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FIRE STATION—PROPOSED TO BE JOINTLY CONSTRUCTED BY TOWNSHIP AND VILLAGE—TOWNSHIP TRUSTEES—COUNCIL OF VILLAGE—BUILDING TO BE FINANCED OUT OF PROCEEDS OF VOTED TOWNSHIP BOND ISSUE AND GENERAL FUNDS OF VILLAGE—SECTION 505.37 RC—NOT NECESSARY TO SUBMIT TO ELECTORS OF TOWNSHIP AND VILLAGE QUESTION AS TO BUILDING OF JOINT FIRE STATION—SECTION 511.05 ET SEQ., RC HAS NO APPLICATION.

SYLLABUS:

Where it is proposed by the township trustees of a township and the council of a village located within such township that a fire station be constructed jointly by the township and the village pursuant to Section 505.37, Revised Code, Section 3298-54, G.C., and where such a building is to be financed entirely out of the proceeds of a voted township bond issue and from general funds of the village, it is not necessary to submit to the electors of the township and the village the question of whether or not a joint fire station shall be built, Section 511.05, et seq., Revised Code, having no application to such a proposal.

Columbus, Ohio, July 13, 1954

Hon. Alva J. Russell, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

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

“Pursuant to the provisions of the Uniform Bond Act, the electors of Hudson Township have authorized a bond issue in the amount of \$20,000 for the construction of a fire station.

“By authority of Section 505.37 R.C., the township trustees and the Village of Hudson have contracted for the joint construction of a mutual fire station with an agreed prorated expense of such joint fire station and its consequent operation.

“The question:

“Do Sections 511.05 and 511.06 apply to such a joint fire station, in that a separate election of the voters must be held and a two-thirds vote necessary for passing.”

Through subsequent communication you have informed me that no special tax levies other than the one involved in the bond issue are contemplated with reference to the construction of the township-village fire station. The township bond issue in the amount of \$20,000 has already been passed by the electorate by the necessary 55% affirmative vote. The expected construction cost of \$80,000 is to be met from the proceeds of this bond issue plus \$60,000 which the village of Hudson now has on hand.

Section 505.37, Revised Code, formerly Section 3298-54, General Code, contains, among other things, the authorization for a township to purchase or provide fire equipment and authorization to purchase, lease, or construct necessary buildings in connection therewith. This section further provides:

“* * * The boards of any two or more townships, or the legislative authorities of any two or more political subdivisions, *or any combination thereof*, may, through joint action, unite in the joint purchase, maintenance, use, and operation of fire-fighting equipment, *or for any other purpose designated in sections 505.37 to 505.44, inclusive*, of the Revised Code, and may prorate the expense of such joint action on such terms as are mutually agreed upon. * * *” (Emphasis added.)

This section, then, most certainly contains authority for a township and a village, a political subdivision, to unite in the construction of a township-village fire station, inasmuch as the construction or purchase of necessary fire buildings is a “purpose designated in Sections 505.37 to 505.44, inclusive, of the Revised Code.” This authority for joint participation was first written into Section 3298-54, General Code, in 1939. See 118 Ohio Laws, 273, 274.

Sections 511.05, 511.06 and 511.07, Revised Code, formerly Sections 3399, 3400, 3401 and 3402, General Code, refer to the joint construction by a village and township of a “public building.” The sections follow a group of sections relating to the construction of a *town hall* by a township alone.

Section 511.05, Revised Code, formerly Sections 3399 and 3400, General Code, reads as follows:

“The electors of a township in which a village is situated, and the electors of such village, may, if the electors of both so determine, unite in the enlargement, improvement, or erection of a *public building*.”

“For such purpose, an application shall be made to and filed with the board of township trustees, signed by not less than twenty-five resident freeholders of such township, who are not residents of the village, and an application shall also be made to and filed with the mayor of the village, signed by not less than twenty-five resident freeholders of the village.”

(Emphasis added.)

Section 511.06, Revised Code, formerly Section 3401, General Code, provides for submission of the question of whether or not a tax shall be levied upon all taxable property in the township and village, for the purpose of enlarging, improving, or erecting a public building.

Section 511.07, Revised Code, Section 3402, G. C., provides :

“If, at an election under section 511.06 of the Revised Code, two thirds of the electors of the township and of the village voting, vote in favor of such improvement, the board of township trustees and the legislative authority of the village shall jointly take such action as is necessary to carry out complete improvement.”

Section 511.07, Revised Code, requiring a two-thirds vote upon the question of joint construction of a public building would appear to be linked with the necessity of securing the approval of the electorate to a special tax levy therefor. It was held in Opinion No. 1829, Opinions of the Attorney General for 1933, page 1707, that :

“1. A township and village located in such township cannot unite in the erection of a public building without submitting the same to a vote of the electors of both subdivisions.

“2. The only method by which the approval of such electors to such an improvement can be obtained, is by submitting to them the question as to whether or not a tax shall be levied on all the property subject to taxation in such township and village for such improvement.

“3. Upon the approval of the electors by the vote required by section 3402 of the General Code, the cost of said improvement may, if it is not necessary to levy an additional tax therefor, be paid out of the general funds of said subdivision.”

The 1933 opinion does not reveal what kind of a public building was there under construction. Yet it is readily discernible that the building was a town hall, for reference is made in the body of the opinion to sections governing the erection of a town hall by a township alone. The

opinion turned upon the proposition that the public building could not be erected without the two-thirds vote of the electors, regardless of the necessity of a tax levy, because there was no other or independent authority (at that time) for the construction of a joint township-village building.

As I mentioned above, specific authority for joint construction of a fire station was granted by the legislature in 1939, 118 O. L. 274, just six years after the rendition of the 1933 Attorney General's opinion. This would seem to indicate that the reasoning which served as a basis for the 1933 opinion no longer is decisive with reference to the facts you have advanced regarding the construction of a joint township-village *fire station*.

It should also be observed that the provisions of Section 511.05, et seq., Revised Code, make reference to the construction of a "public building," a rather general term. Furthermore, those sections follow other sections of the Code pertaining exclusively to "town halls." This is very much in contrast with the more specific authority found in Sections 505.37, et seq., which grant to a township and a village the power to unite in pursuing *any* of the purposes outlined in those sections, all of which deal with fire equipment and buildings. One of these purposes is the construction and maintenance or improvement of a building whose function is the housing of fire equipment. See Opinion No. 314, Informal Opinions of the Attorney General for 1953, page 1064.

It would seem that the statutes dealing with the subject of fire equipment and buildings should be entitled to greater weight in the proper resolution of your problem than statutes dealing with "public buildings" in general. Section 505.37, Revised Code, Section 3298-54, G. C., apparently authorizes the joint construction of a fire station by action of the *board of township trustees* and the *legislative authority of the village* located within the township. No requirement is to be found necessitating the prior application by the residents or electors for the construction of the fire station. It will be recalled that the statutes relating to the construction of a joint "public building" place the initiating procedure in the hands of the freeholders of the township and village, who in turn file applications with the board of township trustees and the mayor of the village, respectively.

For the foregoing reasons it is my opinion that where it is proposed by the township trustees of a township and the council of a village located within such township that a fire station be constructed jointly by the

township and the village pursuant to Section 505.37, Revised Code, Section 3298-54, G. C., and where such a building is to be financed entirely out of the proceeds of a voted township bond issue and from general funds of the village, it is not necessary to submit to the electors of the township and the village the question of whether or not a joint fire station shall be built, Section 511.05, et seq., Revised Code, having no application to such proposal.

Respectfully,
C. WILLIAM O'NEILL
Attorney General