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FIRE DEPARTMENT—VILLAGE IS MUNICIPALITY IN CONTEMPLATION OF SECTIONS 4647-1 AND 4647-2 G. C.—WHEN TOWNSHIP MAY ESTABLISH FIREMEN'S INDEMNITY FUND—SECTIONS 4647-1 ET SEQ. G. C.—TAX LEVY—VILLAGE WHICH PAYS NOTHING FOR SUPPORT OF FIRE DEPARTMENT CANNOT ESTABLISH FIREMEN'S INDEMNITY FUND.

SYLLABUS:

1. *A village is a municipality in the contemplation of Sections 4647-1 and 4647-2 of the General Code.*
2. *A township which houses a volunteer fire department and pays the department \$25.00 a fire and \$100.00 a year is a township having and maintaining therein a fire department supported in whole or in part at public expense and may establish a firemen's indemnity fund as authorized by Sections 4647-1, et seq. General Code.*
3. *A township can levy the tax authorized in Section 4647-4 of the General Code on all the taxable property lying in the township, including the property in a village located in the township.*
4. *A village which pays nothing for the support of a fire department serving the village can not establish a firemen's indemnity fund as authorized by Section 4647-1, et seq. General Code.*

COLUMBUS, OHIO, February 24, 1939.

HON. HAROLD K. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR: Your recent request for my opinion reads in part as follows:

"A group of volunteers own and operate a volunteer fire department, which the township trustees permit to be housed in part of the town hall in Burton Township. This volunteer department services Burton Village in said Township, the Township of Burton and a few other adjoining townships. The Village of Burton pays nothing, but Burton Township pays the volunteers \$100.00 a year and \$25.00 a fire and the surrounding townships also pay them \$25.00 a fire, all of which money goes for equipment and supplies.

Now, under Section 4647-1 creating Firemen's Indemnity Fund, the following questions arise, assuming that there is no firemen's pension fund created:

1. Could Burton Village be construed to be a municipality?
2. Could the above facts be construed to comply with the

statute so that you could say Burton Township *'has and maintains* therein a *fire department* supported in whole or part at public expense'?

3. If these facts permit the levying of a tax under the statute (4647-4) can Burton Township levy the tax on the township and on Burton Village which is in the township or would the Village make its own levy, if you call the village a municipality?"

The sections of the General Code which are pertinent to your questions are Sections 4647-1, 4647-3 and 4647-4. These sections provide as follows:

Section 4647-1, General Code.

"That in all municipalities or townships having no firemen's pension fund created under the provisions of chapter I, title 12, division 6 of the General Code of Ohio, and having and maintaining therein a fire department supported in whole or in part at public expense, a firemen's indemnity fund shall be created and disbursed as herein provided."

Section 4647-3, General Code.

"The indemnity fund shall consist of an amount of not less than three ten-thousandths of one per cent of the total tax valuation of each municipality or township, but in no case shall such fund be less than four hundred dollars (\$400.00)."

Section 4647-4, General Code.

"The council or other authority charged with the duty of levying municipal taxes, or the township trustees in the case of townships, shall at the time next occurring after the creation of such board, and in the manner provided by law for the levying of other taxes for municipal and township purposes, levy not more than three-tenths of one mill upon each dollar of the taxable property in such municipality or township, provided that the total of said indemnity fund shall be raised in not less than four years. * * *"

The term "municipality" is used interchangeably and synonymously with municipal corporations. In 43 Cor. Jur. at page 66, we find the following language:

“A municipal corporation is commonly called a municipality. The term municipality is all embracing.”

The Constitution of the State of Ohio contemplates villages as a division of municipal corporations. Section 1 of Article XVIII of the Ohio Constitution provides:

“Municipal corporations are hereby classified into cities and villages.”

It seems apparent, therefore, that the term “municipality” includes villages under the sections of the General Code quoted above.

Coming now to your second question, Section 4647-1, *supra*, sets out that all municipalities or townships having no firemen’s pension fund and having and maintaining therein a fire department supported in whole or in part at public expense, may establish an indemnity fund. I note from your communication that Burton Township not only pays the fire department \$25.00 a fire, but also pays the department \$100.00 a year. This would certainly give rise to a situation of “having and maintaining therein a fire department supported in whole or in part at public expense.”

The question as to whether a township can levy a tax on all of the taxable property located in the township, including the property in a village lying within the township, has been passed upon by a former Attorney General. In Vol. I of the Opinions of the Attorney General for the year 1924, at page 82, the first proposition of the syllabus reads as follows:

“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.”

In the opinion above mentioned at page 83, the then Attorney General said:

“‘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.' ”

It will be noted, therefore, that it is the general rule that a township can levy a tax on all of the taxable property located in the township, including the property in a village or city located within the township, unless an exception is found in the statute providing for the tax. In the present situation, Section 4647-4, *supra*, provides that the tax shall be levied upon “each dollar of the taxable property in such * * * township”. No exception is made exempting the property of a village or city which may be located within the township.

You further present the question as to the power of the village to make its own levy. The Village of Burton, according to your communication, pays nothing toward the support of the fire department. Therefore, since the village does not contribute, it could not be said to be in the situation of maintaining a fire department. Consequently, the Village of Burton can not establish the indemnity fund.

Therefore, in specific answer to your inquiries, I am of the opinion that: (1) A village is a municipality in the contemplation of Sections 4647-1 and 4647-2 of the General Code; (2) Burton Township, in the situation presented by you, has and maintains therein a fire department supported in whole or in part at public expense; (3) Burton Township can levy the tax provided for in Section 4647-4 of the General Code, on all taxable property located in the township, including the property lying in Burton Village; (4) The Village of Burton can not make the levy provided for in Section 4647-4, General Code, for the reason that it does not have and maintain therein a fire department supported in whole or in part at public expense and consequently, does not come under the provisions of Section 4647-1, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.