

**OPINION**  
**46-58**

July 8, 1946 (OPINION)

COUNTIES

RE: No Power to Aid City in Purchase of Fire Equipment

Your letter of July 5, 1946, addressed to the attorney general has been received and contents noted.

You desire the opinion of this office on the following situation:

The city fire department has requested the board of county commissioners to assist in the maintenance of the department insofar as the Jamestown organization is used for fires in the county, sometimes being called to points as far away as Streeter and Buchanan. The local firemen are demanding additional compensation for fires outside the city limits. The city officials feel that they are unable to make such additional payments, particularly where the demand is based on the proposition that the city department is going outside of the boundaries of the city to assist in putting out fires in the county.

So far as the city is concerned, subsection 37 of section 40-0501 of the 1943 Revised Code authorizes it to use its fire department to attend fires and render assistance to other municipalities within or without the state, or to private property, including farm buildings located outside the city limits, and the fire department, its members, and apparatus, when engaged outside the limits of the municipality, shall be deemed to be engaged in the performance of a public duty as fully as if serving within the limits of the municipality.

I would also call your attention to chapter 319 of the 1945 Session Laws, which authorizes the electors of each township at the annual township meeting to authorize and empower the board of township supervisors to provide by contract or otherwise for the prevention of, protection from, and extinguishment of fires within the townships, in such manner as the board of supervisors shall deem advisable.

The county commissioners have only such powers with reference to the expenditure of funds as are specifically granted or which necessarily must follow by clear implication. I am of the opinion that the county commissioners have not the power to make a contribution for the purpose of assisting the city of Jamestown in fighting fires outside the city limits or otherwise. It would seem, however, that the city of Jamestown could, under chapter 319 of the 1945 Session Laws, enter into agreements with surrounding townships by the terms by which such townships may make an annual payment to the city for fire protection, and thus provide additional funds with which to compensate the members of the fire department.

But as I have pointed out, I do not believe that the county commissioners would have authority to make a contribution to the city

for such purposes.

You refer to an opinion previously written by this office relative to a contribution by the county commissioners of Stutsman County to the North Dakota Reclamation Association. This letter was written to your county auditor, Mr. Whitney, and for your information I enclose a copy of same.

You will note that the payment made by Stutsman County, in the matter referred to in the letter of April 15, 1946, was out of a budget of \$200.000 made for water conservation and reclamation. There is, therefore, a distinction between the payment made by the county in that case and the payment suggested in your letter of July 5, 1946. The fund set aside for water conservation would not be used in payment of services rendered to anyone in particular, which would be the case where the fire department of the city of Jamestown assists in putting out a fire in buildings upon the premises of an individual, but would be for the promotion of reclamation and water conservation for the residents of the county in general.

NELS G. JOHNSON

Attorney General