

be approved by me. Said leases are therefore hereby approved and my approval is endorsed upon the same and upon the duplicate and triplicate copies thereof.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

569.

FIRE PROTECTION—CONTRACTS BETWEEN TOWNSHIP AND MUNICIPALITY—FIXED ANNUAL CHARGE NECESSARY.

*SYLLABUS:*

*Under the provisions of Section 3298-60, General Code, as enacted by the 88th General Assembly, it will be necessary to provide for a fixed annual charge in the making of contracts for fire protection as authorized under said section.*

COLUMBUS, OHIO, June 28, 1929.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—Acknowledgment is made of a communication from your office which reads:

“One of the townships in this county has contracted with another township, which has provided its own fire equipment under the provisions of Section 3298-54 of the General Code, et seq., for fire protection and following the opinion of the Attorney General as found in the Opinions of the Attorney General of November 30, 1928, being Opinion No. 2955, contracted for payment at \$50.00 per unit per run.

The last session of the legislature in House Bill No. 315, enacted a law becoming effective July 18, 1929, specifically providing for such authority to contract, and, in its first paragraph, provided that such contract could be entered into ‘upon such terms and conditions as are mutually agreed upon.’ Under this provision apparently a contract such as was entered into in the instant case would be valid. However, in the second paragraph of House Bill No. 315 it provided ‘such contract shall provide for a *fixed annual charge* to be paid at such times as may be stipulated in the contract.’

Under the provisions of this law, can the township fix the terms and conditions of payment at other than a fixed annual charge?”

Opinion No. 2955, issued under date of November 30, 1928, to Hon. J. R. Pollock, prosecuting attorney, Defiance, Ohio, held as disclosed by the syllabus, that:

“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.”

Section 3298-60, as enacted in House Bill No. 315 by the 88th General Assembly, provides:

"Any township, in order to obtain fire protection shall have authority to enter into a contract for a period not to exceed three (3) years with any city, village or township, upon such terms and conditions as are mutually agreed upon, for the use of its fire department and fire apparatus, if such contract is first authorized by the trustees of such township and the council of such city or village.

A similar contract may be made between a village and any city if authorized by the council of the village and the council of the city. Such contract shall provide for a fixed annual charge to be paid at such times as may be stipulated in the contract. All expenses thereunder shall be construed as a current expense and the taxing authority of the township or village shall make an appropriation therefor from the general funds, and shall provide for the same in their respective annual tax budgets."

As indicated in the opinion of my predecessor which you have mentioned, the general power to enter into such contracts existed prior to the taking effect of Section 3298-60. In other words, in so far as the general power is concerned, the right of a township to enter into a contract for fire protection to be supplied by a municipality, is declaratory of what the law was held to be by the Attorney General. However, in the enactment of said Section 3298-60, the Legislature has undertaken to fix certain limitations for such contract. That is to say, under said section such a contract may not exceed a period of three years and the same must be first authorized by the trustees of the township and the council of such municipality. The other limitation to which you refer is that, "such contract shall provide for a fixed annual charge to be paid at such times as may be stipulated in the contract." It is, of course, difficult to determine definitely what actuated the Legislature to make such provision for the reason that it may be difficult for a taxing authority to determine in advance the proper amount for a given contract. There may be few fires in a given time, or there may be many, all of which indicate that a stipulated price per fire might be an equitable way of arriving at the amount under a given contract.

However this may be, it seems that the Legislature in plain and unambiguous language has expressly provided that such contract shall provide for a fixed annual charge and that contracts entered into after the taking effect of said act must necessarily contain such provisions. It follows that there is no authority for any other method of payment.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

570.

WORKMEN'S COMPENSATION LAW—SECTIONS 1465-74 AND 1465-75,  
 GENERAL CODE, CONSTRUED—WHEN PROVISIONS NOT APPLICABLE—SPECIFIC CASE.

**SYLLABUS:**

*The provisions of Sections 1465-74 and 1465-75, General Code, relating to the payment of compensation to be paid from the surplus fund created by Section 1465-54, General Code, are not applicable to the judgment for compensation of dependents of employes who died subsequent to January 1, 1923, as a result of injuries received prior to said date.*