

OFFICERS:
COMPENSATION:
FIRE PROTECTION DISTRICTS:

1. Members of the board of directors of a fire protection district are not entitled to receive compensation for attending more than two regularly

called board meetings in any calendar month and this includes a regularly called meeting of the directors of several fire protection districts which have established a consolidated alarm and dispatching service. After September 28, 1971, the effective date of Senate Committee Substitute for House Bill No. 316 of the 76th General Assembly, the members of the board of a fire protection district in a first class county having a charter form of government, may receive compensation for not more than four meetings each calendar month. 2. A member of the board of directors of a fire protection district cannot be employed and paid any additional compensation for services rendered the district in excess of the amount allowed under Section 321.190, RSMo 1969.

OPINION NO. 341

August 18, 1971

Honorable J. Anthony Dill
Representative, District 44
8011 Grandvista Avenue
Affton, Missouri 63123



Dear Representative Dill:

This is in response to your request for an opinion from this office as follows:

"May I respectfully request the opinion of your office regarding the proper interpretation to be given to Section 321.190 of the Revised Statutes referring to fire protection districts.

"Question 1: Board members are entitled to receive compensation for attending not more than two regularly called board meetings in any calendar month. Does a regularly called meeting of the directors of several fire protection districts which have established a consolidated alarm and dispatching system qualify attending directors for compensation from their respective districts?

"Question 2: May the chairman of the board of directors of a fire protection district, who is not the secretary or the treasurer of the

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board, be paid any additional compensation for services rendered to the district, such as preparing for board meetings, or reviewing existing or proposed legislation, etc.?"

We assume your question concerns fire protection districts located in a first class county having a charter form of government and the fire protection districts involved proceeded under Sections 321.243 and 321.245, RSMo 1969, in establishing joint, central fire and emergency dispatching service. Section 321.190, RSMo 1969, provides for compensation and expenses to be allowed directors of such fire protection districts. It provides as follows:

"Each member of the board shall receive an attendance fee in the amount of twenty-five dollars for attending each regularly called board meeting, but shall not be paid for attending more than two in any calendar month. In addition, the chairman of the board of directors shall receive fifteen dollars for attending each regularly called board meeting, but shall not be paid the additional fee for attending more than two meetings in any calendar month. Each member of the board shall be reimbursed for his actual expenditures in the performance of his duties on behalf of the district. The secretary and the treasurer, if members of the board of directors, may each receive such additional compensation for the performance of their respective duties as secretary and treasurer as the board shall deem reasonable and necessary not to exceed seven hundred fifty dollars per year. The circuit court having jurisdiction over the district shall have power to remove directors or any of them for good cause shown upon a petition, notice and hearing."

Section 321.190, supra, was amended by Senate Committee Substitute for House Bill No. 316 of the 76th General Assembly effective September 28, 1971, by increasing the per diem of members of the fire protection district boards from twenty-five dollars a meeting to thirty dollars and increases the number of monthly meetings in charter first class counties for which the per diem may be claimed from two to four.

You first inquire whether members of a fire protection district are entitled to compensation for attending a joint meeting of the boards of several fire protection districts which have established a consolidated alarm and dispatching system.

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Section 321.243, RSMo 1969, provides:

"1. Notwithstanding any other provision of law, an additional tax of not to exceed three cents per one hundred dollars of assessed valuation may be levied and collected by any city, town, village, or fire protection district all or part of which is located in a county of the first class having a charter form of government, but all the funds derived from such tax shall be used solely for the purpose of providing a joint, central fire and emergency dispatching service.

"2. The additional tax prescribed by this section shall be levied only when the governing body of the city, town, village, or fire protection district determines that a central fire and emergency dispatching center is available, that the center meets the minimum requirements set by section 321.245, and when the governing body has entered into a contract with the center for fire and emergency dispatching services. The funds from the tax shall be kept separate and apart from all other funds of the city, town, village, or fire protection district, and shall be paid out only on order of the governing body."

Under this statute the funds derived from the special tax can be used only when the governing body of the fire protection district determines that a central fire and emergency dispatching service is available and the governing body of the fire protection district enters into a contract for such service. The statute is silent as to any meetings of the board with other agencies in negotiating or executing the contract so the general principles of law that govern the transaction of business of the fire protection district apply. Members of the board may meet individually, but official business can be transacted only when the members meet as a board. *Carter v. Reynolds County*, 315 Mo. 1233, 288 S.W. 48 (1926). This applies whether the meeting is for the transaction of business of the individual fire protection district or to a business transaction at a joint meeting with another fire protection district or agency. It follows that any business transacted by the board of directors of a fire protection district has to be transacted at an official meeting of the board of the fire protection district under Section 321.190, supra, and this applies if the board meets jointly with the board of another fire protection district or other agency.

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Since official business can be conducted only at a meeting of a fire protection district board, it follows that a joint meeting of fire protection district boards at which official business is transacted is a meeting of each board and the members are entitled to compensation for attending such a meeting. Such meeting is to be counted in determining the maximum number of meetings for which compensation can be paid to district directors.

Members of the fire protection district board of directors are public officers. Compensation to a public officer is a matter of statute and not of contract; and compensation exists, if it exists at all, solely as a creation of the law and then is incidental to the office. *State ex rel. Evans v. Gordon*, 245 Mo. 12, 27, 149 S.W. 638 (en banc 1912); *Smith v. Pettis County*, 345 Mo. 839, 136 S.W.2d 282 (1940). The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefore is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other further compensation or to any different mode of security. Such statutes are strictly construed against the officer. *Nodaway County v. Kidder*, 129 S.W.2d 857 (Mo. 1939).

It is our opinion the only compensation members of the board of directors of a fire protection district are entitled to receive for the performance of their official duties is the compensation provided for under Section 321.190, supra. This statute sets the compensation to be paid to each member for each regularly called meeting but limits the number of meetings for which compensation is to be paid to two meetings in any calendar month. We find no statute authorizing additional compensation for attending any additional meeting in the performance of their duties in attending joint meetings of the several boards as may be necessary under Sections 321.243 and 321.245, RSMo 1969. It is our opinion that members of the board of directors of each fire protection district are entitled to compensation only as provided by Section 321.190, supra, whether such meeting is a meeting of the board of the individual fire protection districts or whether it is a joint meeting of all the boards of the several fire protection districts.

In answer to your second question whether a member of the board may be paid additional compensation for services he renders the district, it is our opinion he cannot be paid any compensation in addition to the amount allowed under Section 321.190, supra, for any service he may perform for the benefit of the district. In *Nodaway County v. Kidder*, supra, the county court of Nodaway County sued the ex-presiding Judge of the county court to recover money that had been paid him by the county court as an employee of the county under an agreement with the county court that he be paid

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a stated amount per day for work he performed for the county. The court in holding a county judge was not entitled to receive any compensation for work performed by the county in addition to the statutory amount he was to receive as a member of the court, stated l.c. 61:

"Appellant's alleged contract was also void as against public policy regardless of the statute. A member of an official board cannot contract with the body of which he is a member. The election by a Board of Commissioners of one of its own members to the office of clerk and agreement to pay him a salary was held void as against public policy. Town of Carolina Beach v. Mintz, 212 N.C. 578, 194 S.E. 309; 46 C.J. 1037 Sec. 308."

It is our view that a member of the board of directors of a fire protection district cannot be employed and paid any additional compensation for services rendered the district in excess of that as provided under the statute.

CONCLUSION

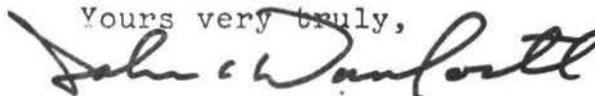
It is the opinion of this office that:

1. Members of the board of directors of a fire protection district are not entitled to receive compensation for attending more than two regularly called board meetings in any calendar month and this includes a regularly called meeting of the directors of several fire protection districts which have established a consolidated alarm and dispatching service. After September 28, 1971, the effective date of Senate Committee Substitute for House Bill No. 316 of the 76th General Assembly, the members of the board of a fire protection district in a first class county having a charter form of government, may receive compensation for not more than four meetings each calendar month.

2. A member of the board of directors of a fire protection district cannot be employed and paid any additional compensation for services rendered the district in excess of the amount allowed under Section 321.190, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General