

Based upon the foregoing, you are specifically advised that:

1. When the legislation, providing for one bond issue for the improvement of city streets, designates therein the streets which are to be improved without allotting a specific sum to any project, the city authorities may use their discretion as to the sum to be expended on any particular street enumerated. In the absence of abuse of such discretion, if the fund is exhausted before all the streets enumerated in such legislation are improved, such expenditure will be regarded as made for the purposes for which such fund was created.

2. When such legislation allots to each street enumerated a specific amount, no more than the amount so allotted can be expended from the proceeds of the bond issue for each street.

3. Under no circumstances can the proceeds of such a bond issue be used to improve streets that are not enumerated in the legislation determining to issue such bonds.

4. In those instances where, for some reason, a street which was enumerated in the bond legislation has not been improved, and the funds, arising from the proceeds of the bond issue, issued for the purpose of providing funds to improve a number of streets, no specific amount being allotted to any one street, are entirely exhausted, such a street has the same status as though no bonds had been issued, and steps may be taken as provided by law to improve the same.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2955.

FIRE DEPARTMENT—TOWNSHIP TRUSTEES MAY PAY VILLAGE FOR
FIRE PROTECTION OUTSIDE VILLAGE—METHOD DISCUSSED.

SYLLABUS:

Township trustees may lawfully pay from township funds for the use of a fire department maintained by a neighboring political subdivision for the purpose of protecting the lives and property of citizens of the township against damages resulting from fires. Payment may be made therefor at an agreed price per year or per month, or for each fire as it occurs.

COLUMBUS, OHIO, November 30, 1928.

HON. J. R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Hicksville is an incorporated village in Defiance County and lies wholly within the confines of Hicksville Township. It is a village of sufficient size to maintain reasonable fire equipment. The past few years the fire department of said village has answered calls in the surrounding township and in neighboring townships and has saved several buildings from destruction by fire.

Some months ago they answered two calls in Mark Township and they had understood previous to the time that when these runs were made that they would receive compensation from the Mark Township trustees for their services. The trustees refused to allow any compensation, whereupon the council of the Village of Hicksville passed an ordinance refusing to permit their fire equipment to be taken beyond the confines of the village.

* * *

Under the provisions of Section 3298-54, General Code, certain provisions are made by which township trustees are given authority to take certain measures to protect the property and lives of the citizens of the township against loss by fire.

QUESTION: Does this section place within the hands of the trustees of Hicksville Township enough authority to enter into an agreement with the village authorities of the village of Hicksville whereby said village of Hicksville will furnish fire protection to Hicksville Township at an agreed price per year or per month to be paid out of the township fund by said board of trustees?"

Boards of township trustees are creatures of statute and are within the same class of public agencies as are boards of county commissioners and boards of education so far as the limits and extent of their powers are concerned. Such boards, it has been held, have only such powers as are expressly granted to them by the authority creating them, together with such other powers as may properly be said to be included within the express powers granted for the purpose of properly effectuating the end to be accomplished in the exercise of the express power. Among the many statements of this proposition by our courts is the expression contained in the opinion of the court in the case of *State ex rel. vs. Menning*, 95 O. S. 97, 99, as follows:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

A later similar expression of the Supreme Court is made in the syllabus of the case of *State ex rel Clark vs. Cook*, 103 O. S. 465, wherein it is said:

"Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted."

This doctrine, as applied to boards of county commissioners and boards of education in their financial transactions, must in principle be equally obligatory upon township trustees.

The Legislature has, by the enactment of Sections 3298-54 et seq., General Code, unquestionably granted certain powers to township trustees to guard against the occurrence of fires within the township and to provide for the protection of the lives and property of the citizens of the township against damage and accident resulting from fires; and the only question is, whether or not the power so granted confers upon the trustees the power to co-operate with other political subdivisions in the purchase and maintenance of fire-fighting apparatus, or to contract and pay for the use of fire departments maintained by neighboring political subdivisions when fires occur within the township. Sections 3298-54 and 3298-55, 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. 3298-55. "The trustees of a township are authorized to levy in any year or years a sufficient tax upon all the taxable property in the township to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of volunteer fire companies."

Pursuant to the foregoing sections of the Code, one of my predecessors in office held (Opinions of the Attorney General, 1920, Vol. II, page 1065) :

"The statutes of Ohio do not authorize the joint purchase of fire apparatus by the township trustees and the council of a village within the township."

Again, in 1924, a similar question was before the then Attorney General, and it was held (Opinions of the Attorney General, 1924, Vol. I, p. 82) :

" * * * "

2. Under Section 3298-54 G. C., before the township trustees purchase fire apparatus and appliances there must exist a volunteer fire company having such character as to give assurance of permanency and efficiency.

3. Joint action by the township trustees and a council of a village within the township to purchase fire apparatus and to use and maintain the same is not authorized by statute."

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 3298-35, 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 fires does not extend to the *joint purchase* and maintenance 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 main-

tained by the city or village. Whether or not this may be done depends entirely on what the Legislature meant by the language used in the statute.

The Attorney General, when rendering his opinion in 1924, was apparently of the opinion that the authority to provide protection against fire in each of the above statutes was circumscribed by the later provisions of the statutes and the authority thus granted limited to the equipping and maintaining of a volunteer fire department. While the exact question involved in the present inquiry was not before the Attorney General in 1924, he did hold that fire apparatus and equipment could be *bought* by township trustees *only* where there existed in the township a volunteer fire department of such character as to give assurance of permanency and efficiency. He based this contention entirely on the use of the word *such* as used in Section 3298-54, General Code. To quote from his opinion:

"The language here used makes the acts of the township trustees discretionary because the words are 'may establish and may purchase and provide for the use of such company *such fire apparatus and appliances.*' This language clearly makes the purchase and the providing of fire apparatus and appliances contingent upon the existence of a volunteer fire company of such permanency and efficiency as to provide the means of using the same." (Italics the writer's.)

It will be noted that the Attorney General in quoting from the statute the clause in which appears the words "such fire apparatus and appliances" does not quote the entire clause. The words "such fire apparatus and appliances" are followed by the words "as may seem to the trustees advisable."

A reading of Section 3298-54, General Code, will disclose that this section contains three independent clauses joined by the word "and," each of which clauses contains a distinct grant of power independent of the grants contained in the other clauses. That is, the trustees may first establish all necessary regulations to guard against the occurrences of fires and protect the property and lives of the citizens against accidents resulting therefrom. Second, when a volunteer fire company, as described in the section, has been organized, they may purchase such fire apparatus and appliances as may seem to the trustees advisable, in which event they are required to provide for the care and maintenance thereof, and for this purpose they are authorized to purchase, lease or construct and maintain certain buildings. Third, they may establish and maintain fire alarm telegraph within the township.

The same observations may be made with reference to Section 3298-55, which contains two independent clauses joined by the word "and" and each containing a distinct and independent grant of authority. This section authorizes the levying of a tax (1) to provide protection against fire, and (2) to provide and maintain fire apparatus and appliances and buildings and sites for the use of volunteer fire companies.

The act of the Legislature (108 O. L. Pt. 2, p. 1152), in which was enacted Sections 3298-54 and 3298-55, also contained Sections 3298-56, 3298-57, 3298-58 and 3298-59, General Code. These latter four sections authorize the trustees, upon vote of the people, to issue bonds for the purpose of providing protection against fire and limited the issuing of these bonds to the purpose of providing fire apparatus and appliances and buildings and sites and for the use of volunteer fire companies. These latter four sections were repealed by the 87th General Assembly, but even while they were in force and even though they were a part of the same act as were Sections 3298-54

and 3298-55, they did not serve to limit, in my opinion, the authority granted in said Sections 3298-54 and 3298-55 to the providing of means of protection against fires in cases only when there existed in the township a volunteer fire department.

The language of the first clause of Section 3298-54, General Code, is a distinct grant of authority and is independent of the succeeding provisions of the statute as is also the first clause of Section 3298-55. It cannot be presumed that the Legislature in delegating authority to statutory boards and similar governmental agencies delegates in express language and in minute detail each and every act which it is necessary for the board to do in order to accomplish the ends which the authority in general terms seeks to accomplish. 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. Such boards have some discretion which the courts will respect. The Legislature has in general terms authorized township trustees to establish all necessary regulations to guard against the occurrence of fires, protect the property and the lives of citizens against damages and accidents resulting therefrom and to levy in any year or years a sufficient tax upon all the taxable property in the township to provide protection against fire, and has not limited the manner in which the trustees are to provide this protection. It therefore must be conceded that the Legislature has reposed in the trustees the discretion of accomplishing the end desired, and it is my opinion that in so doing a board of township trustees may lawfully, if it does not abuse its discretion in so doing, provide for the protection of the property and lives of the citizens of the township against damages and accidents resulting from fires by contracting with a neighboring municipality, which maintains a fire department, for the use of such fire department in putting out fires within the township. Having that discretion, the trustees may contract for the use of the fire department by the month or by the year, or by paying for the use of the department for each fire as it occurs.

I am therefore of the opinion, in specific answer to your question, that the trustees of Hicksville Township do have authority to enter into an agreement with the village authorities of the village of Hicksville whereby said village of Hicksville will furnish fire protection to Hicksville Township at an agreed price per year or per month, or by paying for the use of the village fire department, for each fire as it occurs, from township funds.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2956.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
TUSCARAWAS COUNTY.

COLUMBUS, OHIO, November 30, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*