

Note from the Attorney General's Office:

1950 Op. Att'y Gen. No. 50-2396 was overruled in part by 2014 Op. Att'y Gen. No. 2014-006.

2396

1. FIRE EQUIPMENT—TOWNSHIP FIRE DISTRICT—CREATED IN ANY TOWNSHIP IN WHICH THERE IS A MUNICIPAL CORPORATION—TOWNSHIP BOARD OF TRUSTEES MAY ENTER INTO CONTRACT WITH MUNICIPALITY NOT TO EXCEED THREE YEARS—FIRE EQUIPMENT OF FIRE DISTRICT SHALL BE HOUSED BY MUNICIPALITY—USED FOR JOINT PROTECTION OF TOWNSHIP FIRE DISTRICT AND MUNICIPALITY.

2. EXPENSES OF CONTRACT—TAX LEVY ON TAXABLE PROPERTY IN DISTRICT—SECTION 3298-55 G. C.—OPTION—BOND ISSUE—SECTION 3298-56 G. C.—OPINIONS ATTORNEY GENERAL, 1943, OPINION 5798, PAGE 44, APPROVED AND FOLLOWED.

SYLLABUS:

1. Where a township fire district has been created in any township in which there is located a municipal corporation or corporations, or a part of a municipal corporation, the board of trustees of such township acting on behalf of such district may enter into a contract, for a period not to exceed three years, with a municipality, by which the fire equipment of the fire district shall be housed by the municipality and used for the joint protection of the township fire district and the municipality.

2. Where a contract has been entered into between a township fire district and a municipality for the joint use and maintenance of fire equipment of the fire district the expenses incident thereto, imposed upon such fire district 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. Opinion No. 5798, page 44, Opinions of the Attorney General for the year 1943, approved and followed.

Columbus, Ohio, October 10, 1950

Hon. George R. Smith, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

"The Xenia Township Trustees have recently provided for a fire district which includes all of the township excepting the corporate limits of Xenia City and have purchased 2 units of fire fighting equipment for the purpose of providing fire protection to this district. The township was without proper housing facilities for this equipment and due to the \$20,000.00 limitation placed upon them regarding the borrowing of money for fire protection, they have been financially unable to construct or acquire proper housing facilities for these units.

"Therefore, the township is considering entering into a contract with the City of Xenia for the exchange of services in regard to fire protection and I am herewith enclosing a copy of the contemplated contract. This contract will run until the end of the year at which time they contemplate executing a new contract very much on the same terms as the one enclosed.

"Xenia Township now finds itself in the position of being financially unable to meet the terms of this contract as well as provide for the hiring of the necessary personnel to maintain the equipment and provide the necessary care as well as to man it. They propose, therefore, to levy a one mill tax on the property in said fire district for the purpose of paying these expenses under authority of G. C. 3298-55.

"My question, therefore, is specifically whether or not, under

authority of this section, the township has authority to levy such a tax and whether or not the township has authority, under G. C. 3298-54 and G. C. 3298-60 to enter into such a contract with the City of Xenia and expend its funds as provided for in said contract?"

I further acknowledge receipt of the copy of the contemplated contract which in essence provides for the housing of the fire trucks of Xenia Township by the City of Xenia; the furnishing of personnel to drive said trucks by said city, one of which trucks and a driver therefor is to be available at all times for immediate runs in answer to any fire call in Xenia Township; the use of said trucks by the City of Xenia in fighting fires within said city and the payment to the City of Xenia of a stipulated sum by Xenia Township for the services provided by the City of Xenia.

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 cooperative 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.

From the context of your request I conclude that the fire fighting equipment involved in the proposed contract is the property of the township fire district and it is further concluded that the proposed contract is intended to concern the township fire district as distinguished from Xenia Township proper. It is observed that the draft of this contract as submitted recites that the same is entered into "by and between the City of Xenia, Ohio, and the Board of Trustees of Xenia Township, Greene County, Ohio," without indicating that the same is done on behalf of the fire district. Further, throughout the proposed draft no reference is made to the fire district but various recitals therein mention only Xenia Township. In view of these recitals it is my opinion that the proposed contract, if executed, would fail to accomplish the purpose intended and would on the other hand constitute the township instead of the fire district a party to the contract.

Assuming, for the purpose of considering the object of your request, that proper corrections are made to effectively make the fire district a party to the contract, the question arises as to the validity of the respective provisions of such contract.

Questions concerning Section 3298-54, et seq., General Code, relating to township fire protection have been considered by this office upon numerous occasions. In Opinion No. 2556, Opinions of the Attorney General for the year 1940, the then Attorney General considered a question involving a contract to be entered into between a township and a village and under the then provisions of Section 3298-54 and 3298-60, General Code, ruled as follows :

"A township may, under the terms of Section 3298-54, General Code, acquire fire fighting equipment and may thereafter, by the provisions of Section 3298-60, General Code, enter into a contract, for a period not to exceed three years, with a village by which such equipment shall be under the control of that village for the joint protection of the township and village."

While these sections have been amended the amendments have only broadened and expanded the grants of authority therein contained.

In Opinion No. 231, Opinions of the Attorney General for the year 1945, it was stated in the second branch of the syllabus thereof that :

“The board of trustees of a township in which a fire district has been created pursuant to Section 3298-54, General Code, may on behalf of such fire district enter into an agreement with another township or with a municipality for the joint purchase, maintenance, use and operation of fire fighting facilities, the portion of the expense thereof belonging to such district to be provided by a tax levied on the property in such district.”

Since the rendition of the 1940 Opinion Section 3298-54, General Code, has been amended to authorize township trustees to contract for fire protection for fire districts to the same extent as that provided for township and other subdivision fire protection contracts under Section 3298-60. I am of the opinion, therefore, that the provisions of the proposed contract if entered into by the Board of Trustees of Xenia Township for and on behalf of the township fire district would not contravene any provision of law and that such contract would be authorized by the above mentioned sections of the General Code.

With respect to your question relating to the authority to levy a tax on the property in the fire district for the purpose of paying the expenses involved in fulfilling the terms and conditions of the contract your attention is called to Opinion No. 5798, Opinions of the Attorney General for the year 1943, wherein the then Attorney General had under consideration a question involving a contract for fire protection between a village and a township fire district relating to Section 3298-55, General Code. The following pertinent comment is made at page 50 of said Opinion :

“ * * The Legislature has provided a means, and in my opinion the only means, whereby such protection in a fire district can be provided for. This is found in Sections 3298-55 and 3298-56, above quoted, whereby the trustees are authorized to levy a sufficient tax for such purpose upon all taxable property in a fire district or fire districts, and are further authorized to issue bonds which, however, must be first approved by a vote of the people in the township if the service is for the entire township, or in the fire district in case the service is for a district.
* * *.”

The third branch of the syllabus of said Opinion reads as follows :

“The cost of acquiring and maintaining such fire equipment

or of obtaining such fire protection in any such fire district cannot be paid out of the general funds of the township, but must be obtained by a levy of taxes on the taxable property in the district, pursuant to the provisions of Section 3298-55 of the General Code, or by the issuance of bonds pursuant to the provisions of Section 3298-56 of the General Code."

Being in agreement with the reasoning and conclusion reached in the foregoing Opinions of the Attorney General you are advised that it is my opinion that:

1. Where a township fire district has been created in any township in which there is located a municipal corporation or corporations, or a part of a municipal corporation, the board of trustees of such township acting on behalf of such district may enter into a contract, for a period not to exceed three years, with a municipality, by which the fire equipment of the fire district shall be housed by the municipality and used for the joint protection of the township fire district and the municipality.

2. Where a contract has been entered into between a township fire district and a municipality for the joint use and maintenance of fire equipment of the fire district the expenses incident thereto, imposed upon such fire district 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. Opinion No. 5798, page 44, Opinions of the Attorney General for the year 1943, approved and followed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.