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FIRE PROTECTION SERVICE—EXCEPT AS PROVIDED IN SECTION 3298-60 GC., WHICH AUTHORIZES COUNTY TO CONTRACT WITH TOWNSHIP FOR FIRE PROTECTION, COUNTY WITHOUT AUTHORITY TO EXPEND PUBLIC FUNDS IN SUPPORT OF TOWNSHIP FIRE DEPARTMENT—COUNTY PROPERTY LOCATED OUTSIDE OF BOUNDARIES OF TOWNSHIP—SECTION 3298-60 GC.

SYLLABUS:

Except as provided in Section 3298-60, General Code, which authorizes a county to contract with a township for fire protection service with respect to county property "located outside the boundaries of such township," a county is without authority to expend public funds in support of a township fire department.

Columbus, Ohio, May 15, 1953

Hon. John D. Sears, Jr., Prosecuting Attorney
Crawford County, Bucyrus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have been requested to obtain your opinion on the following questions:

"1. Can the county contribute toward the maintenance of a fire department which is owned and operated by four adjoining townships when the county has property located in the townships which would receive protection from the said fire department owned and operated by said townships?

"2. If the county can contribute toward the maintenance of this fire department, to what extent and amount would be allowable?"

The primary method of providing revenue for the support of township fire protection service is by the levy of taxes as provided in Section 3298-55, General Code. This section reads:

"The trustees of a township are authorized to levy in any year or years a sufficient tax upon all taxable property in the township or in a fire district, or districts, to provide protection against fire and to provide and maintain fire apparatus and ap-

pliances and buildings and sites therefor and sources of water supply and materials therefor, and the establishment and maintenance of lines of fire alarm telegraph and the payment of permanent, part-time or volunteer fire fighting companies to operate same."

In providing this method of financing township fire protection services, it is to be presumed that the Legislature realized that no part of such expense would fall on the county within which the township concerned is located for the reason that any property in such township owned by the county is exempt from taxation under the provisions of Section 5351 et seq., General Code.

An auxiliary method of providing revenue for the support of township fire protection services is found in Section 3298-60, General Code, which authorizes the township trustees to enter into contracts with municipalities or other townships whereby the services of the fire department maintained by one party will be made available to the other. In 1945 this section was amended to include the following provisions:

"The county commissioners of any county or the superintendent or other administrative head of any state institution, college or university, when authorized by the board or authority charged with the care and maintenance of such institution, college or university, may make a contract with a township, city or village having a fire department, or with a private fire company, for the service of such department, or private fire company in affording fire protection or additional fire protection in times of emergency for property, located outside the boundaries of such township, city or village, belonging to such county or to such institution, college or university, such contract to be made only when authorized by the respective boards of trustees, councils or other legislative bodies of said township, municipalities, or officers of private fire companies, and for a period not to exceed two years. A copy of such contract or contracts shall be filed in the office of the state fire marshal at Columbus, Ohio." * * *

The provision in this language limiting its application to property "located outside the boundaries of such township" is a clear indication that any county property located within the township is to be afforded fire protection without charge to the county.

I am unable to find any statutory authority other than that above indicated for the expenditure of county funds in support of township fire protection services. In this situation it must be borne in mind that a county

is a creature of statute, and so possesses only statutory powers. 11 Ohio Jurisprudence, 244, Section 7. Moreover, the authority of county commissioners to act in financial transactions must be clear and distinctly granted and where such authority is of doubtful import the doubt is to be resolved against its exercise. See *State ex rel Locher v. Menning*, 95 Ohio St., 97; *State ex rel Bentley Co. v. Pierce*, 96 Ohio St., 44. In this situation I am impelled to conclude, in specific answer to your inquiry, that except as provided in Section 3298-60, General Code, which authorizes a county to contract with a township for fire protection service with respect to county property "located outside the boundaries of such township," a county is without authority to expend public funds in support of a township fire department.

Respectfully,

C. WILLIAM O'NEILL
Attorney General