

Reference is made to the Acts of 1955, Ch. 303, Sec. 3, which states in substance that all appropriations contained in that Act and all appropriations otherwise provided by statute for traveling and hotel expenses for any department, officer, agent, employee, person, trustee or commissioner "shall be construed to mean and are hereby intended to be confined to such traveling and hotel expenses *within the state of Indiana and not elsewhere*; this, however, shall not apply when such expenses are incurred in traveling outside the State of Indiana on trips *which have been previously approved by the Governor; * * **" Section 3 contains certain exceptions to the foregoing, none of which are applicable to the Wilbur Wright Birthplace Commission.

Therefore, in answer to your fourth question and in conclusion, it is my opinion that the Wilbur Wright Birthplace Commission, upon receiving previous approval by the Governor, is authorized to make necessary trips out of the State for the purpose of carrying out its powers and duties and may be reimbursed for such necessary and reasonable expenses as provided by the Acts of 1955, Ch. 303, Sec. 14, *supra*.

OFFICIAL OPINION NO. 11

March 16, 1956

Mr. R. R. Wickersham
State Examiner
State Board of Accounts
304 State House
Indianapolis, Indiana

Dear Mr. Wickersham:

I am in receipt of your letter of February 28, 1956, requesting my Official Opinion on the following questions:

"1. Do the officers of a civil township, which owns and operates a fire department for the purpose of extinguishing fires which may occur within the limits of such township outside of the limits of any incorporated city or town therein, have the authority to contract with a water utility for annual rental of fire hydrants that serve:

OPINION 11

“(a) only a fraction of the area included in such taxing district?

“(b) the entire taxing district?

“(The taxing district is made up of the township outside of the limits of any incorporated city or town therein.)

“2. Would your answers to questions 1 (a) and 1 (b) be the same if the township contracts with a volunteer fire-fighting organization for fire protection for the township outside of the limits of any incorporated city or town therein?

“3. Would your answers to questions 1 (a) and 1 (b) be the same if the township contracts with an incorporated city or town for the furnishing of fire protection for the residents of the township who live outside the corporate limits of any city or town?”

In order to answer your first question, it is necessary to examine those statutes authorizing such township to provide fire protection. An official opinion of this office, 1944 O. A. G., page 413, No. 95, discussed the Acts of 1927, Ch. 229, Secs. 1 to 10, as amended, as found in Burns' Indiana Statutes (1951 Repl.), Sections 65-501 to 65-510, and concluded on page 417 of said opinion as follows:

“* * * it is clear the legislature intended that such a township could have available fire protection by one of three means: (1) By direct contract with such city or town already having an established and adequate fire-fighting force for such fire protection; (2) By entering into a cooperative contract with such city or town for the joint maintenance of such fire department in which event the personnel is employed and subject to the control of the city or town and the equipment may be owned by either or both the city or town and township. This could only be done by following the statutory requirements of conditions precedent to the entering into such cooperative contract. In such event such equipment must be available for fire protection both to the city or town and to the township; or (3)

Such township could purchase its own equipment and establish its own fire department and contract with some volunteer fire association for its personnel.”

Subsequent to the above opinion, the Legislature passed two acts relating to township fire protection.

The Acts of 1945, Ch. 130, Sec. 1, as found in Burns' Indiana Statutes (1951 Repl.), Section 65-511 states that the township could provide fire protection by contracting with any one or more corporate non-profit volunteer fire-fighting companies; which company or companies maintain their own adequate fire-fighting service for the operation of that fire-fighting equipment owned by the companies and for service of the operators of such equipment. This Act was passed supplementary to the Acts of 1927, Ch. 229, as amended, *supra*.

The Acts of 1947, Ch. 95, Sec. 1, as found in Burns' Indiana Statutes (1951 Repl.), Section 65-513, provides that the township may purchase fire-fighting equipment; provide for its housing, care, maintenance, operation and use, and employ firemen to operate the equipment. This Act was passed supplementary to acts then in effect enabling townships to provide for fire protection.

Your first question concerns, in part, the authority of the township to contract with a water utility for annual rental of fire hydrants. I will assume that this contract would provide water supply for the use of the fire department. The above statutes have no express provisions for the supply of water for the township fire department. It remains to examine the statute for the authority from which it may be implied that such action may be taken by the township.

“* * * Towns or townships, which derive all their power from the state, possess and can exercise such powers as are granted by the legislature in express words or are necessarily or fairly implied from, or incident to, those expressly granted, or those which are indispensable to its declared objects and purposes.”

87 C. J. S. Towns, § 34.

“* * * A municipal corporation has such powers as are expressly granted, and also such implied or inci-

OPINION 11

dental ones as are necessary to carry into effect the express powers and effectuate the object of the corporate existence. * * *"

Clark *et al.* v. The City of South Bend (1882), 85 Ind. 276.

In the City of Crawfordsville *et al.* v. Braden (1891), 130 Ind. 149, 28 N. E. 849, a statute gave cities the right to light the streets, alleys and other public places with electric lights and to contract with any individual or corporation for lighting such streets. The court held that the city had the power to erect, maintain and operate the necessary buildings, machinery and appliances to light those streets, saying at page 158 as follows:

"We can see no good reason why they may not also, without statutory authority, provide and maintain the necessary plant to generate and supply the electricity required. *Possessing authority to do the lighting, that power carries with it incidentally the further power to procure, or furnish, whatever is necessary for the production and dissemination of the light.* * * *" (Our emphasis)

It is clear from the examination of the statutes in question that the Legislature intended to confer broad powers upon the townships in the matter of fire protection, as evidenced by the several and varied means by which the township may acquire this protection.

This intention is further evidenced by language used by the Legislature, as shown by the following:

1. The Acts of 1927, Ch. 229, *supra*, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 65-501 provides "For the purpose of extinguishing fires" occurring in the township, the trustee may contract with the city or town for fire protection or cooperate with said city or town in the purchase, maintenance and upkeep of the apparatus and equipment "as may be deemed necessary to afford the requisite fire protection to such city or town and to the township."

2. The Acts of 1927, Ch. 229, *supra*, as found in Burns' Indiana Statutes (1951 Repl.), Section 65-503 provides that

the trustee of any township contemplated in the Act who desires to cooperate with such city in the operation of fire-fighting equipment, "*as may be necessary to afford the requisite fire protection to such city or town and to such township,*" may petition the city council or town trustee for the creation of such cooperative fire protection.

3. The Acts of 1927, Ch. 229, *supra*, as found in Burns' Indiana Statutes (1951 Repl.), Section 65-507 provides that a township with its own fire apparatus and equipment may contract with a volunteer fire-fighting company or association "*for the use and operation of such apparatus and equipment as shall best conduce to the saving from destruction by fire of the property of citizens of such township and of the public property therein situated.*"

4. The Acts of 1947, Ch. 95, *supra*, as found in Burns' Indiana Statutes (1951 Repl.), Section 65-513 authorizes the township to purchase fire-fighting apparatus and equipment and "*to provide for the housing, care, maintenance, upkeep and use thereof for the purpose of extinguishing fires which may occur within the limits of such township outside of the limits of any city or town therein.*"

In 1947 O. A. G., page 179, No. 36, in examining Burns' Indiana Statutes, Section 65-513, *supra*, it was stated:

"It is apparent from the above quoted part of the 1947 Act, Chapter 95, that the purpose of such statute was to permit the township trustee to purchase such apparatus and equipment necessary to accomplish the specific purpose of preventing and controlling fires in the township. *It is, of course, common knowledge that in accomplishing such purpose it is necessary to provide some means to furnish water to extinguish fires.* It would seem that the use of fire plugs would be entirely consistent with the accomplishment of this purpose. Accordingly, it is my opinion that water plugs would come within the term 'equipment' which the trustee is authorized to purchase." (Our emphasis)

Therefore, it is my opinion that the Legislature intended to confer broad powers upon the townships for fire protection under the Acts of 1927, *supra*; Acts of 1945, *supra*, and Acts

OPINION 11

of 1947, *supra*; and the rental of fire hydrants, in order to supply water, is a reasonable means necessary for the performance of those powers and may be fairly implied from the language of the statutes.

Part (a) of your Question One poses the problem of whether a township may contract for the rental of fire hydrants that serve only a fraction of the area included in such taxing district, the taxing district being that part of a township outside of an incorporated city or town therein.

In *Morton Salt Co. v. City of South Hutchinson et al.* (1947), 159 Fed. (2d) 897, a corporation sought to enjoin the issuance of bonds by the defendant city to finance a water system alleging that although the corporation would pay 46% of the tax, it would receive no benefits. The court said at page 900:

“* * * It is no constitutional defense to a tax that the taxpayer is not directly benefited thereby, or is less benefited than others who pay the same or less tax. *Kelly v. Pittsburgh*, 104 U. S. 78, 26 L. Ed. 658; *Thomas v. Gay*, 169 U. S. 264, 280, 18 S. Ct. 340, 42 L. Ed. 740; *Houck v. Little River Dist.*, 239 U. S. 254, 36 S. Ct. 58, 60 L. Ed. 266. For example, ‘every citizen is bound to pay his proportion of a school tax, although he has no children, or is not a resident, and this applies also to corporations; of a police or fire tax, although he has no buildings or personal property; or of a road tax although he never used the road. In other words, a general tax cannot be dissected to show that, as to certain constituent parts, the taxpayer receives no benefits. So property within the limits of a municipality is subject to local taxation although it derives little or no benefit from the municipal government.’ *Cooley*, Sec. 89, p. 214. The fact of living in an organized society carries with it the obligations to contribute to its general welfare, whether or not the recipient of particular benefits. Furthermore, the legislative determination that the property taxed will be benefited by the public improvement for which it is assessed is ordinarily conclusive. *Thomas v. Kansas City Southern R. Co.*, 261 U. S. 481, 43 S. Ct. 440, 67 L. Ed. 758.”

In the same case reported in 177 Fed. (2d) 889 at page 892, the court said:

“When, however, the tax is levied upon all the property for public use, such as schools, the support of the poor, for police and fire protection, for health and sanitation, for waterworks and the like, the tax need not, and in fact seldom does, bear a just relationship to the benefits received. Thus the property of a corporation may be taxed for the support of public schools, asylums, hospitals, and innumerable public purposes, although it is impossible for it to derive any benefits other than privileges which come from living in an organized community. The benefits are intangible and incapable of pecuniary ascertainment, but it is constitutionally sufficient if the taxes are uniform and are for public purposes in which the whole city has an interest. (Citations omitted.)”

Our Supreme Court in *Wright et al. v. House* (1919), 188 Ind. 247, 121 N. E. 433, held as follows:

“Taxes levied for governmental purposes are not imposed on the basis of a special and particular benefit accruing to each citizen in proportion to the taxes paid. The protection of life, liberty, and property, and the other rights, privileges, immunities and benefits which a citizen enjoys as a result of living under the protection of an organized government are of such a nature that their value cannot be measured by dollars and cents. The power to tax for such purpose is not limited to actual benefits resulting to the citizen by reason of the maintenance of government, but such power is limited only by governmental needs. *Harmon v. Bolley, supra*; *Kelly v. Pittsburgh* (1881), 104 U. S. 73, 26 L. Ed. 658.”

From the foregoing authorities, it is apparent that a tax for governmental purposes (in this case for fire protection) is valid although it may directly benefit only a part of the taxing district.

Based on the above, it is my opinion that officers of a civil township, under the conditions as set out in your Questions

OPINION 12

One, Two and Three, have the authority to contract with a water utility for annual rental of fire hydrants even though the fire hydrants directly benefit only part of the area included in such taxing district.

OFFICIAL OPINION NO. 12

March 26, 1956

Mr. Wilbur Young
State Superintendent of Public Instruction
227 State House
Indianapolis 4, Indiana

Dear Mr. Young:

Your letter of March 6, 1956, has been received and reads as follows:

“Pursuant to the provisions of Section 2, Chapter 226, of the 1949 Acts, the five townships of Brown County were consolidated to form the Brown County school corporation. This consolidation was effected in 1949.

“May I have your official opinion on the following question: Do the provisions of Chapter 97, of the 1927 Acts as amended, same being Burns’ Indiana Statutes Section 28-4307, which provides for teachers becoming tenure teachers in certain cases, apply to this school corporation?”

The Acts of 1949, Ch. 226, as referred to in your letter, is found in Burns’ Indiana Statutes (1948 Repl.), Section 28-2431 *et seq.*, Section 11 of said Act, as found in Burns’ Indiana Statutes (1948 Repl., 1955 Supp.), Section 28-2441, provides, in part, as follows:

“The government of the common schools of the county shall be vested in the board, and the board shall function with all the authority, powers, privileges, duties and obligations heretofore granted to or required of school cities and their governing boards generally under the laws pertaining thereto with reference to