

153

TOWNSHIP TRUSTEES—FIRE DISTRICT—PURCHASE OF FIRE EQUIPMENT — SUBSEQUENT ANNEXATION TO MUNICIPAL CORPORATION—MUNICIPAL CORPORATION HAS NO RIGHT OF OWNERSHIP IN SUCH FIRE EQUIPMENT.

SYLLABUS:

Where a board of township trustees creates a fire district from part of a township, and purchases a fire truck to serve such fire district, the subsequent annexation of territory, including all of the fire district, to a municipal corporation does not give such municipal corporation any right of ownership in such fire truck.

Columbus, Ohio, February 27, 1957

Hon. Robert L. Marrs, Prosecuting Attorney
Butler County, Hamilton, Ohio

Dear Sir:

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

“On or about October 14, 1944 the Trustees of Lemon Township in Butler County, Ohio created the ‘North Middletown Fire District’, the same being a part of the area in said township

lying to the north and adjacent to the City of Middletown in said county. After said date said trustees issued bonds in the amount of \$6,000.00 for the purchase of a 1944 Dodge Fire Truck for the sum of \$5,963.00 and that on the aforesaid date said fire truck was delivered to the said Board of Trustees who took title thereto in their names as Trustees of Lemon Township; the said bonds were retired and paid off in 1954 by means of taxes levied against the *property solely in said Fire District*. During said period from 1944 to 1954 the said Board of Trustees paid out of the General Fund of the township all operating expenses the total thereof being \$18,028.25 inasmuch as said fire truck was used in other parts of said township.

“On June 20, 1956 the City of Middletown annexed an area in Lemon Township *including all of the North Middletown Fire District* which has no fire hydrants therein.

“On the above facts it is respectfully requested that the Attorney General opine as to whether the right to title to the aforesaid truck passes to the City by virtue of the annexation of said Fire District into said City.”

House Bill No. 187, enacted by the Ninety-fourth General Assembly in 119 Ohio Laws, 315, authorized the creation of fire districts and the purchase of fire-fighting equipment by a board of township trustees in an amendment to Seciton 3298-54, General Code, Section 505.37, Revised Code, the applicable part of which statute reads :

“The board of any township may, by resolution, whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting therefrom, create a fire district of such portions of the township as it deems necessary, and the board may purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes, or may contract for such fire protection for such fire district as provided in section 505.44 of the Revised Code. The fire district so created shall be given a separate name by which it shall be known.

“The board of any township or fire district created by such board under sections 505.37 to 505.44, inclusive, of the Revised Code or the legislative authority of any municipal corporation, may purchase the necessary fire-fighting equipment, buildings and sites for such township, fire district, or municipal corporation and pay for it over a period of four years. Such board or legislative authority may issue the notes of the township, fire district, or municipal corporation, signed by the board or legislative authority and attested by the signature of the township or municipal

clerk, covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed six per cent per annum, and shall not be subject to sections 133.01 to 133.65, inclusive, of the Revised Code. One fourth of such purchase price shall be paid at time of purchase, and the remainder of the purchase price shall be covered by notes maturing in two, three, and four years respectively. Such notes shall be offered for sale on the open market or given to the vendor if no sale is made."

The same act amended Section 3298-55, General Code, Section 505.39, Revised Code, extending the taxing power of township trustees to property in a fire district to provide protection against fire, and Section 3298-56, General Code, Section 505.40, Revised Code, granting to the people in a fire district the power to approve by vote the issuance of bonds by township trustees to establish and maintain property used to combat fire. Neither this act nor any subsequent act of the General Assembly provided for a board or body other than the township trustees to acquire property for and administer the laws applicable to fire districts.

Since title to fire-fighting equipment purchased for a fire district is in the board of township trustees by reason of the provisions of Section 505.37, Revised Code, it must be ascertained if the subsequent annexation of territory, including the entire fire district, to a municipal corporation, divests the board of township trustees of title to the fire-fighting equipment and vests such title in the municipal corporation to which such territory is annexed.

Paragraph 1, of the syllabus of *City of Detroit v. Township of Redford*, 253 Mich., 453, 235 N. W., 217, (1931), reads:

"1. Municipal Corporations—Annexation of Territory—Division of Property Statutes.

"In the absence of express statutory provision, municipal corporation annexing territory of another municipality is not entitled to division and participation in latter's personal property."

The Michigan court adopted the common law rule on this question, which rule has been recognized by one of my predecessors in office:

"As to your second question, it may be stated that no division of funds or property of a township can be made in cases of a division, partition or other alteration of existing townships in the absence of statutory authority therefor."

See Opinion No. 687, Opinions of the Attorney General for 1949, page 335.

Section 709.12, Revised Code, provides in part:

“When proceedings upon annexation of a portion of a township to a municipal corporation upon which the tax levies made by the board of township trustees do not apply, the county auditor shall ascertain and apportion the existing net indebtedness of the township which shall be assumed and paid by the municipal corporation.”

The provisions of this statute are limited to the apportionment of indebtedness and the division of *funds* between a township from which territory is annexed to a municipal corporation and such municipal corporation and has no application to the question of determining title to or a division of *tangible personal property* between such political subdivisions.

When the limits of a municipal corporation become identical with those of a township the statute specifically provides that all township property shall be delivered to the municipal corporation. Section 703.22, Revised Code. When a village is created out of a portion of a township or townships, the statute provides that such new village may receive a share of township property upon making application to the Probate Court. Section 707.28, Revised Code.

Similarly, when the board of county commissioners enters an order erecting a new township, the statute imposes upon them the duty to order a proper division of funds, credits and properties between the new township and the city eliminated from the township. Section 503.11, Revised Code. However, I find no statutory authority to effect a division or transfer of property between a board of township trustees and a municipal corporation, under the facts which you have presented.

In answer to your inquiry it is therefore my opinion that where a board of township trustees creates a fire district from part of a township, and purchases a fire truck to serve such fire district, the subsequent annexation of territory, including all of the fire district, to a municipal corporation does not give such municipal corporation any right of ownership in such fire truck.

Respectfully,
WILLIAM SAXBE
Attorney General