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1. TOWNSHIP TRUSTEES—AUTHORITY TO ESTABLISH AND MAINTAIN LINES OF FIRE ALARM TELEGRAPH WITHIN TOWNSHIP LIMITS WOULD INCLUDE ESTABLISHMENT OF SHORT WAVE RADIO EQUIPMENT—FIRE CALLS COULD BE TRANSMITTED TO HOMES OF VOLUNTEER FIREMEN—SECTION 3298-54 G. C.
2. AUTHORITY TO PURCHASE DESIGNATED MATERIALS ON PAYMENTS EXTENDING OVER FOUR YEARS INCLUDES RIGHT TO PURCHASE SHORT WAVE RADIO TRANSMISSION AND RECEIVER EQUIPMENT CONNECTED WITH HOMES OF VOLUNTEER FIREMEN TO SUMMON THEM IN CASE OF FIRE CALL.

SYLLABUS:

1. The authority given by Section 3298-54, General Code, to township trustees to establish and maintain lines of fire alarm telegraph within the limits of a township would include the establishment of short wave radio equipment, by which fire calls could be transmitted to the homes of volunteer firemen.

2. The authority given by Section 3298-54, General Code, to township trustees to purchase, on payments extending over four years, such fire apparatus, appliances, materials, fire hydrants and water supply as may seem to the trustees to be advisable, includes the right to provide as a part of such apparatus and appliances, short wave radio transmission and receiver equipment connected with the homes of the volunteer firemen to be used for the purpose of summoning them in case of a fire call.

Columbus, Ohio, December 10, 1946

Hon. William G. Wickens, Prosecuting Attorney
Elyria, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Trustees of Black River Township of Lorain County, Ohio, proposes to issue bonds in the sum of \$4,000.00, with the proceeds of which it can purchase radio short wave transmission and receiver equipment for use in connection with its township fire department. It is proposed to eliminate two firemen stationed at its fire station twenty-four hours a day and have fire calls received at a nearby radio station whose operators

will utilize a special township radio transmitter to send out fire calls, which calls can be received by receiving sets in the homes of the various volunteer firemen. The township trustees feel that once the equipment is acquired it will permit a substantial salary economy which will pay for the equipment within a short time.

I call your attention to Section 3298-54, G. C., which provides in part that the township trustees may:

‘establish and maintain lines of fire alarm telegraph within the limits of the township.’

And which further provides that:

‘The board of trustees of any township may purchase the necessary fire fighting equipment for such township and pay for the same over a period of four years. Such trustees shall be authorized to issue the notes of the township, signed by the trustees and attested by the signature of the township clerk, and covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed six per cent per annum, and shall not be subject to the provisions of Section 2293-1 to 2293-37a, inclusive, of the General Code. The amount of such purchase shall not exceed ten thousand dollars, covered by the issuance of notes payable over a period of four years. One-quarter of such purchase price shall be paid at the time of purchase. The remainder of the purchase price shall be covered by said notes, maturing in two, three and four years respectively. Such notes shall be offered for sale on the open market or given to the vendor if no sale is made.’

I respectfully solicit your opinion as to whether or not the radio transmission receiving equipment is: ‘lines of fire alarm telegraph’ within the meaning of the statute and, if so, whether the same constitutes: ‘fire fighting equipment,’ within the meaning of said section, which may be paid for over a period of four years *in the manner* provided in the statute.”

Section 3298-54, General Code, to which you refer, reads in part 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 board of trustees of any township or fire district or districts created by them under the provisions of this act, may purchase the necessary fire fighting equipment for such township, fire district or districts and pay for the same over a period of four years. Such trustees shall be authorized to issue the notes of the township, fire district or districts, as the case may be, signed by the trustees and attested by the signature of the township clerk, and covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed six per cent per annum, and shall not be subject to the provisions of sections 2293-1 to 2293-37a, inclusive, of the General Code. The amount of such purchase shall not exceed ten thousand dollars covered by the issuance of notes payable over a period of four years. One-fourth of such purchase price shall be paid at time of purchase. The remainder of the purchase price shall be covered by said notes maturing in two, three and four years respectively. Such notes shall be offered for sale on the open market or given to the vendor if no sale is made."

The purpose intended to be accomplished by this legislation is clearly shown by the wording of the opening sentence. You will note the very comprehensive language which the general assembly has seen fit to use in authorizing township trustees to make provisions not only for extinguishing fires but also for *fire prevention*. They are expressly authorized to "establish *all necessary regulations guarding against the occurrence of fires*" and *for that purpose to "purchase or otherwise provide* such fire apparatus, appliances, materials, fire hydrants and such water supplies for fire fighting purposes *as may seem to the trustees to be advisable.*"

You have directed especial attention to that clause wherein the trustees are authorized to "establish and maintain lines of fire alarm telegraph within the limits of the township" and you raise the question whether this would include the installation of radio short wave transmission and receiver equipment to be used in sending out fire calls to the homes of the volunteer firemen.

The courts of several states have held that the word "telegraph" would include also "telephone." In "Words and Phrases" under the subject of "telegraph" a number of cases are cited to the effect that a corporate power or franchise authorizing a telegraph company to do a telegraph business, or to place its poles and lines in a highway will include telephone business and telephone lines, since telephony is merely a phase of telegraphy. In the case of *Davis v. Pacific T. & T. Co.*, 127 Cal., 312, the court had before it the question whether under a statute making it a misdemeanor to cut *telegraph* lines, one might be prosecuted for cutting *telephone lines*. The court held that notwithstanding the well recognized rule of strict construction as applied to criminal statutes, the prosecution could be maintained. In the course of the opinion the court said:

"The term 'telegraph' means *any apparatus* for transmitting messages by means of *electric currents and signals*, and embraces within its meaning the narrower word 'telephone'."
(Emphasis added.)

The court remarked that that proposition had been announced in a large number of cases, a number of which were cited. To like effect see *C. & P. Tel. Co. v. B. & O. Tel. Co.*, 66 Md., 399; *McLeod v. Pacific Tel. Co.*, 52 Ore., 22; *State v. Tel. Co.*, 53 N. J. L. 341. Applying the general principle stated by the courts, I am unable to see why radio equipment designed to accomplish the same purpose by means of electric currents and signals but dispensing with the use of the wire should not fall within the meaning and intent of the language used by the general assembly. The definition of radio as given by Webster's New International Dictionary seems to fit in with the proposition stated by the California court which I have above quoted. Webster defines radio to be:

"The transmission and reception of signals by means of electric waves without a connecting wire; the use of radiotelegraphy or radiotelephony for conveying messages."

In granting the authority to establish and maintain lines of fire alarm telegraph within the limits of the township the general assembly unquestionably had in mind the single purpose of authorizing a method of communication as a means of aiding in the effective combat against fires and the question as to the precise means to be employed would be of secondary importance. In other words it would be a matter of indif-

ference so far as the purpose of the law is concerned whether the signals transmitted by electric currents were carried over a wire or through the ether.

It is evident that in using the words "fire alarm telegraph" the general assembly was clinging to the language of the old law provided for fire alarm telegraph systems for cities before either the radio or telephone had been invented. We find references to "fire alarm telegraph" as early as 1873 when the statutes provided for it in cities of certain population. See 70 Ohio Laws, p. 168. It is probable that the provisions then in existence contemplated only the use of such system in sending alarms from fire boxes to the central station, but I see nothing in the law to limit its usefulness to that particular function. It is certainly at least as important to summon the firemen to their post of duty in case of a fire, as it is to get notice of the fire to the department headquarters.

It appears to me however that in order to find authority for the township trustees to establish means of communication by the installation of short wave transmitting and receiving sets it is not necessary to rely alone on the particular provision which I have been considering. I call attention again to the language with which the section quoted begins, granting authority to the township trustees to provide "such fire apparatus, appliances, materials * * * *as may seem to the trustees to be advisable.*" In accomplishing the purposes outlined in the statute, to-wit, "to guard against the occurrence of fires, protect the property and lives of the citizens against damages and accidents resulting therefrom, it would appear that the trustees are given very wide discretion in determining what apparatus and equipment will best accomplish that purpose. By the terms of the statute they are authorized to "purchase the necessary fire fighting equipment for such township, * * * and pay for the same over a period of four years." This provision, in my opinion, is the culmination of the whole purpose and intent of the statute and is to be interpreted in the light of that purpose.

Now let us inquire what the general assembly meant by the words "fire fighting equipment." Is it possible that it meant nothing but the pieces of apparatus that are actually used in putting out a fire, to-wit the hose cart and the engine which throws water on the fire? That would certainly be a narrow, and it seems to me an absurd construction. A

construction that would be ruinous to the efficiency of a fire department and a hindrance to the township in accomplishing the purpose set out in the law. Certainly fire fighting equipment includes those facilities which will prevent fires from starting or check them in their incipency. Equipment for fighting insect pests in horticulture is certainly not confined to the administration of a lethal dose to a full fledged worm. It includes every device and measure that may prevent the worm from being born. If we adopt so narrow a definition, then the fireman's axe, his rubber coat and helmet, his gas mask, tarpaulins for protection from water and the chief's car are not fire fighting equipment, for none of them are directly used in putting out fires. They are merely some of the many devices which are provided for enabling the firemen to do their whole job more quickly and efficiently, and they are in my opinion "fire fighting equipment" within the intent of the law. And by the same reasoning any reasonable device to bring the alarm of fire to the department and to the firemen with the greatest possible speed, is "fire fighting equipment," which the trustees are authorized by the statute to purchase.

I am not without authority in support of my contention that "equipment" is an inclusive term. In a case involving a mortgage which covered a plant and equipment, "equipment" was held by the Supreme Court of Mississippi to mean "the collective designation for the articles comprising an outfit;" that to "equip" is "to fit out or supply whatever is necessary to efficient action in any way." *London v. Sykes*, 98 Miss., 495. In so stating, the court adopted in practically literal words the definitions given in Webster's International Dictionary. In the case of *Insurance Company v. Kohner*, 78 Ind., 479, the court had before it the terms of an insurance policy which insured against theft an automobile, including "the body, machinery and equipment." The court held that "equipment" included a rectifier used in charging the battery, although it was not kept in the car or carried with it, but was kept in a public garage where the car was kept when not in use. The court cited the same definition from Webster.

It should be noted that the specifications for the equipment which the trustees are authorized to purchase or provide are to be approved by the prosecuting attorney.

Having concluded that the trustees may purchase the radio equipment referred to as a part of the fire fighting equipment it follows of course

that they may purchase it in the manner and on the terms provided in the statute, to-wit on payments extending over a period of four years.

Accordingly, in specific answer to your questions it is my opinion:

1. The authority given by Section 3298-54, General Code, to township trustees to establish and maintain lines of fire alarm telegraph within the limits of a township would include the establishment of short wave radio equipment, by which fire calls could be transmitted to the homes of volunteer firemen.

2. The authority given by Section 3298-84, General Code, to township trustees to purchase, on payments extending over four years, such fire apparatus, appliances, materials, fire hydrants and water supply as may seem to the trustees to be advisable, includes the right to provide as a part of such apparatus and appliances short wave radio transmission and receiver equipment connected with the homes of the volunteer firemen to be used for the purpose of summoning them in case of a fire call.

Respectfully,

HUGH S. JENKINS
Attorney General