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FIRE PROTECTION — SCHOOL DISTRICT — MAY NOT BY ITSELF OR BY UNITING WITH POLITICAL SUBDIVISION ENGAGE IN FIRE PROTECTION — MAY NOT LEVY TAX FOR SUCH PURPOSE.

SYLLABUS:

A school district may not as such either by itself or by uniting with a political subdivision engage in fire protection and may not levy any taxes for such purpose.

Columbus, Ohio, February 25, 1944

Hon. M. J. Cofer, Acting Prosecuting Attorney
Waverly, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The village of Beaver is located in Beaver township, Pike County, Ohio. Beaver village is also located in the Beaver school district. The Beaver school district extends across the Jackson County line and takes in a small area over in Jackson county.

The question is: Can a school district become a unit for fire protection and vote a special levy for that purpose and if so, does the part of the district located in Jackson County have to agree?”

Your inquiry raises the question as to the power of a school district as such to afford fire protection to its inhabitants. Section 3298-54, General Code, provides:

“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.

The trustees of any two or more townships or the councils or other legislative authorities of any two or more political subdivisions or any combination thereof, are authorized through joint action to unite in the joint purchase, maintenance, use and operation of fire fighting equipment, or for any other purpose designated in this act, and to pro-rate the expense on such terms as may be mutually agreed upon.

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.”

Clearly, this section does not authorize a school district as such to engage in fire protection by itself without uniting for such purpose with another political subdivision. Although the first sentence of the second paragraph of the above quoted section authorizes political subdivisions to unite with each other for the purpose of fighting fires, I

believe that the term "political subdivision" as used therein does not embrace within its meaning a school district. While it is true that school districts are generally considered to be political subdivisions and are defined as subdivisions in the Uniform Tax Levy Law, fire protection is utterly foreign to the purposes for which they were established and are maintained. In the absence, therefore, of compelling language, I am unwilling to believe that the legislature intended to include school districts in the term "political subdivisions" as used in the above quoted section.

This belief is supported by the provisions of Section 3298-61, General Code, which is part of an act providing for insurance for volunteer firemen. This section provides in part:

"Wherever it is used in this act: the term 'political subdivision' shall include municipal corporation, village, township and taxing district."

While this statutory definition is not by its terms required to be applied to other laws, it nevertheless is at least strongly suggestive of the meaning which the legislature ascribes to the term "political subdivision" when used in fire protection statutes.

It remains only to be stated that there is no other statute authorizing school districts to engage in the activity here in question, and in conformity with the well established principle that public boards and officers have only such powers as are expressly granted to them by law and such as must be necessarily implied in order to carry out those expressly granted, I am of the opinion that a school district has no power to afford fire protection.

You are therefore advised, in specific answer to your question, that a school district may not as such either by itself or by uniting with a political subdivision engage in fire protection and may not levy any taxes for such purpose.

Respectfully,

THOMAS J. HERBERT
Attorney General