

2951.

FIRE DEPARTMENT—MUNICIPAL CORPORATION UNAUTHORIZED TO ORGANIZE, HOUSE AND MAINTAIN VOLUNTEER FIRE DEPARTMENT TO SERVE ONLY SURROUNDING TOWNSHIPS WHEN—FIRE FIGHTING EQUIPMENT.

SYLLABUS:

A municipal corporation having a regularly organized fire department may not organize and provide for the housing and maintaining of a volunteer fire department, which department is organized for the sole purpose of serving surrounding townships.

COLUMBUS, OHIO, July 25, 1934.

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

GENTLEMEN:—I am in receipt of your communication of recent date which reads as follows:

“We are requesting reconsideration of Opinion of your predecessor No. 727, page 1106 of the 1929 Opinions, relative to the legality of a city contracting for fire protection with a volunteer company in view of the fact and circumstances disclosed in the attached correspondence.”

Attached to your communication is a letter from the city solicitor of Chillicothe, Ohio, which reads:

“A proposal has recently been made to the council of this city by a representative of the S. Corporation of C., Ohio, of substantially the following nature:

A volunteer fire department is to be organized composed of members of the regular department and this volunteer fire department will purchase from the S. Corporation a fire engine and equipment. Contracts previously secured with the trustees of surrounding townships will provide for fire protection to be furnished by such volunteer fire company to townships at certain stipulated amounts per year.

Out of the funds thus arising, the volunteer fire department will pay for the equipment and at the end of two years will have completed payment therefor and will turn the same over to the city. The city is to furnish a place to house the equipment, maintain the same and furnish the services of a fireman to operate it and in return is to have the privilege of using the equipment in the city as well.

It appears that council is disposed to act favorably upon this proposal, and it was suggested that the resolution be passed empowering the organization of the volunteer fire company and the completion of the project as planned. Upon the matter being submitted to me, I made some examination of the law with a view to determining whether the city was authorized to enter into such an arrangement. In considering this, these questions arose: first, whether the city is authorized to furnish housing and maintenance and the services of a fireman for this purpose,

and second, whether there is authority for the organization of the volunteer fire department in a city.

I am aware that sections 4389 to 4392, inclusive, appear to provide for the organization of a volunteer fire department in a village and for the furnishing of equipment and buildings therefor, but I have been unable to find any specific authority for this with respect to cities. My inclination is to take the position that this cannot be done unless some authority is shown clearly authorizing the same, but I am advised by the representative of the S. Corporation that this plan has been adopted and followed in several cities in Ohio, as well, of course, as a large number of villages.

Inasmuch as I am unable to find any definite authority to cover this situation, I am wondering whether you would be so good as to give me your advice on the matter."

From your communication it appears that the city of Chillicothe now maintains a legally organized fire department and that the volunteer company as contemplated is to be created by resolution of the council of the city of Chillicothe and the personnel thereof is to be the same as that of the regular fire department of said city. Further the said volunteer fire department is to provide fire protection to the surrounding townships only, for certain stipulated amounts per year to be paid to it.

Section 4393 of the General Code reads as follows:

"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."

Section 3617, General Code, provides that municipal corporations shall have the power to organize fire departments, erect the necessary buildings and purchase and hold all necessary implements and apparatus required therefor. Said sections clearly authorize the council of any village or city to 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 to establish and maintain a fire department and to erect all necessary buildings for the housing of same. An examination of said sections therefore leads to the conclusion that a fire department may be established and maintained by a municipality for the purpose of protecting the property and lives of its inhabitants against fire. However, in view of the language employed in said sections, it can hardly be said that the power conferred thereby authorizes the establishment, maintenance and housing by a municipality of a volunteer fire company solely for service in a township beyond the corporate limits of such municipality.

Section 3298-60, General Code, reads as follows:

"Any township, in order to obtain fire protection shall have authority to enter into a contract for a period not to exceed three (3) years with any city, village or township, upon such terms and conditions as are mutually agreed upon, for the use of its fire department and fire apparatus, if such contract is first authorized by the trustee of such township and the council of such city or village.

A similar contract may be made between a village and any city if authorized by the council of the village and the council of the city. Such contract shall provide for a fixed annual charge to be paid at such times as may be stipulated in the contract. All expenses thereunder shall be construed as a current expense and the taxing authority of the township or village shall make an appropriation therefor from the general funds, and shall provide for the same in their respective annual tax budgets."

Under the provisions of said section, any township may enter into a contract with any city for the use of its fire department and fire apparatus, and therefore under the powers conferred, the city of Chillicothe could doubtless contract with the surrounding townships for the use of its regularly organized fire department. However, in view of the fact that the proposed plan, as outlined, contemplates the organization of a volunteer fire department solely for the purpose of serving the surrounding townships, Section 3298-60, supra, is not applicable. Under the proposed plan, the volunteer fire department to be organized will purchase from the S. Corporation a fire engine and certain equipment under an installment payment contract, payments thereunder extending over a period of two years, during which time the city of Chillicothe is to furnish a place to house said equipment, maintain the same and furnish the services of a fireman to operate it and in consideration therefor the city is to have the privilege of using said equipment in connection with its fire department and at the end of two years when said equipment is fully paid for the city is to receive title thereto. I am of the opinion that the carrying out of the above agreement would result in the purchase of equipment through the agency of a volunteer company for the city of Chillicothe and by such means avoid the provisions of law relative to competitive bidding. Sections 4371 and 4328 of the General Code provide for the purchase of fire engines, apparatus and all other supplies necessary for the fire department by competitive bidding where the contract for the purchase of such equipment is in excess of five hundred dollars.

This office, in an opinion found in Opinions of the Attorney General for 1933, Vol. 1, page 799, passed upon a question similar to the one presented here. The second branch of the syllabus of that opinion is as follows:

"Where a township or village enters into an arrangement with a volunteer fire company owning a fire truck and equipment, whereby the subdivision agrees to pay \$250.00 per year for a period of three years, at the end of which time the truck and equipment is to be transferred to the subdivision, such an arrangement is a contract of sale and is violative of the principles of competitive bidding where section 4221, General Code, is not complied with."

In regard to your request for a reconsideration of an opinion of my predecessor reported in Opinions of the Attorney General for 1929, page 1109, you will note that the question upon which an opinion was sought in that case was whether or not a municipal corporation may legally contract for fire protection with a volunteer company which is a private organization, and legally pay for such protection from public funds. In the opinion of my predecessor referred to by you, a comprehensive discussion was given upon the question of whether or not a municipal corporation could, under the provisions of Section 4393, enter into an agreement with a volunteer fire company whereby such volunteer company would be required to furnish fire protection to the municipal corporation at an agreed price to be paid out of public funds. The then Attorney General, after a thorough consideration of the question, gave an affirmative answer. However, it can readily be seen that there is no analogy between the question presented therein and the facts of the proposed plan in the instant case.

Therefore, in view of the foregoing and in specific answer to your inquiry, it is my opinion that a municipal corporation having a regularly organized fire department may not organize and provide for the housing and maintaining of a volunteer fire department, which department is organized for the sole purpose of serving surrounding townships.

For the reasons above given, I am of the opinion that the plan referred to in your letter, to wit, an arrangement with a volunteer fire company owning a fire truck and equipment, to maintain and house such equipment and furnish the services of a fireman for a period of two years, at the end of which time the truck and equipment is to be transferred to the city, is violative of the statutes of Ohio on competitive bidding and therefore cannot legally be consummated.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2952.

APPROVAL, RESERVOIR LAND LEASE TO L. VON GERICHTEN OF COLUMBUS, OHIO, OF LAND AT BUCKEYE LAKE, FAIRFIELD COUNTY, OHIO.

COLUMBUS, OHIO, July 25, 1934.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am just in receipt of a communication from the chief of the bureau of inland lakes and parks of the division of conservation in your department, with which he submits for my examination and approval a reservoir land lease in triplicate executed by the conservation commissioner to one L. von Gerichten of Columbus, Ohio. By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of twenty-four dollars, there is leased and demised to the lessee above named the right to occupy and use for cottage site purposes only, the inner slope and waterfront and the outer slope and borrow pit in the rear thereof, that is included in the west half of Embankment Lot No. 80, as laid out by the Ohio Canal Commission on the north bank of Buckeye Lake in Section 22, Town 17, Range 18, Fairfield County, Ohio.