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TOWNSHIP TRUSTEES—FIRE DISTRICTS; CREATION OF TWO SEPARATE DISTRICTS WITHIN A SINGLE TOWNSHIP—CONTRACTS FOR FIRE PROTECTION WITH DIFFERENT FIRE DEPARTMENTS—MAY LEVY TAXES AT DIFFERENT RATES—§§505.37, 505.39 RC.

SYLLABUS:

1. Under Section 505.37, Revised Code, it is proper for the township trustees to create two separate fire districts in a single township.
2. Under Section 505.37, Revised Code, it is proper for the township trustees to enter into a contract with one fire department for the protection of one fire district and a second contract with a different fire department for the protection of the other fire district.
3. It is proper for the township trustees to levy a tax under Section 505.39, Revised Code, at one rate upon the taxable property in one district and at a different rate upon the taxable property in the other district.

Columbus, Ohio, May 16, 1957

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

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

“R. C. 505.37 provides:

“The board of any township may, by resolution, whenever 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 of such portions of the township as it deems necessary, * * * or may contract for such fire protection for such fire district as provided in section 505.44 of the Revised Code.’

“R. C. 505.39 provides:

“The board of township trustees may, in any year, levy a sufficient tax upon all taxable property in the township or in a fire district, to provide protection against fire, * * *’

“R. C. 505.44 provides:

“In order to obtain fire protection, * * * any township may enter into a contract, for a period not to exceed three years,

with one or more townships, municipal corporations, or private fire companies, upon such terms as are agreed to by them, * * *.”

“Richland Township in Marion County is a large township covering considerable territory over its length. It has no villages therein and no township fire department. Due to its area, the trustees are desirous of creating two fire districts of said township, an East District and a West District, each consisting of approximately one half the portion of the township area. They then desire to contract with the Cardington Fire Department (Morrow County) for protection of the East District, and with Waldo Township Department (Marion County) for protection of the West District. The contract rate with one of the departments would be considerably less in cost than with the other department. However, neither department cares to contract for the entire township protection due to the distance involved from its respective station to the farthest point in the township, although they are willing to make runs to the middle of the township area.

“The trustees desire to know if they can create two separate fire districts of the township, contract separately with different fire departments for the protection of each district at different contract rates and levy taxes in each fire district, the rate of which tax would vary in the two districts due to the difference in the contract rates for the protection.

“Although they have been advised, they cannot follow this plan, I see no objection unless as to the rate of taxation differing within the township as to the two districts. Could you please render your opinion on the following:

“1. Can the trustees create two separate fire districts of their township.

“2. If so, can they enter a contract with one fire department for the protection of one fire district and a second contract with a different fire department for the protection of the district, the contracts differing in rates or cost for protection.

“3. If so, in view of the differing cost of protection for the two districts, can they then levy a tax under R. C. 505.39, at one rate upon the taxable property in one district and at a different rate upon the taxable property in the other district.

“4. If the answer to question 3 is ‘No,’ could they levy a tax upon all the property in the township at one rate, the proceeds of which would cover the total cost of protection, even though the cost in one district was greater than in the other district.

“5. If none of the above is permissible, can they legally contract with both fire departments for protection of the entire

township, notifying the inhabitants of the various portions of the township which department they should call for quicker response and action, in view of the distances involved.”

In answer to your first question, the fact that there are no municipalities located within the township is no longer a bar to the creation of a fire district since this requirement was deleted from Section 505.37, Revised Code, by the 99th General Assembly, 124 Ohio Laws, 397.

It will be noted that in the prior analagous provision, Section 3298-54 General Code, reference was made to “a fire district or districts.” In Section 505.37, Revised Code, reference is made only to “a fire district.” Was this change, which occurred in the recodification of 1953, intended to restrict the authority of the board of trustees? I think not.

Section 1.24, Revised Code, provides:

“That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments.”

A similar problem was considered in *Lofkin v. Loews, Inc.*, 75 Ohio App., 448, and *Ramon v. Spike*, 92 Ohio App., 49. The third paragraph of the syllabus in the *Lofkin* case is as follows:

“When the entire legislation affecting a particular subject matter has undergone revision and consolidation by codification, the revised section will be presumed to bear the same meaning as the original sections, unless it is clearly manifested that the legislature intended a change.”

Moreover, I find express authority for the construction I have placed upon the section in question in Section 1.10, Revised Code. This section provides in part:

“As used in the Revised Code, unless the context otherwise requires:

“(C) Words in the plural number include the singular number, and words in the singular number include the plural number.”

Therefore, I think that Section 505.37, Revised Code, authorizes the creation of more than one fire district.

Section 505.37, Revised Code, also expressly gives the board of township trustees authority to "contract for such fire protection." So it seems clear that it would be proper for the township trustees to contract for fire protection furnished by the named fire departments, and at different rates if it is deemed expedient.

The question which apparently troubles you most is whether it would be proper to levy a tax at one rate on one fire district and a different rate on the other district. In Opinion No. 5798, Opinions of the Attorney General for 1943, page 44, a very similar problem was considered. The question was presented whether it would be proper for the township trustees to create a fire district composed of only a part of the township and leave the rest of the township without fire protection; and, if so, would it be proper to support the fire district by taxing only the property within that fire district. Syllabus 3 of that opinion reads:

"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 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." (G. C. 3298-55 and G. C. 3298-56, now R. C. 505.39 and R. C. 505.40).

Therefore, it must follow that if it is proper to tax one fire district without taxing the rest of the township, it is quite proper to tax two fire districts at different rates. It is not only the logical procedure, but also the only just and equitable method.

To answer your questions specifically, it is my opinion and I so advise:

1. Under Section 505.37, Revised Code, it is proper for the township trustees to create two separate fire districts in a single township.

2. Under Section 505.37, Revised Code, it is proper for the township trustees to enter into a contract with one fire department for the protection of one fire district and a second contract with a different fire department for the protection of the other fire district.

3. It is proper for the township trustees to levy a tax under Section 505.39, Revised Code, at one rate upon the taxable property in one district and at a different rate upon the taxable property in the other district.

Respectfully,
WILLIAM SAXBE
Attorney General