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FIRE COMPANY—FIRE PROTECTION FOR VILLAGE—VILLAGE EMPOWERED TO CONTRACT WITH VOLUNTEER FIRE COMPANY—OWNS ITS EQUIPMENT AND INCORPORATED AS CORPORATION NOT FOR PROFIT—SECTION 4393 G. C.—ARTICLE XVIII, SECTION 3, CONSTITUTION OF OHIO—OAG 1783, MAY 23, 1950 OVERRULED.

SYLLABUS:

A village is empowered, both by the provisions of Section 4393 of the General Code, and by the grant of power contained in Section 3, Article XVIII of the Constitution of Ohio, to contract with a private volunteer fire company which has its own equipment and is incorporated as a corporation not for profit, for furnishing fire protection for the village. Opinion No. 1783, of May 23, 1950, overruled.

Columbus, Ohio, July 16, 1951

Hon. Harry J. Callan, State Fire Marshal
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

"On May 23, 1950, your predecessor rendered Opinion No. 1783 to the Hon. C. J. Borkowski, Prosecuting Attorney, Jefferson County, Steubenville, Ohio. The syllabus of this opinion was:

'A village has no authority to enter into a contract with a volunteer fire department which has its own equipment and is incorporated as a corporation not for profit, for fire protection for the village.'

"As a result of this opinion, the Bureau of Inspection of the Department of State Auditor has been advising the communities which practice contracting with volunteer fire companies, that this practice is illegal. There are a great many, in fact, I would estimate the number at being in excess of one hundred volunteer fire departments which contract with villages to furnish fire protection. This practice has become very common because of previous opinions of the Attorney General which indicated that such practice was legal.

"I refer you to an informal opinion No. 85 dated June 17, 1946, and opinion of the Attorney General for 1929, page 1106:

"Because of these previously rendered opinions, it has been

the standard practice for many years for villages to contract with private volunteer fire companies.

"In view of the above stated facts, will you please give me your opinion on the following:

> "May a village contract with a private volunteer fire company which has its own equipment and is incorporated as a corporation not for profit, for fire protection for the village?"

Section 4393, General Code, reads as follows:

> "The council 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 for such purpose *may establish and maintain a fire department,* provide for the establishment and organization of fire engine and hose companies, establish the hours of labor of the members of its fire department, but after the first day of January, nineteen hundred and eleven, council shall not require any fireman to be on duty continuously more than six days in every seven, and provide such by-laws and regulations for their government as is deemed necessary and proper."

Substantially the same question as that which you have submitted was asked of one of my predecessors, and was answered in an opinion found in 1929 Opinions of the Attorney General, page 1106, the syllabus of which is as follows:

> "A municipal corporation may legally contract for fire protection with a volunteer company which is a private organization and pay for such protection from public funds, unless such municipality in pursuance of its constitutional authority, has adopted a charter and other regulations inconsistent with the provisions of the general law with respect to such power."

In the course of said opinion Section 4393 was discussed, and it was said:

> "In view of the foregoing, it would seem that inasmuch as the broad power is granted to municipalities to protect the property and lives of its inhabitants against fire, it must necessarily have such implied power as is necessary to carry into effect the express power. It is easy to conceive of a municipality being so situated by reason of its size and financial condition that it would be more profitable to arrange with some volunteer or private organization to furnish fire protection under some contractual agreement than it would be to undertake to establish a fire depart-

ment of its own. If such a condition exists in the sound discretion of the municipal officers, it is difficult to see any objection to its entering into such an arrangement.

"Section 4393, hereinbefore mentioned and quoted, clearly contemplates some other method of procedure in addition to the establishment of a municipal fire department. What has been stated herein, of course, has been without consideration of the provisions of Section 3 of Article XVIII of the Ohio Constitution which relates to the so-called home rule provisions governing municipalities. However, it is believed that any such provision would in nowise limit the power of such municipalities as granted to them under the general law, unless such municipalities, in the exercise of their constitutional powers, have adopted a charter prescribing regulations inconsistent with the provisions of the general law."

The opinion proceeded with the following statement:

"I am entirely cognizant of the apparent inconsistency in the receipt of any consideration for services rendered by a volunteer fire company. This is true because the word 'volunteer" imports one who performs a service gratuitously. At the same time, the valuable public service being rendered in Ohio by the thousands of volunteer firemen must be recognized, and I do not feel that a certain measure of consideration passing to a company of volunteers for the services rendered is in any way contrary to public policy or in contravention of law."

With the views above expressed, I heartily concur. I note the reference in the paragraph quoted from the 1929 opinion, to Section 3 of Article XVIII of the Ohio Constitution. The then Attorney General did not appear to be considering that section as a possible source of power, but referred to it only as a possible limitation.

It appears to me that we may very properly look to Section 3 of Article XVIII, as additional authority for the practice which your letter states is very general on the part of villages. I recognize that the Supreme Court has held repeatedly that fire protection is a matter of concern to the people of the State, generally, and that while municipalities are given broad powers in the organization and management of these departments, yet there is reserved to the State the power of control over them, to which the municipalities must submit. It was held in the case of State ex rel. Strain v. Houston, 138 Ohio St., 203:

"Fire protection is a matter of concern to the people of the state generally, and when the Legislature enacts general laws to

> make more efficient the management of fire departments within the cities for the protection of persons and property against the hazards of fire, the cities of the state may be required within reasonable limits to provide funds for the purpose of carrying out such legislation."

A similar holding was made in the case of Cincinnati v. Gamble, 138 Ohio St., 220, decided on the same day as the Houston case, with reference to both the police and fire departments of a municipality. In both of these cases the court held that a municipality may be required to establish certain systems prescribed by the general law for the betterment of these departments and their personnel.

There was nothing, however, in either of those decisions which denied to the municipality the right to take such steps by way of prevention of loss by fire or by way of police protection so long as it did not conflict with the general law. In the later case of State ex rel. Arey v. Sherrill, 142 Ohio St., 574, the same principles were announced and applied to the conclusion that the power of suspension and dismissal of a police officer of a city was vested in the director of public safety, and could not be exercised by a city manager under the provisions of a city charter. In the course of the opinion in that case Judge Bell used this language:

> "That the police department of a city is a matter of statewide concern does not prevent the city from adopting any regulation in reference thereto so long as said regulation does not conflict with general laws."

The same proposition is stated by Judge Matthias in the case of Schneiderman v. Sesanstein, 121 Ohio St., 80. Referring to the power granted by Section 3, Article XVIII of the Constitution, "to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws," the court said:

> "The police power thus conferred by the Constitution cannot be denied municipalities by statute, but that power is restricted, in that such 'local police, sanitary and other similar regulations' must not be 'in conflict with general laws.' Thus the legislative branch of the state government enacts laws to safeguard the peace, health, morals, and safety, and to protect the property of the people of the state, and these are the general laws referred to. They apply to all parts of the state alike. Municipalities may adopt and enforce local regulations covering the same subject so long and so far as the same are not in conflict with general laws."

Manifestly the same principle would apply to regulations adopted by a municipality in reference to a fire department or fire protection. In my opinion, Section 3 of Article XVIII gives a municipality abundant authority to take such action as it sees fit, to protect its citizens and property from loss by fire, so long as such action does not in any way contravene the general laws.

Opinion of the Attorney General, No. 1783, issued May 23, 1950, held:

> "A village has no authority to enter into a contract with a volunteer fire department which has its own equipment and is incorporated as a corporation not for profit, for fire protection for the village."

That opinion proceeded solely on the fact that no explicit authority was found in the statutes authorizing a village to make a contract with a volunteer fire department. I am unable to agree with the conclusion, and must therefore overrule that opinion.

Specifically answering your question, it is my opinion that a village is empowered, both by the provision of Section 4393 of the General Code, and by the grant of power contained in Section 3, Article XVIII of the Constitution of Ohio, to contract with a private volunteer fire company which has its own equipment and is incorporated as a corporation not for profit, for furnishing fire protection for the village. Opinion No. 1783, of May 23, 1950, overrulled.

Respectfully,

C. William O'Neill,
Attorney General.