

COUNTY FIRE DISTRICTS:  
FIREMEN:  
RETIREMENT:  
RETIREMENT INSURANCE:  
CONSTITUTIONAL LAW:  
SPECIAL FUNDS:  
MUNICIPAL CORPORATIONS:

House Bill No. 356, 73rd General Assembly (Section 321.220 as amended) Subsection 15 authorizing a pensioning program for firemen in Fire Protection Districts in counties of the first class is constitutional. House Joint Resolution Nos. 5 and 15 would allay any questions of constitutionality

of the pensioning program for firemen in Fire Protection Districts in counties of the first class. Under House Bill No. 52, 73rd General Assembly (Section 321.240 V.A.M.S. August 1965 Pamphlet) the Board in its discretion may provide for a program of pensions through an insurance company except that a mutual company having an unlimited assessment liability may not be employed. The special fund raised for this purpose by taxation can only be utilized to provide a pension program.

Amended Opinion No. 366

November 9, 1965



Honorable Donald J. Gralike  
112 Buckley Meadows  
St. Louis 25, Missouri

Dear Representative Gralike:

This opinion is written in response to your inquiry concerning House Bill 356 of the 73rd General Assembly which provides, in part, that a fire district within a county of class one may formulate a retirement plan for employees.

You pose the following questions:

"1. In the event that the voters would approve a pension program under House Bill No. 356, Section 321.220, Subsection 15, would such a program of pensioning be constitutional or would the same be contrary to Section 25 of Article VI of the constitution?

"2. Since no provision is made for a constitutional amendment as was done by the prior legislature under House Joint

Honorable Donald J. Gralike

Resolution No. 33, would this be cured by House Joint Resolution No. 5, especially since no provision is made for political subdivisions other than municipalities?

"3. Under House Bill No. 52 which provides for the funding of such a program and the depositing of the revenues in a special fund to be used for the pension program, could a fire district fund this through a program of annuities through an insurance company?"

Your first question has been answered in our Opinion Attorney General No. 329, Cantrell, dated September 27, 1962, (which is attached). We concluded that the act was constitutional under our interpretation of Chapter 321, RSMo, (as amended). Our opinion has not been changed because of amendments.

House Joint Resolution Nos. 5 and 15 of the 73rd General Assembly clearly defines the constitutional authority of political subdivisions in this area. Such an amendment would allay any questions that might exist as to the constitutionality of Section 321.220, RSMo, (as amended) regarding the pensioning of firemen in Fire Protection Districts in counties of the first class.

We believe your third question is answered, in effect, by letter of the Attorney General in response to opinion request No. 395, Schecter, October 31, 1962, (which is attached). In this letter (No. 395), we say: "In view of the unrestricted authority granted by Section 86.583, RSMo, (here it is Section 321.220 as amended) we know of no reason why the provision for the pensioning of \* \* \* firemen pursuant to that section could not be accomplished by an arrangement with an insurance company".

This position is predicated upon one of the accepted rules of statutory construction. In this instance, the rule is that a power given by statute carries with it, incidentally or by implication, powers not expressed, but necessary to render effective the power that is expressed. (Reilly v. Sugar Creek Township of Harrison County, 139 S.W. 2d 525, 526; State ex rel Brokaw v. Board of Education of St. Louis et al, 171 S.W. 2d 75, 82; City of Flordell Hills v. Hardekopf, 271 S.W. 2d 256, 257; Petition of City of Liberty, 296 S.W. 2d 117, 123) The purpose of these rules of construction is to reach the true intent of the lawmaking authority - the General Assembly. (State ex rel

Honorable Donald J. Gralike

Brokaw v. Board of Education of St. Louis, supra l.c. 79).

Under House Bill No. 52, 73rd General Assembly, (Section 321.240, RSMo, as amended) the proceeds of the "additional rate" is to be "deposited in a special fund and used only for the pension program of the district". Thus, a power to set up a pension fund has been given to a municipal corporation without limiting the mode of effectuating that power. Based on the authorities cited in the paragraph (supra), we conclude the Board may exercise that power in any lawful and reasonable manner which it deems expedient in order to effect the purpose for which the power is given. It can be expended only for pensions.

#### CONCLUSION

It is the opinion of this office that:

1. The pensioning program for firemen in Fire Protection Districts in counties of the first class created under House Bill 356, 73rd General Assembly (Section 321.220, RSMo, as amended) is constitutional.

2. House Joint Resolution Nos. 5 and 15, 73rd General Assembly, would allay any question of constitutionality of the amendments to Section 321.220, RSMo, regarding pensions for firemen in Fire Protection Districts in counties of the first class.

3. Under House Bill No. 52, 73rd General Assembly, (Section 321.240 V.A.M.S. August 1965 Pamphlet) the special fund in the discretion of the Board could be utilized to provide a program of annuities through an insurance company except that a mutual insurance company having an unlimited assessment liability may not be employed.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Richard C. Ashby.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General