

there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Independence Indemnity Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
C. C. CRABBE,
Attorney General.

1213.

TAX LEVY—"ALL TAXABLE PROPERTY OF A TOWNSHIP," CON-
STRUED—PURCHASE OF FIRE APPARATUS.

SYLLABUS:

1. *A levy of a tax "on all the taxable property of a township" includes the property of a village within such township unless the property of the village is expressly excepted by statute from such levy.*
2. *Under section 3298-54 G. C. before the township trustees purchase fire apparatus and appliances there must exist a volunteer fire company having such character as to give assurance of permanency and efficiency.*
3. *Joint action by the township trustees and a council of a village within the township to purchase fire apparatus and to use and maintain the same is not authorized by statute.*

COLUMBUS, OHIO, February 21, 1924.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—You have requested the opinion of this department on the following questions:

"Question 1. May the trustees of a township in which an incorporated village is located levy a tax upon all of the property of the township, including that in the incorporated village, for the purpose of fire protection for the territory located outside of the village, when the village has provided its own fire protection?"

Question 2. May the trustees of a township enter into an agreement with the council of a village to pay a lump sum plus the wages of the firemen and cost of chemicals used, for each fire, and also to furnish \$600.00 worth of hose to be used in conjunction with other hose belonging to the village?"

Question 3. May the trustees of a township purchase and install a pumper and mechanical engine in the fire station now used by the village so that there will be fire protection for both the village and the territory outside of the village in the township?"

Question 4. May the township trustees purchase fire equipment for fire protection in a township when no volunteer fire department has been established?"

You are referred to the opinion of this department found in the Opinions of 1920, Vol. II, page 265, the head note of which reads as follows:

"The statutes of Ohio do not authorize the joint purchase of fire apparatus by the township trustees and the council of a village within the township."

This opinion discusses H. B. No. 332, which was an act that includes sections 3298-54 and 3298-59 G. C., passed in 108 O. L., Part II, 1122, entitled "An act to authorize township trustees to provide against fires and provide and maintain fire apparatus and buildings for the use of volunteer fire companies." The opinion says:

"H. B. 332, above referred to, makes no provision for joint action by a township and a village in the matter of the purchase of fire apparatus, and I am unable to find any statutory provision whatever for such joint action."

This will answer both your second and third questions in the negative because these questions relate to joint action between the village council and the township trustees.

Section 3298-55 G. C. reads:

"The trustees of a township are authorized to levy in any year or years a sufficient tax upon all the taxable property in the township to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of volunteer fire companies."

"All the taxable property in the township" includes the taxable property of a village in the township. The practice is and seems always to have been to make the general levies of the township to cover all property within the township. Because some part of the territory of a township becomes a village does not seem to operate to take the area within the village out of the township for voting or for taxing purposes. Village electors vote for township officers and are often elected as such officers. In *State ex rel. vs. Ward*, 17 O. S., 543, the opinion says:

"The statutes nowhere provide, either expressly or by just implication, that on the organization of a city within the limits of a township or townships, the territory within the city limits shall cease to be a part of the township or townships from which the same was taken, but there are clear indications of a contrary legislative intent."

This case arose concerning voting in what was then called a city of the second class, the boundaries of which were not coterminus with the township. I am unable to find any statute or court decision that provides or holds to the contrary.

Section 3292 G. C. provides a tax for drilling an oil or gas well "when so authorized by a majority vote" and says:

"Such election shall be conducted the same as elections for township officers."

Electors of a village in the township are thus allowed to vote at such an election.

Section 3411 G. C. provides that:

"The trustees of each township may levy and collect a tax * * * on each dollar of taxable property of the township and pay it to a hospital association which maintains and furnishes a free public hospital for the benefit of the inhabitants of such township. * * *"

But section 3413 G. C. provides that:

"In a township in which there is a municipality, the council of which has already levied a tax for hospital purposes, the township trustees may make such levy only on the taxable property of the township, outside of the limits of such municipality."

The clear inference here is that when township trustees levy a tax on all of the property of the township the levy falls upon the property in a village that is within the township unless there are express statutory provisions exempting the property in the village from such levy.

Your first question, therefore, is answered in the affirmative.

Section 3298-54 G. C. 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, when a volunteer fire company has been organized for service of the township, of such character as to give assurance of permanency and efficiency, may purchase and provide, for the use of such company, such fire apparatus and appliances as may seem to the trustees advisable, in which event they shall provide for the care and maintenance thereof, and, for such purpose, 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."

The language here used makes the acts of the township trustees discretionary because the words are "may establish and may purchase and provide for the use of such company such fire apparatus and appliance." This language clearly makes the purchase and the providing of fire apparatus and appliances contingent upon the existence of a volunteer fire company of such permanency and efficiency as to provide the means of using the same.

Therefore, your fourth question must be answered in the negative.

Respectfully,

C. C. CRABBE,

Attorney General.