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FIRE DEPARTMENT — TOWNSHIP TRUSTEES — FIRE DISTRICT CREATED—TRUSTEES MAY ENTER INTO CONTRACT WITH VOLUNTEER FIRE DEPARTMENT FOR FIRE PROTECTION FOR ENTIRE TOWNSHIP EXCLUSIVE OF MUNICIPAL CORPORATION — VOLUNTEER FIRE DEPARTMENT OWNS ITS OWN APPARATUS—SECTION 3298-54 G. C.

SYLLABUS:

Township trustees after having created a fire district may enter into a contract with a volunteer fire department which owns its own apparatus for fire protection for the entire township exclusive of a municipal corporation under the provisions of Section 3298-54 of the General Code.

Columbus, Ohio, July 23, 1949

Hon. J. L. MacDonald, Prosecuting Attorney  
Columbiana County, Lisbon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“There exists in Franklin Township, Columbiana County, Ohio, a volunteer fire company, known as the Franklin Township Volunteer Fire Department. This volunteer fire department is regularly incorporated under the laws of the State of Ohio as a corporation not for profit and has no connection with the township as a political subdivision. Recently, the Volunteer Fire Department purchased its own fire truck and has the same available for fire protection.

The Franklin Township Trustees now wish to enter into a contract with the Volunteer Fire Department for fire protection to the entire township, exclusive of the corporation of Summitville. There is no other means of fire protection available to the township. Transfer of ownership of the fire fighting equipment to the township or to any other political subdivision is not contemplated, now or at any future date.

I have read the Opinion of the then Attorney General 1930 AG OPNS No. 2376 where it is stated in Paragraph No. 2 of the syllabus that a board of township trustees may lawfully enter into a contract and pay a volunteer fire company for its services

in furnishing fire protection to the township. This Opinion was rendered nearly nineteen years ago and under Sections of the Ohio General Code (3298-54 and 3298-60) which have since been amended.

Your Opinion is respectfully requested as to whether the Township Trustees of Franklin Township, Columbiana County, Ohio, may lawfully enter into a contract for fire protection with a volunteer fire department which consists of private citizens and is regularly incorporated under the laws of Ohio as a corporation not for profit."

For the purpose of clarity and brevity I will condense your question to read as follows :

May Township Trustees enter into a contract with a Volunteer Fire Department which owns its own apparatus for fire protection for the entire township exclusive of a municipal corporation?

The first paragraph of Section 3298-54 of the General Code reads as follows :

"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 may, with the approval of the specifications by the county prosecuting attorney, purchase or otherwise provide such fire apparatus, appliances, materials, fire hydrants and such water supply for fire fighting purposes as may seem to the trustees to be advisable, in which event they shall provide for the care and maintenance thereof, and, for such purposes, 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. Such township trustees may employ one or more persons to maintain and operate fire fighting equipment; or they may enter into an agreement with a volunteer fire company for the use and operation of such equipment. The trustees are empowered to compensate the members of a volunteer fire company on such basis and in such amount as the trustees deem fair and equitable.*"

(Emphasis added.)

Thus the authority is clear that with the approval of the prosecuting attorney the township trustees may purchase or otherwise provide fire fighting equipment, and under the term "or otherwise provide" the legislature left nothing for the imagination when it provided as above em-

phasized, "or they may enter into an agreement with a volunteer fire department for the use and operation of such equipment."

The third paragraph of Section 3298-54 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.*  
(Emphasis added.)

Thus the answer to your question unfolds where it is provided that the trustees may by a resolution create a fire district or districts of that portion of the township not included within the corporate limits of a corporation and enter into a contract for such fire district or fire districts the same as provided in Section 3298-60 of the General Code.

The last paragraph of Section 3298-60 reads as follows:

"Such contracts may provide for a fixed annual charge to be paid at the times agreed upon and stipulated therein, or for compensation based upon a stipulated price for each run, call or emergency, or the number of members or pieces of apparatus employed or the elapsed time of service required, in such run, call or emergency; and may provide for compensation for loss or damage to equipment or apparatus while engaged outside the limits of the subdivision owning and furnishing the same; and said contracts may provide for the reimbursement of the subdivision wherein the fire department members are employed for any pension or indemnity award or premium contribution assessed against the employing subdivision for workmen's compensation benefits, for injuries or death of its fire department members occurring while engaged in rendering service in pursuance thereof."

and shall be your guide in drafting the terms and consideration for such contract.

Therefore, in answer to your question it is my opinion that the township trustees of Franklin Township, Columbiana County, Ohio, may enter into a contract with a volunteer fire department under the provisions of Sections 3298-54 and 3298-60 to furnish fire protection to all that portion or any part of that portion of the township which lies outside the corporate limits of Summitville if such portion has been created into a fire district.

However, in addition to the above I direct your attention to the following quoted from Opinions of the Attorney General for the year 1945, pages 197 and 198, being Opinion No. 231 :

“It will be noted that the township trustees of any township in which there is located a municipal corporation are authorized to create a fire district or districts out of that portion of such township not included within the limits of such municipal corporation, and may purchase for such fire district or districts apparatus and appliances and install fire hydrants and provide a water supply for fire fighting purposes ; or may contract for such fire protection for such fire district or districts, as provided in Section 3298-60, for other subdivisions. Any such fire district is to be given a separate name by which it shall be known and designated.

There is nothing, however, in this section which constitutes such fire district as a separate political subdivision or gives it any organization of its own. It is also to be noted that such district may be only a part of that portion of the township which is outside a municipality. See 1943 Opinions of Attorney General, page 44. Furthermore, there is nothing in this or any other section of the statutes so far as I can find, which contemplates the creation of a fire district composed of portions of two or more townships.

Section 3298-54a, General Code, further carries out the idea that the governing body of such fire district is the board of township trustees. They are authorized by this section to appoint a fire chief and to employ and discharge firemen for such district.

Section 3298-55, General Code, reads as follows :

“The trustees of a township are authorized to levy in any year or years a sufficient tax upon *all taxable property* in the township or *in a fire district*, or districts, to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor and sources of water supply and materials therefor, and the establishment and maintenance of lines of fire alarm telegraph and the payment of permanent, part-time or volunteer fire fighting companies to operate same.”

It will be noted that by the terms of this section, when a fire district has been created as provided in Section 3298-54, supra, the

trustees of the township are authorized to levy a tax upon the taxable property in such fire district alone, to provide protection against fire and to provide and maintain fire apparatus, buildings, etc., in such district.”

in all of which I concur.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.