. Such boards have some discretion which the courts will respect. The Legislature has in general terms authorized township trustees to establish all necessary regulations to guard against the occurrence of fires, protect the property and the lives of citizens against damages and accidents resulting therefrom and to levy in any year or years a sufficient tax upon all the taxable property in the township to provide protection against fire, and has not limited the manner in which the trustees are to provide this protection. It therefore must be conceded that the Legislature has reposed in the trustees the discretion of accomplishing the end desired, and it is my opinion that in so doing a board of township trustees may lawfully, if it does not abuse its discretion in so doing, provide for the protection of the property and lives of the citizens of the township against damages and accidents resulting from fires by contracting with a neighboring municipality, which maintains a fire department, for the use of such fire department in putting out fires within the township. Having that discretion, the trustees may contract for the use of the fire department by the month or by the year, or by paying for the use of the department for each fire as it occurs."

In view of the foregoing, it would seem that inasmuch as the broad power is granted to municipalities to protect the property and lives of its inhabitants against fire, it must necessarily have such implied power as is necessary to carry into effect the express power. It is easy to conceive of a municipality being so situated by reason of its size and financial condition that it would be more profitable to arrange with some volunteer or private organization to furnish fire protection under some contractual agreement than it would be to undertake to establish a fire department of its own. If such a condition exists in the sound discretion of the municipal officers, it is difficult to see any objection to its entering into such an arrangement.

Section 4393, hereinbefore mentioned and quoted, clearly contemplates some other method of procedure in addition to the establishment of a municipal fire department. What has been stated herein, of course, has been without consideration of the provisions of Section 3 of Article XVIII of the Ohio Constitution which relate to the so-called home rule provisions governing municipalities. However, it is believed that any such provision would in nowise limit the power of such municipalities as granted to them under the general law, unless such municipalities, in the exercise of their constitutional powers, have adopted a charter prescribing regulations inconsistent with the provisions of the general law.

In connection with this inquiry, Section 6 of Article VIII of the Ohio Constitution has been noted, which, among other things, provides that no law shall be passed authorizing any city to loan its credit to or in aid of any company, corporation or association, etc. However, it is believed that entering into a contract for a given service, such as arranging for the furnishing of fire protection, would not necessarily be in violation of this constitutional provision. Said section has in mind donations or joint ownership or some act other than simply purchasing a service.

I am entirely cognizant of the apparent inconsistency in the receipt of any consideration for services rendered by a *volunteer* fire company. This is true because the word "volunteer" imports one who performs a service gratuitously. At the same time, the valuable public service being rendered in Ohio by the thousands of volunteer firemen must be recognized, and I do not feel that a certain measure of consideration passing to a company of volunteers for the services rendered is in any way contrary to public policy or in contravention of law. In the operation of such a fire company expenses are necessarily incurred and a partial or even total reimbursement of those expenses by the municipality would certainly be justified.

By this I do not mean to say that payment under the contract can exceed the expenses to which the company is put, for this would make the operation one for profit and I am not attempting to pass upon the right of a municipality to contract for fire protection with a corporation either organized for profit or in fact operated for profit. Neither is it my intention to sanction a contract which, in effect, would ultimately result in the purchase of equipment, through the agency of a volunteer company, for the municipality and by such means avoid the provisions of law relative to competitive bidding.

Subject to these qualifications, however, I believe that payment may be made and that such payment does not prevent the organization receiving such payment from being classed as a volunteer company. Such an arrangement is particularly valuable to the smaller communities in which the maintenance of a regular fire department would constitute too heavy a burden and in which substantially the same result can be accomplished at an effective saving of public expenditure through employing the services proffered in a spirit of civic pride and public service by volunteer fire companies.

In view of the foregoing, and in specific answer to your inquiry, it is my opinion that a municipal corporation may legally contract for fire protection with a volunteer company which is a private organization and pay for such protection from public funds, unless such municipality in pursuance of its constitutional authority, has adopted a charter and other regulations inconsistent with the provisions of the general law with respect to such power.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

728.

CORONER—VIEWING BODY OF LIVING PERSON SUPPOSED TO BE  
DEAD—TRAVELING FEE LAWFUL.

*SYLLABUS:*

1. *When a coroner has been informed that a dead body has been found in his county, whose death is supposed to have been caused by unlawful or suspicious means, and he travels to the place where the body is reported to be, he is entitled to a fee of ten cents for each mile traveled by reason of such information.*
2. *Such right is not defeated by the fact that the information was false.*

COLUMBUS, OHIO, August 12, 1929.

HON. G. G. JEWELL, *Prosecuting Attorney, Eaton, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

“On May 30, 1929, Dr. C. M. Treffinger, coroner of Preble County, was notified that a dead man had been found four miles northeast of Eaton. The coroner went to the place designated without delay. Dr. Treffinger made an examination which showed the man was alive. The man was intoxicated and had been run over by an automobile, thus causing a belief that he was dead.

The coroner is of the opinion that he is entitled to fees, etc., the same