

2692

- I. FIRE DISTRICT IN TOWNSHIP—TOWNSHIP TRUSTEES —NOT AUTHORIZED TO CREATE SAME IN TOWNSHIP IN WHICH NO MUNICIPALITY OR PART THEREOF LOCATED.
- I. SECTION 3298-54 G. C. AUTHORIZES TOWNSHIP TRUSTEES TO PROVIDE FIRE PROTECTION SERVICES TO TOWNSHIP—SEPARATE PORTIONS TO BE SERVICED BY FACILITIES OF DIFFERENT MUNICIPALITIES—TOWNSHIP IN WHICH THERE IS LOCATED MUNICIPAL CORPORATION OR PART OF IT—AUTHORIZED TO CREATE FIRE DISTRICTS AND CONTRACT WITH MUNICIPALITIES ON BEHALF OF FIRE DISTRICTS.

SYLLABUS:

1. Township trustees are not authorized to create a fire district in a township in which no municipality or part thereof is located.
2. The only authority of township trustees to provide fire protection services to a township whereby separate portions thereof will be serviced by the facilities of different municipalities is that contained in Section 3298-54, General Code, whereby townships in which there is located a municipal corporation or a part of a municipal corporation are authorized to create fire districts and contract with municipalities for such service on behalf of such fire districts.

Columbus, Ohio, January 4, 1951

Hon. Anthony J. Bowers, Prosecuting Attorney
Allen County, Lima, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would like to have your opinion in reference to the following facts:

The Bath Township Trustees of Allen County, Ohio, have entered into a contract with the City of Lima, Ohio, for fire protection of Bath Township. A part of Bath Township is a built up area adjacent to the City of Lima where fire hydrants have been installed. The Bath Township Trustees would like to set up a fire district in this congested area where these hydrants have been installed. The particular question involved is whether

the Township Trustees could set up a fire district under the provisions of General Code Section 3298-54 and levy a tax, which money from the levy would be used only for the installation and maintenance of the fire hydrants. The fire protection for the entire township including the fire district would still be paid from the general fund.

Therefore, we would like to have your opinion as to whether if a fire district could be created in a township and a request made for a levy only for the purpose of installation and maintenance of hydrants would be permissible and that the fire protection for the entire township, including the fire district, could be paid from the general fund of the township.

Also, the Township Trustees are faced with the proposition that they would like to contract for fire protection for the south half of the township with the City of Lima and for the north half of the township with the municipality of Beaverdam.

Quoting 1940 AOG 2129 wherein 'A Board of Trustees cannot enter into a contract with a municipal corporation whereby the municipal corporation agrees to give fire protection to a portion or portions of a township', I wish to call your attention to the fact that the entire township would be given fire protection, only the township would be divided between two municipalities so that the township could be better served by the nearest fire department.

Therefore, we would like to have your opinion as to whether a township may contract with two municipalities for fire protection, each municipality furnishing protection for one-half of the township and thereby giving the entire township fire protection."

In addition to the foregoing you have verbally advised me that no municipal corporation or part thereof is located within the boundaries of Bath Township, Allen County, Ohio; that the proposed fire protection contracts with the two municipalities will not necessarily provide equal service nor cost the township equal sums of money; that a fire district has been created in a part of the township; that one-half of the township proposed to be covered by one of the fire protection contracts includes all of the fire district plus additional territory of the township lying outside the fire district.

As I understand your questions, they could be rephrased as follows:

1. May township trustees create a fire district in a portion of a township in which no municipal corporation or part thereof is located

for the purpose of providing fire hydrants for such district, the remaining fire protection for which is to be provided by the township as a whole?

2. May such township trustees contract with one municipality for fire protection for one-half of the township which would include, but not necessarily be co-extensive with such fire district and at the same time contract with another municipality for fire protection for the other half of the township without establishing the same as a fire district?

The foregoing questions necessitate an examination of those sections of the General Code of Ohio relating to fire protection for areas outside municipalities, the pertinent portions of which are as follows:

Section 3298-54:

“Township trustees 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 may, with the approval of the specifications by the county prosecuting attorney, purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes as may seem to the trustees to be advisable, in which event they shall provide for the care and maintenance thereof, and, for such purposes, may purchase, lease or construct and maintain necessary buildings; and they may establish and maintain lines of fire alarm telegraph within the limits of the township. Such township trustees may employ one or more persons to maintain and operate fire fighting equipment; or they may enter into an agreement with a volunteer fire company for the use and operation of such equipment. The trustees are empowered to compensate the members of a volunteer fire company on such basis and in such amount as the trustees deem fair and equitable.

The trustees of any two or more townships or the councils or other legislative authorities of any two or more political subdivisions or any combination thereof, are authorized through joint action to unite in the joint purchase, maintenance, use and operation of fire fighting equipment, or for any other purpose designated in this act, and to pro-rate the expense on such terms as may be mutually agreed upon.

The board of trustees of any township *in which there is located a municipal corporation or corporations, or a part of a municipal corporation*, may by resolution whenever in their opinion 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 or districts of that portion of such township not included within the corporate limits*

*of such municipal corporation or corporations, and may purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes; or may contract for such fire protection for such fire district or districts the same as provided in Section 3298-60 for other subdivisions. The fire district or districts so created shall be given a separate name by which it shall be known and designated. * * **
(Emphasis added.)

Section 3298-60:

*“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, provided that such contracts are first duly authorized by the respective boards of trustees, councils, or other legislative bodies. * * **
(Emphasis added.)

In Opinion No. 2396, Opinions of the Attorney General for the year 1950, I had under consideration a question of the authority of township trustees to enter into a contract with a municipality on behalf of a fire district for joint use and operation of fire fighting equipment by the fire district and the municipality under said Sections 3298-54 and 3298-60, General Code. In the course of said opinion, with reference to Section 3298-54, I said:

“Section 3298-54, General Code, contains broad grants of authority to township trustees for the establishment of facilities for protecting the property and lives of the inhabitants of the township against damage from fire. The first paragraph contemplates a fire department serving the entire township and supported by the township. The second paragraph relates to co-operative action between two or more political subdivisions and does not include in its terms any provision for contracts by a fire district with any political subdivision. The third paragraph then proceeds to authorize the organization of fire districts comprising part of the township and reads as follows:

“The board of trustees of any township in which there is located a municipal corporation or corporations, or a part of a municipal corporation, may by resolution whenever in their opinion 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 or districts of that portion of such township not included within the corporate limits of such municipal corporation or corporations, and may purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes; or may contract for such fire protection for such fire district or districts the same as provided in section 3298-60 for other subdivisions. The fire district or districts so created shall be given a separate name by which it shall be known and designated.'

It will be seen that authority is therein contained for fire protection contracts for fire districts. Such contracts are required, by the provisions of said paragraph to be made by the township trustees on behalf of the fire district.

It is pointed out, therefore, that a distinction must be kept in mind at all times when dealing with fire protection contracts between those made by the township trustees in behalf of the township as such and those made by the township trustees on behalf of a township fire district. Such distinction is contemplated by the last sentence of the above quoted paragraph requiring the district or districts so created to be given a separate name by which it is to be known and designated."

I refer you to the foregoing opinion solely for the purpose of showing the relationship which each of the above quoted paragraphs of Section 3298-54 bear to one another. In the course of said opinion in response to the question with respect to the levy of a one mill tax on the property in a fire district for the purpose of paying the expenses incident to the contract I stated both in the opinion and in the second branch of the syllabus that such expenses must be obtained by a levy of taxes on the taxable property in the district, pursuant to the provisions of Section 3298-55, General Code, or by the issuance of bonds pursuant to the provisions of Section 3298-56 of the General Code. I wish to point out that no question with respect to a possible levy of taxes outside of the ten mill limitation in such fire district was before me, nor did I deem it necessary to discuss the same in arriving at an answer to the question. Said syllabus, therefore, is not to be construed as excluding the right to levy taxes in such districts outside the ten mill limitation.

With respect to the authority of township trustees to create fire districts within a township your attention is called to 1945 Opinions of the Attorney General, No. 231 wherein my predecessor in office in com-

menting on said Section 3298-54, General Code, stated on pages 197, 198 and 199 of the reported opinion as follows:

"It will be noted that the township trustees of any township *in which there is located a municipal corporation* are authorized to create a fire district or districts out of that portion of such township not included within the limits of such municipal corporation, and may purchase for such fire district or districts apparatus and appliances and install fire hydrants and provide a water supply for fire fighting purposes; or may contract for such fire protection for such fire district or districts, as provided in Section 3298-60, General Code, for other subdivisions. Any such fire district is to be given a separate name by which it shall be known and designated.

There is nothing, however, in this section which constitutes such fire district as a separate political subdivision or gives it any organization of its own. It is also to be noted that such district may be only a part of that portion of the township which is outside a municipality. See 1943 Opinions Attorney General, page 44. Furthermore, there is nothing in this or any other section of the statutes so far as I can find, which contemplates the creation of a fire district composed of portions of two or more townships,
* * *

As to your first question, as interpreted by your parenthetical note, my answer must be in the negative. There is no provision in the statute authorizing the establishing of a fire district comprising portions of two or more townships. *Each fire district authorized to be created must be located in a township containing a municipality.* It would of course follow that no bonds of any such joint district could be issued for the purchase of equipment."
(Emphasis added.)

From the underlined portions of Section 3298-54, *supra*, and that portion of the foregoing opinion above quoted, it appears eminently clear that the township under consideration, having no municipality or part thereof within its boundaries, is without authority to create such fire district. Such lack of authority to create such district is not to be interpreted, however, as limiting the authority of the trustees to establish fire hydrants with such township as may seem to them to be advisable as authorized by the first paragraph of said section.

There remains for consideration the question, therefore, whether the trustees may enter into a contract for fire protection for one-half of the township with one municipality and at the same time contract for fire protection for the other half of the township with another municipality.

It is evident from the wording of the underlined portions of Sections 3298-54 and 3298-60 supra, that the trustees may contract with one or more municipalities or other townships for fire protection whereby the entire township would be afforded fire protection service throughout the entire township by any one or all of such contracting subdivisions.

The 1940 Opinion of the Attorney General, the first syllabus of which you have quoted in your request, was written prior to the amendment of Section 3298-54, General Code, in 119 Ohio Laws, 315, which authorized the creation of fire districts by township boards of trustees. The proposition stated therein is, therefore, modified to the extent that such contracts may be entered into for such portions of a township in which a municipality is located in whole or in part within its boundaries as may be created into fire districts, when made on behalf of such districts.

If one were to accept the argument that by the execution of the contracts with the two separate municipalities the entire township would be given fire protection as refuting the reasons set forth in the 1940 Opinion of the Attorney General it seems to me that at least two additional reasons would prevent the execution of contracts with municipalities for fire protection service to portions of a township which have not been created into fire districts. The first and most compelling objection is that there could be no assurance that the service provided and the cost thereof by one municipality would be equal to the service and cost thereof provided by another municipality with the result that township funds would be used to provide greater benefits to one portion of the township than to another. The second objection is based on the fundamental proposition that boards of trustees are creatures of statute and have only such powers as are delegated by statute or necessarily implied therefrom. Section 3298-60, supra, contains the only authority of which I am apprised, for the execution of contracts between townships and municipalities for fire protection services, other than that hereinabove discussed relating to such contracts for fire districts. By this section such contracts may be entered into "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.*" (Emphasis mine.) I do not interpret this language, even by necessary implication, to authorize a contract for such service within a portion only of the territory of a contracting subdivision. On the contrary, it appears quite clear that

the entire area of each subdivision is intended to be included by such contract or contracts even though several subdivisions may be parties thereto. I am therefore of the opinion that the only authority contained in the General Code of Ohio whereby township trustees may provide fire protection service to a township by contracts with separate municipalities for the furnishing of such service to separate portions of such township is that contained in Section 3298-54, General Code, whereby such separate portions of a township in which a municipality or part thereof is located may be created into fire districts.

In view of the foregoing, you are advised that it is my opinion that :

1. Township trustees are not authorized to create a fire district in a township in which no municipality or part thereof is located.
2. The only authority of township trustees to provide fire protection services to a township whereby separate portions thereof will be serviced by the facilities of different municipalities is that contained in Section 3298-54, General Code, whereby townships in which there is located a municipal corporation or a part of a municipal corporation are authorized to create fire districts and contract with municipalities for such service on behalf of such fire districts.

Respectfully,

HERBERT S. DUFFY,
Attorney General.