

CIVIL DEFENSE:

A county may properly expend funds for the salary and mileage of a civil defense director; it would be improper to employ civil defense director and have him designated as a deputy sheriff although he performs none of the civil or criminal functions of the deputy sheriff.



February 1, 1954

Honorable John E. Downs
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your request:

"Buchanan County, a county of the second class, is desirous of employing an individual to act as a director of County Civil Defense. In this connection I have two questions for your determination:

"1. Can the County properly expend funds for the salary and mileage for a Civil Defense director?

"2. Is it proper to employ such an individual and carry him as a Deputy Sheriff and paid as such even though this individual performs no functions criminal or civil and is not under the direction and control of the Sheriff, but merely carried budgetwise as a Deputy?"

The Civil Defense Law of Missouri is found in Senate Bill #406, enacted by the 67th General Assembly, which became effective August 29, 1953. This law is a reenactment of the Civil Defense Law enacted in 1951. Senate Bill No. 406 is now Chapter 44, V.A.M.S., Pocket Part.

In this law the term "political subdivision" is stated to mean "any county or city, town, village or any fire district created by law." And the term "local organization for civil defense" means "any organization established under this law by any county or any city, town or village to perform local civil defense functions."

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Section 44.020, of the Civil Defense Law states:

"1. There is hereby created within the executive branch of the state government a 'Division of Civil Defense' (hereinafter called the 'Civil Defense Agency') and a 'Director of Civil Defense' (hereinafter called the 'Director') who shall be the head thereof. The director shall be appointed by the governor with the advice and consent of the senate. He shall not hold any other state office. He shall hold office during the pleasure of the governor and shall receive a salary of not to exceed six thousand five hundred dollars per annum, to be fixed by the governor, payable monthly out of the state treasury.

"2. The director may employ and fix the compensation of such technical, clerical, stenographic and other personnel (when they are to be compensated) and may make such expenditures within the appropriation therefor, as may be necessary to carry out the purposes of this law.

"3. The director, subject to the direction and control of the governor, shall be the executive head of the civil defense agency and shall be responsible to the governor for carrying out the program for civil defense of this state. He shall coordinate the activities of all organizations for civil defense within the state, and shall maintain liaison with and cooperate with civil defense agencies and organizations of other states and of the federal government, and shall have such additional authority, duties and responsibilities authorized by this law as may be prescribed by the governor."

Section 44.080 of the Civil Defense Law states:

"1. Each political subdivision of this state may establish a local organization for civil defense in accordance with the state civil defense plan and program, with a director appointed by the executive officer of the political subdivision and who shall have direct responsibility for the organization, administration and operation of such local organization for civil defense, subject to the direction and control of such executive officer or governing body. Each local organization for civil defense shall be responsible for the performance of civil defense functions within the territorial limits of the political subdivision within which it is organized, and may conduct such functions outside of such

territorial limits as may be required pursuant to the provisions of this law.

"2. In carrying out the provisions of this law each political subdivision may:

"(1) Appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil defense purposes, provide for the health and safety of persons and property, including emergency assistance to victims of any enemy attack; and to direct and coordinate the development of civil defense, plans and programs in accordance with the policies and plans of the federal and state civil defense agencies;

"(2) Appoint, provide, without compensation, or remove air raid wardens, rescue teams, auxiliary fire and police personnel and other civil defense teams, units or personnel;

"(3) In the event of enemy attack, waive any time consuming procedures and formalities otherwise required by statute pertaining to the advertisement for bids for the performance of public work or entering into contracts."

It will be noted that Section 44.080 states that each political subdivision of the state may establish a local organization for civil defense in accordance with the state civil defense plan. We noted above that a county is a political subdivision of the state. Section 44.020, supra, states that the governor may appoint a state director who shall receive a salary not to exceed \$6500.00 per year. It would seem that for a county to appoint a county director, at a salary, would be in "accordance" with the state plan. Furthermore, subparagraph (1) of paragraph (2) of Section 44.080, supra, gives the political subdivision power, in carrying out the provisions of the law, to "appropriate and expend funds. . . ."

It would appear that this could very well include the salary of a director of civil defense.

Furthermore, subparagraph (2) of paragraph (2) of Section 44.080, supra, states that "air raid warden, rescue teams, auxiliary fire and police personnel, and other civil defense terms, units or personnel shall serve without compensation." We do not believe that the words "units or personnel" used above were meant to include the director since he is separately mentioned in paragraph (1) above.

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We are aware of the well-established rule of law in Missouri that before anyone can be paid public funds he must be able to point to a statute authorizing such payment. We believe that Section 44.080, supra, is such authority.

Adequate civil defense is a matter of vital importance to our people. It would seem that to establish and oversee such a program in a county of the size of Buchanan County would be a full time job for one person. It could not be thought that the Legislature contemplated that a Director could be secured to serve without compensation. We, therefore, believe that a county may expend funds for salary and mileage for a civil defense director.

Your second question is: "Is it proper to employ such an individual and carry him as a deputy sheriff and paid as such even though this individual performs no functions criminal or civil and is not under the direction and control of the sheriff, but merely carried budgetwise as a deputy "while in reality acting as civil defense director."

We do not believe that this would be proper. Section 57.270 RSMo 1949, states:

"Every deputy sheriff shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff."

This clearly contemplates that a deputy sheriff shall assist the sheriff in the performance of his civil and criminal functions. To appoint a deputy and then not have him assist the sheriff in performing his duties would be a fraud upon the county.

CONCLUSION

It is the opinion of this department that a county may properly expend funds for the salary and mileage of a civil defense director; also that it would be improper to employ a civil defense director and have him designated as a deputy sheriff although he performs some of the civil or criminal functions of the deputy sheriff.

The foregoing opinion, which I hereby approve, was prepared by my Assistant Hugh P. Williamson.

Very truly yours,

HPW/ld

JOHN M. DALTON
Attorney General