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1. CONTRACT — MADE BY VILLAGE WITH SEVERAL ADJOINING TOWNSHIPS TO FURNISH FIRE PROTECTION — SECTION 3298-60 G. C. — MEMBER OF VILLAGE FIRE DEPARTMENT IF INJURED, OR HIS BENEFICIARIES IF HE IS KILLED, IN COURSE OF EMPLOYMENT, HAS RIGHT TO BENEFITS AND ALLOWANCES PROVIDED BY WORKMEN'S COMPENSATION LAW — IN ADDITION THERETO RIGHTS AND BENEFITS OF FIREMEN'S INDEMNITY FUND — SECTION 4647-1 ET. SEQ., G. C.
2. CONTRACT MAY LAWFULLY PROVIDE THAT ADJOINING TOWNSHIPS WHERE FIRE PROTECTION GIVEN SHALL REIMBURSE VILLAGE IN PROPORTIONS AS AGREED UPON — DAMAGE TO ANY VILLAGE FIRE EQUIPMENT INCURRED IN PERFORMANCE OF SERVICE OUTSIDE LIMITS OF VILLAGE.

#### SYLLABUS

1. Where a village has entered into a contract pursuant to Section 3298-60, General Code, with several adjoining townships for furnishing fire protection to such townships, a member of the fire department of such village who is injured, or his legal beneficiaries if he is killed, while engaged in rendering service in pursuance thereof, has the right to the benefits and allowances provided by the workmen's compensation law, and in addition thereto to the rights and benefits arising from the firemen's indemnity fund set up by the village under Section 4647-1, et seq., General Code.

2. Such contract may lawfully provide that the adjoining townships to which such fire protection is rendered shall reimburse the village in such proportions as may be agreed, for damage to any of the village fire equipment incurred while engaged in the performance of such service outside the limits of such village.

Columbus, Ohio, January 13, 1944

Hon. Glenn L. Fortune, Prosecuting Attorney  
Carrollton, Ohio

Dear Sir:

I acknowledge receipt of your communication requesting my opinion, and reading as follows:

"The Village of Carrollton operates a volunteer fire department as a department of the village and the equipment being owned by the village.

The village also has set up on their records a firemen's indemnity fund and also have the members of the fire department covered by Workmen's Compensation provisions.

Five adjoining townships, who are without fire protection, desire to pay a stipulated annual sum to the village of Carrollton for the purchase of fire protection.

As a part of the proposed contract, it is desired to write into the same the following:

1. That in the event of a damage to any of the village equipment while making a run to a fire in any of the five townships, the amount of said damage shall be proportioned among the five adjoining townships.

2. Also, in the event of an injury or death claim arising out of servicing a fire in any township, it will be stipulated that in the event Workmen's Compensation Act does not cover the injury or the person injured does not apply to the Industrial Commission for relief, and further in the event that the firemen's indemnity fund held by the village is not adequate to pay for said injury and/or death claim in full, then the remaining liability with respect to said claim will be assumed and paid by the five adjoining townships in proportion.

Questions:

1. In the event a person is injured or in the event a death claim is filed for reimbursement with the Industrial Commission of Ohio, then would such an action be treated as an election, thereby barring any further rights or claims to the firemen's indemnity fund set up by the village, and the subdivision itself?

2. Since the contract proposes that the five surrounding townships shall assume full responsibility for any damage to the fire equipment when said equipment is called into any one of the five townships, can the trustees of one township legally contribute toward damages sustained to fire equipment, the cause of which occurred in another of the five townships?"

The contract which the village of Carrollton has made with the adjoining townships is governed by Section 3298-60, General Code, the pertinent part of which reads as follows:

“Any township, village or city, in order to obtain fire protection or to obtain additional fire protection in times of emergency, shall have the authority to enter into a contract or contracts for a period not to exceed three years, with one or more townships, villages or cities, upon such terms as may be agreed upon, for services of fire departments or the use of fire apparatus or for the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivisions, if such contracts are first authorized by the respective boards of trustees, councils or other legislative bodies. \* \* \*

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.

Such contracts may provide for a fixed annual charge to be paid at times agreed upon and stipulated therein, or for compensation based upon a stipulated price for each run, call or emergency, or the number of members or pieces of apparatus employed or the elapsed time or service required, in such run, call or emergency; *and may provide for compensation for loss or damage to equipment or apparatus while engaged outside the limits of the subdivision owning and furnishing the same*; and said contracts may provide for the reimbursement of the subdivision wherein the fire department members are employed for any pension or indemnity award or premium contribution assessed against the employing subdivision for workmen’s compensation benefits, for injury or death of its fire department members occurring while engaged in rendering service in pursuance thereof.”

(Emphasis added.)

It will be observed that this statute authorizes a contract whereby a village may undertake to furnish fire protection to one or more townships for a compensation which may be either in the nature of a fixed annual charge or may be based upon a stipulated price for each run. It is further expressly provided that the contract may provide for compensation for loss or damage to the equipment or apparatus while engaged outside of the limits of the subdivision owning the same.

There is the further provision relative to the right of fire department members, acting outside of the subdivision in which they are employed, to participate in any pension or indemnity fund established by

the employing subdivision to the same extent as if they were acting within the employing subdivision, if the rules of the pension or indemnity fund provide therefor; and I call attention to the further provision that such fire department members are to be entitled to all the rights and benefits of the workmen's compensation act while performing services within such subdivision.

The firemen's indemnity fund is established pursuant to the provisions of Sections 4647-1 to 4647-9, General Code, and is required by Section 4647-1 to be established in all municipalities or townships having no firemen's pension fund created under the provisions of Sections 4600 to 4615 of the General Code. The establishment of such indemnity fund by such municipalities was held by one of my predecessors to be mandatory. See 1937 Opinions Attorney General, p. 925.

This firemen's indemnity fund, according to the provisions of Section 4647-8, General Code, is to provide certain allowances to a fireman who is disabled while in the discharge of his duties and certain benefits to his widow or children, if he is killed while in the discharge of such duties, or dies from exposure or injury received therefrom. The benefits flowing from the firemen's indemnity fund inure to the benefit of a part-time or volunteer fireman as well as one employed for full time. 1927 Opinions Attorney General, p. 6.

Section 1465-61, General Code, defines "employee" as used in the workmen's compensation act. It reads in part as follows:

"Every person in the service of the state, or of any county city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, \* \* \*. Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be established and maintained by municipal authorities under existing laws, unless the amount of the pension fund provided by municipal taxation and paid to such police or firemen shall be less than they would have received had the municipality no such pension funds provided by law; in which event such police and firemen shall be entitled to receive the regular state compensation provided for police and firemen in municipalities where no policemen's or firemen's pension funds have been created under the law; less, however, the sum or sums received by the said policemen or firemen from said pension funds provided by municipal taxation, and

the sum or sums so paid to said policemen or firemen from said pension funds shall be certified to the industrial commission of Ohio by the treasurer or other officer controlling such pension funds."

It will be observed that the qualifications as to police and firemen relate only to those in *cities*, no such exception or qualification appearing relative to police or firemen of villages. The right of part-time employes of a fire department to receive the benefits of the workmen's compensation law was upheld in *State ex rel v. Industrial Commission*, 127 O. S. 217. See also 1930 Opinions Attorney General, No. 1536; 1929 *id.* No. 937.

In an opinion which I rendered on July 12, 1940 (1940 Opinions Attorney General, p. 677), it was held:

"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."

Considering the above statutory provisions in their relation to each other, it seems quite clear that where a village is furnishing fire protection to adjoining townships under a contract authorized by law, the members of its fire department, whether employed on a part time or volunteer basis or on full time, are entitled to the benefit of the indemnity fund established by the village and also to the benefit of the workmen's compensation law in case of injury, although such injury is suffered while in the performance of their duties outside of the municipality by which they are employed.

Relative to the provision of the contract whereby the five townships which are being served agree to pay in certain proportions for damage to the fire equipment of the village while making a run into any such township, I can see no illegality in that arrangement. The statute expressly provides that the contract may provide for compensation for damage to the equipment or apparatus suffered while engaged outside of the subdivision owning or furnishing the same. It is equally for the benefit of all the subdivisions that are served that the equipment be kept up in condition for service, and since the damage to equipment of this sort is partly due to the general wear and tear

and could not be definitely allocated to any particular call or run, it would seem that a reasonable method of equitably apportioning the cost of upkeep would be by charging to the several subdivisions served an agreed proportion of such expense.

Specifically answering your question, I am of the opinion:

1. Where a village has entered into a contract pursuant to Section 3298-60, General Code, with several adjoining townships for furnishing fire protection to such townships, a member of the fire department of such village who is injured, or his legal beneficiaries if he is killed, while engaged in rendering service in pursuance thereof, has the right to the benefits and allowances provided by the workmen's compensation law, and in addition thereto to the rights and benefits arising from the firemen's indemnity fund set up by the village under Section 4647-1, et seq., General Code.

2. Such contract may lawfully provide that the adjoining townships to which such fire protection is rendered shall reimburse the village in such proportions as may be agreed, for damage to any of the village fire equipment incurred while engaged in the performance of such service outside the limits of such village.

Respectfully,

THOMAS J. HERBERT  
Attorney General