

considered Ohio business for the purpose of determining the franchise tax to be assessed under the laws of this state.

Respectfully.

HERBERT S. DUFFY,
Attorney General.

153.

TOWNSHIP TRUSTEES—CONTRACT WITH VILLAGE COUNCIL—USE OF VILLAGE FIRE EQUIPMENT—TRUSTEES CANNOT PURCHASE AND MAINTAIN FIRE EQUIPMENT WHEN.

SYLLABUS:

1. *Township trustees may not purchase and maintain fire equipment for a village volunteer fire company even though such equipment is to be used outside of the village, and within the township.*

2. *Under Section 3298-60, General Code, a board of township trustees may contract with a village council for the use of a fire department and apparatus owned by it.*

COLUMBUS, OHIO, February 19, 1937.

HON. ALEXANDER HYZER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR: I acknowledge receipt of your communication of recent date which reads as follows:

“The Village of Woodville is an incorporated village located approximately in the center of the Township of Woodville, Sandusky County, Ohio. It is the desire of the Township Trustees to furnish fire protection for persons living in said township outside the limits of Woodville Village.

The Village of Woodville now maintains equipment for the use of the Volunteer Fire Department and said Volunteer Fire Department seems to be of such long standing as to have the assurance of permanency.

Question No. 1—Is the Volunteer Fire Company of the Village of Woodville a sufficient organization to comply with Section 3298-54, General Code, so as to permit Woodville

Township to purchase fire equipment for use outside the village or must they have a Volunteer Fire Company organized outside the village?

Question No. 2—Under Section 3298-60, General Code, the City Solicitor of the Village of Woodville has advised Council of said village that they did not have authority to enter into a contract with the Trustees of Woodville Township to furnish fire protection for the entire township. Do you know of any reason why such a contract cannot be entered?"

The code sections which your question involve have been well interpreted by several opinions from this office. The interpretations adopted by them will be discussed in this opinion. Section 3298-54 and 3298-60, General Code, read as follows:

Sec. 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, when a volunteer fire company has been organized for service in the township, of such character as to give assurance of permanency and efficiency, may purchase and provide, for the use of such company, such fire apparatus and appliances as may seem to the trustees advisable, in which event they shall provide for the care and maintenance thereof, and, for such purpose, 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."

Sec. 3298-60. "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 trustees 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."

The language used in Section 3298-54, *supra*, permits the township trustees to exercise discretion, and if the volunteer fire company is "of such character as to give assurance of its permanency and efficiency," then the trustees "may establish, may purchase and provide . . . fire apparatus and appliance . . ." Hence if the trustees are in good faith satisfied with the status of the volunteer fire company, they are entitled to act in terms of the authority given.

However, from the statement of facts given in your letter, the status of the Village of Woodville's volunteer fire company is not the matter which should defer action here. A more pertinent matter is involved since it appears that the Woodville Township Trustees are to purchase and maintain equipment for the Woodville Village volunteer fire department. Such a situation would in effect mean that the township and the village were jointly purchasing and maintaining a volunteer fire department.

In an opinion of the Attorney General for 1928, Volume IV, page 2738, the powers conferred by 3298-54, *supra*, were elucidated as follows:

"There is no express authority for township trustees to lease or contract for the use of fire apparatus for the extinguishment of fires within the township and pay for the same, either in Section 3298-54, General Code, or elsewhere. There is express authority, however, in Section 3298-54, General Code, for township trustees to establish all necessary regulations to guard against occurrence of fires, to protect the property and lives of the citizens against damages or accidents resulting therefrom, and in Section 3298-54, General Code, to levy in any year or years a sufficient tax upon all the taxable property of the township 'to provide protection against fire.'

It may be conceded that this authority in and of itself does not empower the trustees to join with another political subdivision in the maintenance of a fire department; nor will there be found any place in the statutes authority for township trustees to establish and maintain a fire department jointly with a neighboring city or village. Hence the holding of the Attorney General in the opinion of 1920, noted above.

The fact alone, however, that the authority granted to protect the lives and property of the citizens against fire does not extend to the *joint purchase and maintenace* of fire apparatus by the township trustees and the council of a village or city, does not necessarily preclude the trustees from hiring the use of a fire department maintained by the city or village."

The rule of this opinion as to two or more political subdivisions joining in the maintenance or purchase of fire protection equipment and apparatus has been accepted and affirmed in other opinions of this office (1929 O. A. G., page 868, 1924 O. A. G., page 81, 1900 O. A. G., page 265, 1920 O. A. G., page 1065.)

It does not appear that the volunteer company in question is one which is a private organization (Opinions of the Attorney General, 1929, page 1106) and in view of the now well established rule cited from opinions of the Attorney General for 1928, page 2738, supra, the procedure entailed by the statement of facts before us is not authorized.

It is therefore my opinion that the township trustees may not purchase and maintain fire equipment for a village volunteer fire company even though such equipment is to be used outside of the village.

Under the provisions of section 3298-60, supra, a contract between the township trustees and the village council for the use of the village volunteer fire company would be perfectly proper if made in accordance with the provisions given in the section. The language of the section expressly provides that any "township" in order to obtain protection may enter into a contract with any "city, village or township" for the use of its fire department and fire apparatus. Reading further the section provides that "a similar contract may be made between any village and city . . ." The fact that the law does not expressly state that a village may contract with any township does not permit a conclusion that such a contract is not permitted. To allow such a construction of the law would nullify the first provisions of the section. Certainly it is not reasonable to suppose that this is what the legislature contemplated when inserting the last paragraphs of the section. Strict construction of statutes which delegate authority to statutory boards and governmental agencies is undoubtedly favored, but certainly not to the point where it would appear that the intent of the legislature varies with common sense. Of equal import is the rule that the delegation of a power to accomplish a certain end necessarily carries with it the power to do all things necessary to consummate that purpose.

It is therefore my opinion that township trustees and village councils may under 3298-60, supra, contract with each other for the use of a fire department and apparatus owned by one of them.

Respectfully.

HERBERT S. DUFFY,
Attorney General.