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THE BOARD OF TOWNSHIP TRUSTEES CAN ALLOCATE THE WATER OF THE TOWNSHIP FIRE DEPARTMENT TO PRIVATE CITIZENS DURING AN EMERGENCY—THE BOARD MAY DELIVER THE WATER IN THE AFORESAID SITUATION—THE BOARD LACKS THE AUTHORITY TO CHARGE FOR THE WATER IN THE AFORESAID SITUATION—§§505.37, R.C., 3298-54, G.C., 124, O.L., 397, OPINION 2416, OAG, 1953 OPINION 6541, OAG, 1956.

## SYLLABUS:

1. A board of township trustees may, under Section 505.37, Revised Code, furnish water of the township fire department to private citizens to protect the property and lives of such citizens where drought or other causes have resulted in an emergency situation.

2. In such a situation, if the emergency so requires, the board of township trustees may under Section 505.37, Revised Code, deliver such water for the use of such citizens.

3. A board of township trustees lacks authority to charge a fee for its services in meeting the emergency needs of citizens for water.

Columbus, Ohio, June 14, 1962

Hon. James W. Freeman, Prosecuting Attorney  
Coshocton County, Coshocton, Ohio

Dear Sir:

Your request for my opinion reads in part:

“Two fire districts have been created in township ‘A’. At the fire department in each of these fire districts is located a well. Its primary purpose is to provide water for the tank truck and also for drinking water at the department and necessary sanitation purposes. At various times throughout the year situations arise where private citizens through drought or otherwise are unable to obtain sufficient water from their own supply to provide for necessary purposes such as drinking, sanitation and the watering of stock.

“Query: During such emergencies may township trustees provide water from the fire department for the use of private

citizens, assuming that the furnishing of such water will not impair the efficiency of the fire department?

“If it is permissible to furnish such water is it also permissible for the fire department to deliver such water under these circumstances to the private citizen?”

“In the event it is permissible to furnish such water may the fire department or the township trustees make a charge for such service?”

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The powers and duties of a board of township trustees with regard to fire departments are set forth principally in Section 505.37, Revised Code, which, as here pertinent, reads:

“The board of township trustees may establish all necessary regulations to guard against the occurrence of fires, *protect the property and lives of the citizens against damage and accidents* and may, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide such fire apparatus, mechanical resuscitators or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes as seems advisable to the board. \* \* \*” (Emphasis added)

A prior version of this sentence as enacted by the 83rd General Assembly in 108 Ohio Laws, Part 2, 1152 (and which became Section 3298-54, General Code) read:

“SECTION 1. 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*, \* \* \*” (Emphasis added)

In 1951, 124 Ohio Laws, 397, the words “resulting therefrom” were deleted from the sentence in question. The legislature is presumed to intend a change in the law where an amendment is made, and in this case the intention could only have been to broaden the scope of authority of a township fire department as related to protecting the property and lives of citizens against damages and accidents. Where before the amendment such protection was clearly limited to protection against damages and accidents resulting from fires, after the amendment the fire department was authorized to protect against damages and accidents regardless of whether a fire was involved.

In this regard, Opinion No. 2416, Opinions of the Attorney General for 1953, page 114, reads in part:

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“Undoubtedly, the statute is primarily concerned with the guarding against the occurrence of fires. Yet it must be conceded that the township trustees may establish regulations to ‘protect the property and lives of the citizens against damages and accidents,’ and ‘damages and accidents’ are not limited to those caused by fire.

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“The statute in 1951 authorizes purchase of ‘such fire apparatus or mechanical resuscitators, or other equipment, appliances, materials, fire hydrants and such water supply for fire fighting purposes as may seem \* \* \* advisable.’ Fire departments today, through their emergency squads, attend to a great variety of mishaps. A record of an average day’s ‘runs’ may well include a rescue from drowning, resuscitation of persons overcome by gas fumes, aiding persons who have fallen from ladders, etc. In short, I am of the opinion that township trustees have authority, by and with the approval of the prosecuting attorney, to purchase ‘rescue cars’ for the township. If it be objected that ‘rescue cars’ are not specifically mentioned in the statute, it might be noted that ‘fire engines’ are not specified either, and yet it has never been questioned that the township trustees might purchase fire trucks under Section 3298-54, General Code. It is true that fire trucks are used to fight fires, while rescue cars with their pulmotors and other equipment are not necessarily designed for fighting fires, but instead are most often used in instances of emergencies not involving fires.

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The writer then went on to conclude that the legislature was concerned with apparatus or equipment for emergency purposes generally, rather than merely firefighting.

At this point it becomes necessary to discuss Opinion No. 6541, Opinions of the Attorney General for 1956, page 344, which was issued by the same attorney general who issued Opinion No. 2416, *supra*. The second paragraph of the syllabus of Opinion No. 6541, *supra*, reads as follows:

“The authority of a board of township trustees to establish or procure water lines and to provide a water supply within the township concerned extends only to the provision of such water supply as is necessary for fire-fighting purposes.”

The above conclusion appears to state that a board of township trustees lacks authority to provide water for the protection of property and lives of citizens unless the emergency giving rise to the need for protection is related to fire. Assuming that said conclusion was based upon the proposition that the board's authority was limited to fire fighting only rather than emergencies generally, it would be inconsistent with and would reverse Opinion No. 2416, *supra*, which opinion found authority for a board to buy and use "rescue cars" to meet emergencies other than those created by fire. The two opinions may be reconciled, however, if Opinion No. 6541, *supra*, is limited to the question presented. The specific question there was whether funds deriving from a levy for fire protection could be used for laying in water mains for the use of property owners; in other words, could the township use sections of law giving it fire-fighting authority to go into the water supply business generally. The answer to that question is, of course, no. That this is the interpretation intended by the writer of Opinion No. 6541, *supra*, is also apparent because he did not see fit to discuss his prior Opinion No. 2416, *supra*, indicating that he did not think them inconsistent, and thus appeared to agree with his prior position that the board's powers under the particular law extended beyond fire-fighting.

Accordingly, I am of the opinion that the facts presented in the present instance do not come within the conclusion of said Opinion No. 6541, but rather within that of Opinion No. 2416, *supra*, and I am of the opinion that in time of emergency a board of township trustees may provide fire department water to needy private citizens.

Whether the particular situation presented is such an emergency that property and lives of citizens are threatened with damage unless water is furnished, is a question of fact that can be decided in the first instance only by the board of township trustees. But if such an emergency does exist, then under Section 505.37, *supra*, the board may furnish the water.

Your second question asks whether the fire department may deliver the water to the private citizen. This again depends upon the nature of the emergency. If delivery is necessary in order to meet the emergency, the township, in its authority to meet emergencies, may deliver the water. In this regard, delivery of the water appears to be analogous to driving the "rescue car" to the scene of the accident.

In your third question you ask whether the board may charge for its services in furnishing water. I find no authority for the board to charge for its services in meeting any such emergencies, and must conclude that it may not so charge.

In summarizing, it is my opinion and you are advised:

1. A board of township trustees may, under Section 505.37, Revised Code, furnish water of the township fire department to private citizens to protect the property and lives of such citizens where drought or other causes have resulted in an emergency situation.

2. In such a situation, if the emergency so requires, the board of township trustees may under Section 505.37, Revised Code, deliver such water for the use of such citizens.

3. A board of township trustees lacks authority to charge a fee for its services in meeting the emergency needs of citizens for water.

Respectfully,  
MARK McELROY  
Attorney General