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FIREMEN'S PENSION FUND—PROVISION OF SECTION 3298-60 G. C. REQUIRING TWENTY-FIVE PERCENT OF AMOUNT RECEIVED BY MUNICIPALITY ON CONTRACTS TO FURNISH FIRE PROTECTION OUTSIDE OF ITS BOUNDARIES, TO BE PAID INTO FIREMEN'S PENSION FUND, APPLIES ONLY TO CONTRACTS WITH A PERSON, GROUP OF PERSONS, FIRM OR CORPORATION, AND NOT TO CONTRACTS WITH TOWNSHIP OR ANOTHER MUNICIPALITY.

SYLLABUS:

The provision of Section 3298-60, General Code, requiring twenty-five percent of the amount received by a municipality on contracts for furnishing fire protection outside of its boundaries, to be paid into the firemen's pension fund applies only to contracts with a person, group of persons, firm or corporation, and not to contracts with a township or another municipality.

Columbus, Ohio, January 22, 1945

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

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

"Section 3298-60, General Code, was amended in Ohio Laws 119, page 317, which added what is now the second paragraph of said section of law so as to permit municipal corporations to contract with 'any person, group of persons, firm or corporation', to furnish fire protection.

Such municipalities, by the provisions of the first paragraph of said section, are authorized to contract with other subdivisions to furnish fire protection, and they possessed that power before the section was amended, the receipts for such fire service being credited to the general fund of the municipality furnishing the fire service.

The amendment contains the following additional provision:

'Twenty-five percent of the amount received by such municipality on any such contract shall be paid into the firemen's pension fund.'

QUESTION: Does the requirement for payment of twenty-five percent of receipts apply to the contracts with 'any person, group of persons, firm or corporation' only, or is it applicable to receipts on contracts with townships and other subdivisions as well?

Will you kindly give us your interpretation of the above mentioned law, particularly as to the disposition of receipts collected under the separate classes of contracts provided for in said section?"

Section 3298-60, General Code, 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.

Any municipal corporation shall have the authority to enter into a contract or contracts 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 the limits of such municipality, who desires to obtain fire protection for such property, upon such terms as may be agreed upon, for services of the fire department of such municipality, provided such contract or contracts be first authorized by the legislative body thereof. *Twenty-five percent of the amount received by such municipality on any such contract shall be paid into the firemen's pension fund.*

The provisions of Section 3714-1 of the General Code so far as the same shall apply to the operation of fire departments, shall apply to the contracting political subdivisions and fire department members when said members are rendering service outside their own subdivision pursuant to such contracts.

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 the 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 of 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 injuries or death of its fire department members occurring while engaged in rendering service in pursuance thereof."

Your whole question turns upon the interpretation to be given to the words "such contract" as used in the last sentence of the second paragraph of the above statute. Prior to its amendment in 119 O. L., 315, Section 3298-60 was identical with the present form except for the second paragraph, which was interpolated by the amendment. In other words, the act previously provided that any township, village or city might make a contract with another political subdivision for fire protection and since nothing was said as to the disposition of moneys received under such contract, they would by force of general law go into the general fund. This appears to be the specific provision of Section 5625-10, General Code, which reads as follows:

"All revenue derived * * * from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund."

Section 3298-60, General Code, as it then stood provided as it does now, for contracts by municipalities with other political subdivisions. The change in the statute, which became effective August 19, 1941, was in all probability brought about by an opinion rendered by my immediate predecessor April 3, 1940, found in Opinions, Attorney General, 1940, p. 325, wherein it was held that a municipal corporation could not enter into a contract with an association comprised of citizens living outside the corporate limits, for fire protection for their property. Apparently, the legislature saw fit to widen the authority of a municipal corporation so as to permit a contract of that character. In making this amendment, a new

feature was introduced into the law in the last sentence of the new paragraph, to wit: "Twenty-five percent of the amount received by such municipality on any such contract shall be paid into the firemen's pension fund."

If this statute consisted of nothing excepting the first paragraph authorizing a contract by one subdivision with another, and the second paragraph authorizing a municipality to make a contract with the persons indicated, it would appear rather clearly that each paragraph was complete and independent, and that the words "such contract" used in the second paragraph, referred only to the contracts contemplated by that paragraph and did not reach back to include those that were authorized by the preceding paragraph. There are, however, three other paragraphs contained in the section which require consideration.

We find in the third paragraph a provision that Section 3714-1 of the General Code, so far as it applies to the operation of fire departments shall apply to the contracting political subdivisions and to fire department members when said members are rendering service outside their own subdivision pursuant to "such contracts." Section 3714-1 grants certain immunities to municipalities and to its policemen and firemen when operating vehicles in the municipal service. There could be no doubt but that this reference to that section was intended to make it applicable where fire department vehicles were being operated outside the municipal boundaries under contracts made under any of the provisions of Section 3298-60, General Code.

Going on into the next paragraph, we find a provision to the effect that fire department members when acting outside of the subdivision in which they are employed pursuant to "such contracts" are to be entitled to participate in any pension or indemnity fund to the same extent as while acting within the employing subdivision. "Such contracts" again clearly refers to all of the contracts authorized by the preceding paragraphs of the section. And it would appear most logical that the legislature, coincident with giving members the benefit of the fund when acting without their municipal boundaries, should require contributions to the fund from all for whom these extra-territorial services were rendered.

In the final paragraph of the section we again have a provision that "such contracts" may provide for the compensation in either one of

several forms and also that "such contracts" may provide for the reimbursement of the subdivision for any pension or indemnity award or premium compensation assessed for workmen's compensation benefits for injuries or death of its fire department members occurring while engaged in rendering service in pursuance thereof. Unquestionably, all of these references to "such contracts" reach back to and cover all contracts which are authorized by any of the provisions of the section. With this construction, from which there can be no escape, given to the repeated use of these words in the last three paragraphs of Section 3298-60, are we justified in saying that they are to have a more limited meaning where used in the second paragraph?

All of the authorized contracts referred to both in the old and the new portion of this section are for the same general purpose, to wit, the protection from fire of the property either in an entire municipality or township or in a portion of a township, and all the provisions above noted contemplate that the subdivision furnishing the men and equipment incurs some added burdens and risks which ought to be paid for by the subdivision or person obtaining the protection. They further recognize the fact that whenever the services of firemen are hired out to other subdivisions, these men incur added risks, against which they should be protected.

If both the first and second paragraph of the section under consideration provided for precisely the same character and scope of contract but merely extended the list of persons with whom a contract may be made, it would not be difficult to conclude that the provision as to payment into the pension fund of twenty-five percent of the amount received would reach back into the first paragraph of the section as well as covering the second. Here, however, we encounter a new difficulty. It will be observed that the contracts referred to in the first paragraph contemplate not only furnishing the services of a *fire department*, which would include *both apparatus and men*, but also the renting of apparatus alone; while the contracts referred to in the second paragraph contemplate nothing but the "services of the fire department." Plainly, the firemen's pension fund is concerned only with the firemen and with provision for their retirement or relief, and benefits to their dependents. The fund has no interest in the destruction or deterioration of a fire engine or hose truck, and should

not receive any of the rental derived merely from the use of such equipment. I can not impute to the legislature an intent to levy tribute on a political subdivision which rents fire apparatus from a municipality, to support the firemen's pension fund of that municipality.

Accordingly, when the closing sentence of the new paragraph of Section 3298-60 of the General Code, says that twenty-five percent of the amount received "on any such contract" shall be paid to the pension fund, we must confine its meaning to the contracts mentioned in the paragraph in which it occurs. It may be claimed and logically so, that the pension fund and the firemen which it is designed to protect are just as vitally interested in contracts made pursuant to the first paragraph of that section as if they were made pursuant to the second paragraph, when both relate to the services of the firemen. That, however, is an argument that can only be addressed to the legislature, and the defect is one that can only be cured by legislation.

The word "such" is frequently used in legal phraseology, and generally refers to something that has just been mentioned. As stated in *Summerman v. Knowles*, 33 N. J. L. 202:

"'Such', as used in statutes, is a descriptive and relative word, and refers to the last antecedent, unless the meaning of the sentence would thereby be impaired."

The authorities recognize that the word may sometimes have a somewhat broader meaning, to wit: "the same as previously mentioned"; "of that class or kind"; or "of like kind." *Mo. Pac. R. Co. v. Commissioners*, 130 Kan. 554; *Warner Elevator Co. v. Houston (Tex.)*, 28 S. W. 405. It seems to me, however, that in the present matter we must construe the word according to its more general meaning as above stated in *Summerman v. Knowles*.

Accordingly, and in specific answer to your inquiry it is my opinion that the requirement of Section 3298-60, General Code, that twenty-five per cent of the amount received by a municipality on contracts for furnishing fire protection shall be paid into the firemen's pension fund, applies only to contracts made with a person, group of persons, firm or corporation

as mentioned in the second paragraph of said section and does not apply to contracts with other political subdivisions as authorized by the first paragraph of said Section 3298-60, General Code.

Respectfully,

HUGH S. JENKINS
Attorney General