

5302

1. FIRE APPARATUS AND EQUIPMENT — STATE COUNCIL OF DEFENSE — NO POWER TO COMPEL MUNICIPAL CORPORATIONS AND BOARDS OF TOWNSHIP TRUSTEES TO CONTRACT FOR INTERCHANGE SUCH EQUIPMENT DURING EMERGENCY.
2. POLITICAL SUBDIVISION — WHERE IT CONTRACTED TO INTERCHANGE SUCH EQUIPMENT — NOT LIABLE IN DAMAGES, INJURIES TO PERSON OR PROPERTY CAUSED BY SUCH EQUIPMENT — WHERE PROCEEDING TO FIRE, ENGAGED IN DUTY AT FIRE OR IN ANSWERING ANY OTHER EMERGENCY ALARM.
3. WHERE CONTRACT DOES NOT PROVIDE FOR LIABILITY FOR DAMAGE TO SUCH EQUIPMENT, ANY LOSS ORDINARILY FALLS ON POLITICAL SUBDIVISION, OWNER.
4. FIREMAN — STATUS WHERE EQUIPMENT INTERCHANGED — WHERE BENEFITS, FIREMEN'S PENSION FUND, LESS THAN THOSE PROVIDED BY WORKMEN'S COMPENSATION ACT, FIREMAN ENTITLED TO PROTECTION SAID ACT -- SECTION 1465-61 G.C.

## SYLLABUS:

1. State Council of Defense has no power to compel municipal corporations and boards of township trustees to enter into contracts providing for the interchange of fire apparatus and equipment during an emergency.

2. A political subdivision which enters into a contract with another political subdivision for interchange of fire equipment is not liable in damages for injuries to person or property caused by its fire apparatus while it is proceeding to a fire or a place where a fire is believed to be in progress or while engaged in duty at a fire, in such other political subdivision, or in answering any other emergency alarm.

3. If a contract is entered into between two or more political subdivisions for the interchange of fire equipment and such contract contains no provision with respect to liability for damage to such fire equipment, the loss occasioned by such damage must ordinarily fall upon the political subdivision owning such equipment.

4. A fireman employed by a political subdivision which enters into a contract with other political subdivisions for interchange of fire apparatus, who is not eligible to receive benefits from the firemen's pension fund maintained by the subdivision by which he is employed or whose benefits under the firemen's pension fund are less than those provided by the Workmen's Compensation Act, is entitled to the protection of the Workmen's Compensation Act as provided in Section 1465-61, General Code, while engaged in the performance of his duties outside the territorial limits of the subdivision employing him, pursuant to such contract.

Columbus, Ohio, July 11, 1942.

Hon. Ray R. Gill, State Property Officer,  
Columbus, Ohio.

Dear Sir:

I have your letter of recent date wherein you state that you have been requested by the Civilian Defense Council to prepare and carry out a plan whereby cities and townships in Ohio will furnish to each other fire apparatus, men and equipment in cases where, due to emergencies, there are insufficient equipment, apparatus and men in any particular locality. With your letter, you have enclosed a form of contract which you propose to use in carrying out this plan.

The proposed contract is to be executed by some proper officer of the municipality or township pursuant to action by the legislative authority of the municipality or the board of township trustees, as the case may be. It obligates each of the contracting parties to place on call fire apparatus and equipment belonging to it, not needed under ordinary

circumstances, to assist any of the other contracting parties within one hundred and fifty miles in case of emergency.

In connection with this plan, you state that three questions have arisen, viz.:

1. Does the State Council of Defense Act contain provision whereby municipalities and townships may be compelled to enter into such contract?

2. The liability of the municipality or township owning such equipment for damage caused thereby while going to, coming from or within the subdivision to which it is sent in case of emergency. You also desire to know where the liability for damage to equipment under such circumstances would lie.

3. Would firemen, regular or volunteer, be protected by the Workmen's Compensation Act in case of injury while working pursuant to such contract outside of the territorial limits of the subdivision of their employer in the event the Firemen's Pension Plan, of which they were members, did not protect them under such circumstances?

1. Section 5288, General Code, which is part of the State Council of Defense Act, provides in part:

"The council shall have the following powers and duties:

(a) To adopt, amend, and repeal rules, regulations, and by-laws governing its procedure and activities. \* \* \*

(g) *To require the cooperation and assistance of state and local governmental agencies and officials.* \* \* \*

(i) To do all acts and things, not inconsistent with law, for the furtherance of defense activities." (Emphasis mine.)

Section 5289, General Code, which is part of the same act, provides:

"In order to avoid duplication of services and facilities, the council is:

(a) Directed to utilize the services and facilities of existing officers, offices, departments, commissions, boards, institutions, bureaus and other agencies of the state and of the political subdivision thereof, and

(b) *All such officers and agencies shall cooperate with and extend their services and facilities to the council as it shall request.*"  
(Emphasis mine.)

You do not state whether the State Council of Defense has passed any resolution or taken any other action purporting to require townships and municipalities of the state to enter into contracts of the type submitted with your letter. However, I shall assume for the purposes of this opinion that such action has been taken by the State Council of Defense and that, so far as it has the power to do so, it has attempted to require townships and municipalities to enter into such contract.

No provisions of law other than those above quoted could conceivably empower the State Council of Defense to compel the execution of the proposed contract, and it therefore becomes necessary to examine and analyze them so that their true meaning may be determined.

You will note that Section 5288, General Code, empowers the State Council of Defense "to require the cooperation and assistance of local governmental agencies and officials." Likewise, Section 5289, General Code, requires officers and agencies to cooperate and extend their facilities to the Council as it shall request. The language of these provisions is plain. Local subdivisions are required to cooperate with the Council upon its request, but there is no provision requiring such local subdivision to cooperate with other subdivisions upon request of the Council. The meaning of the language is clear and there is therefore no room for construction. Thus, in 37 O.Jur., 514, it is said:

"The right of the courts to interpret a duly enacted statute is based upon some apparent uncertainty of meaning, some apparent ambiguity of terms, or some apparent conflict of provisions. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation."

I am therefore of the opinion, in specific answer to your first question, that the State Council of Defense has no power to compel municipal corporations and boards of township trustees to enter into contracts providing for the interchange of fire apparatus and equipment during an emergency.

I do, however, deem it appropriate to direct your attention to the

provisions of Section 3298-60, General Code, which provides in part:

“Any township, village or city, in order to obtain fire protection or to obtain additional fire protection in times of emergency, shall have the authority to enter into a contract or contracts for a period not to exceed three years, with one or more townships, villages or cities, upon such terms as may be agreed upon, for services of fire departments or the use of fire apparatus or for the interchange of the service of fire departments or use of fire apparatus, within the several territories of the contracting subdivisions, if such contracts are first authorized by the respective boards of trustees, councils, or other legislative bodies. \* \* \*

The provisions of section 3714-1 of the General Code so far as the same shall apply to the operation of fire departments, shall apply to the contracting political subdivisions and fire department members when said members are rendering service outside their own subdivision pursuant to such contracts.

Fire department members acting outside the subdivision in which they are employed pursuant to such contracts, shall be entitled to participate in any pension or indemnity fund established by their employer to the same extent as while acting within the employing subdivision, if the rules of the board of trustees of the firemen's pension or indemnity fund provide therefor; and shall be entitled to all the rights and benefits of the workmen's compensation act, to the same extent as while performing service within said subdivision.

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.”

This section authorizes municipal corporations and boards of township trustees voluntarily to enter into contracts of the type submitted by you, and, undoubtedly, if the importance and advisability thereof is brought to the attention of the proper officers, action will be taken leading to the execution of such a contract.

2. Although your second and third questions assume that the State Council of Defense has power to compel the execution of the contract and are conditioned upon such assumption and consequently do not require an answer, nevertheless, I believe that I should answer such questions in so far as they may pertain to situations arising because of contracts voluntarily entered into under the provisions of Section 3298-60, General Code.

Section 3714-1, General Code, provides:

“Every municipal corporation shall be liable in damages for injury or loss to persons or property and for death by wrongful act caused by the negligence of its officers, agents, or servants while engaged in the operation of any vehicles upon the public highways of this state under the same rules and subject to the same limitations as apply to private corporations for profit but only when such officer, agent or servant is engaged upon the business of the municipal corporation.

Provided, however, that the defense that the officer, agent, or servant of the municipality was engaged in performing a governmental function, shall be a full defense as to the negligence of members of the police department engaged in police duties, and as to the negligence of members of the fire department while engaged in duty at a fire or while proceeding toward a place where a fire is in progress or is believed to be in progress or in answering any other emergency alarm. And provided, further, that a fireman shall not be personally liable for damages for injury or loss to persons or property and for death caused while engaged in the operation of a motor vehicle in the performance of a governmental function and provided further that a policeman shall not be personally liable for damages for injury or loss to persons or property and for death caused while engaged in the operation of a motor vehicle while responding to an emergency call.”

This section by express reference thereto is made applicable to the situations which might arise if the proposed contract is executed. You will have noted that it exempts from liability subdivisions owning fire equipment for negligence of the firemen operating same while engaged in duty at a fire or while proceeding toward a place where a fire is in progress or is believed to be in progress or in answering any other emergency alarm.

In *Staudenheimer v. City of Newark*, 62 O.App., 255, the court held as disclosed by the syllabus:

“A fire truck en route to an engine house other than the one at which it is usually stationed, to replace a fire truck which has been called to a fire, is answering an emergency alarm as contemplated in Section 3714-1, General Code, and a person injured in a collision with such fire truck cannot hold the city liable.”

If therefore, fire apparatus is sent from one subdivision or city to another to replace or supplement equipment, under the rule laid down in the case just cited, the provisions of the statute would exempt the owner of such apparatus from liability for damage caused by its operation.

It is, of course, too clear to require discussion that there would be no liability on account of damage caused by the operation of such equipment in proceeding to a fire or a place where a fire is believed to be in progress or for negligence in the operation of such equipment at a fire.

The statute does, however, make the owner of such equipment liable for damage caused by the negligent operation thereof under any other circumstances and, if some person or corporation suffered damage by reason of the negligent operation thereof in returning from a fire, the owner would be liable. Such liability, however, could be insured against. See my Opinion No. 481, found in Volume I of the Opinions of the Attorney General for 1939, at 595.

Although Section 3298-60, General Code, permits the parties in their contract for interchange of fire protection to provide where liability shall be for damage to fire apparatus, the proposed contract which you have submitted contains no such provision. In the absence of such provision, the municipal corporation or township to which the apparatus was sent pursuant to such contract would not be liable for damage caused to such apparatus merely because it might be damaged while proceeding thereto, fighting fires thereat or returning therefrom. It is, of course, conceivable that such city or township might be liable because of some other reason, such as a defect in the highway or street or something of that nature, but, in the absence of some special or unusual circumstances, no liability would attach.

3. Section 1465-61, General Code, which is part of the Workmen's Compensation Act, provides in part:

“The term ‘employee,’ ‘workman’ and ‘operative’ as used in this act, shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein. Provided that nothing in this act shall apply to police or firemen in cities where the injured policemen or firemen are eligible to participate in any policemen's or firemen's pension funds which are now or hereafter may be established and maintained by municipal authority under existing laws, unless the amount of the pension funds provided by municipal taxation and paid to such police or firemen shall be less than they would have received had the municipality no such pension funds provided by law; in which event such police and firemen shall be entitled to receive the regular state compensation provided for police and firemen in municipalities where no policemen's or firemen's pension funds have been created under the law; less, however, the sum or sums received by the said policemen or firemen from said pension funds provided by municipal taxation, and the sum or sums so paid to said policemen or firemen from said pension funds shall be certified to the industrial commission of Ohio by the treasurer or other officer controlling such pension funds. \* \* \*

The provisions of Section 3298-60, General Code, supra, contemplate that in some cases the firemen's pension fund may not protect firemen when they are working outside the limits of the political subdivision maintaining the fire department, and that section expressly provides that in such cases such firemen shall be entitled to all the rights and benefits of the Workmen's Compensation Act to the same extent as while performing service within such subdivision.

In my Opinion No. 2520, found in Opinions of the Attorney General for 1940, Volume I, at page 677, I advised, as shown by the second paragraph of the syllabus which I quote as follows:

"Members of a volunteer fire department of a village, who are employes of the village under Section 1465-61, General Code, acting outside such village and in another subdivision pursuant to a contract providing fire protection for said subdivision, are subject to and are entitled to the benefits of the Workmen's Compensation Act while so engaged."

This ruling, of course, is based upon the assumption that the firemen's pension fund did not protect the firemen in such case or did not give them so much protection as the Workmen's Compensation Act.

However, the reasoning therein contained is applicable to your third



question and you are specifically advised in answer thereto that firemen who are injured outside the territorial limits of the subdivision by which they are employed while engaged in rendering services pursuant to the proposed contract and who are not entitled to benefits under the firemen's pension fund maintained by their employer, are entitled to the benefits of the Workmen's Compensation Act while so engaged.

Respectfully,

THOMAS J. HERBERT  
Attorney General.