

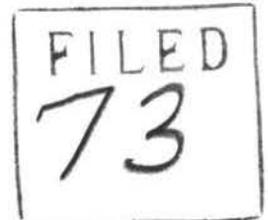
CIVIL DEFENSE:
FIRE PROTECTION DISTRICTS:
COUNTIES:

The Missouri Civil Defense Act (Chapter 44 RSMo.) envisions autonomous local civil defense organization in those political subdivisions defined by the law. Therefore, the county Civil Defense Agency has duties and responsibilities only within the areas of the county lying outside any of the statutorily defined political subdivisions having their own local organization for disaster planning.

OPINION NO. 375 (1967)
73 (1968)

August 1, 1968

Honorable William R. Antoine
State Representative, District 23
12101 Newbury Lane
Independence, Missouri 64052



Dear Representative Antoine:

This is in response to your request for an opinion on certain questions that you have relating to the Missouri Civil Defense Act. (Chapter 44, RSMo 1959, A.L. 1967) Your questions are as follows:

"1. Considering the governmental order of state, county and city or village, is a city political subdivision civil defense agency subordinate to a county political subdivision civil defense agency? If so, to what extent? If not, would this not negate and be inconsistent with Missouri's governmental structuring?

2. Was a duplication of activities intended by the statute considering the executive officer of any political subdivision appointing authority may be representative of, e.g., a city of 100 inhabitants, whereas, on the other hand, the executive officer of a county political subdivision appointing authority is responsible to the total county electorate?

3. What are the duties and responsibilities of a county civil defense agency respecting the total territorial and geographic area?

Honorable William R. Antoine

4. Does the county civil defense agency have the right or the statutory responsibility to superimpose upon any lesser political subdivision a total county plan consistent with such county's function and would such lesser political subdivision inherently be bound to coordinate its plans and civil defense activities with every other lesser political subdivision under the county civil defense agency's direction?"

The statute authorizes each political subdivision of the State to establish a local organization for disaster planning (civil defense) in accordance with the state survival plan and program. (Section 44.080 (1)). Political subdivision is defined by the statute as "any county or city, town or village, or any fire district created by law" (Section 44.010 (6)). Local organization for civil defense is defined as "any organization established under this law by any county, city, town or village, to perform local civil defense functions" (Sec. 44.010 (5)). We think it entirely clear that the legislature has intended that either the County of Jackson, the City of Kansas City, or any towns, villages, or fire districts in Jackson County may, within their respective areas, adopt and carry out their own civil defense plans, and that none of these entities are placed in a position of superiority or subordination to the other in this respect. Cooperation between local governments in this area is certainly encouraged by the statute, and in the event of an emergency, the Governor is empowered to insure coordination of effort between the political subdivisions (Section 44.100, 1 (4) (a) (b).) The Governor is also, during emergencies, empowered to consolidate all civil defense efforts within the state (Sec. 44.100,2).

We do not consider that the foregoing arrangement is at all "inconsistent with Missouri's governmental structure", as you have suggested in your request.

"Constitutions and statutes providing for different types of government for the counties and cities of the state establish the policy of placing urban areas under city government and keeping rural areas under county government. * * *" (62 C.J.S., Municipal Corporations, Section 114, Page 249)

Honorable William R. Antoine

"* * *Cities have been a chief factor in human progress. They exercise policy making authority and have legislative powers for their local government. It is inconsistent with the purposes of their creation that counties exercise jurisdiction over their affairs. Dual authority would tend to create confusion. This is especially true of an exercise of governmental police power. The indispensability of local self-government arises from problems implicit in the safety, order, health, morals, prosperity, and general welfare of thickly populated areas. *Heller v. Stremmel*, 52 Mo. 309; *State ex rel v. Leffingwell*, 54 Mo. 458; *Barton County v. Walser*, 47 Mo. 189; *Cook County v. Chicago*, 311 Ill. 234, 142 N.E. 512, 31 A.L.R. 442; 20 C.J.S., Counties §§ 1-3, p. 753; 43 C.J. p. 72, Municipal Corporations, Secs. 11-13, p. 186, Sec. 184; p. 247, Sec. 247, nn 73, 74. The jurisdiction of the city attaches and that of the county ceases when rural or county territory is annexed to a municipality. *St. Louis Gaslight Co. v. City of St. Louis*, 46 Mo. 121, 133; *Kurtz v. Knapp*, 127 Mo. App. 608, 106 S.W. 537; 43 C.J. 142, Municipalities, Secs. 117,120. Within its authorized sphere of action a city has been termed 'a miniature state'. *Paulsen v. City of Portland*, 149 U.S. 30, 38, 13 S.Ct. 750, 753, 37 L. Ed. 637. This policy of government has received practical recognition by the General Assembly of Missouri." (*State ex rel Audrain County vs. City of Mexico*, 197 S.W. 2d 301 (1.c. 303))

We believe that fire protection districts were likewise intended to be independent of county government in regards to their civil defense operations.

See; *State ex rel Askew v. Kopp*, 330 SW2d 882 (Div1, 1960).

Cf; *St. Louis County v. City of Manchester*, 360 SW2d 638 (Banc 1960).

The legislature could have placed counties above the other political subdivisions, but we do not believe such was done. Rather, it is our opinion that the legislature chose to distribute among each

Honorable William R. Antoine

of the designated political subdivisions co-equal powers in the matter of "normal" (i.e.; non-emergency) disaster planning operations. (20 C.J.S. Counties §1, p. 753.)

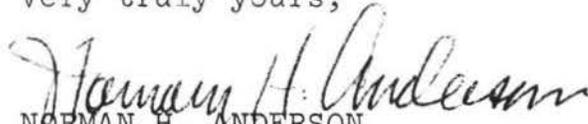
You have inquired as to the relationship between a county and political subdivisions in such county insofar as Civil Defense functions are concerned. We do not therefore deem it necessary to discuss the question whether a fire protection district would be subordinate to or superior to a city insofar as territory which is located both within a city and a fire district is concerned.

CONCLUSION

It is the opinion of this office that the Missouri Civil Defense Act envisions autonomous local civil defense organization in those political subdivisions defined by the law. "Each local organization for disaster planning shall be responsible for the performance of civil defense functions within the territorial limits of its political subdivision, and may conduct these functions outside the territorial limits as may be required pursuant to the provisions of this law." Section 44.080 (1). Therefore, we answer your first, second and last questions in the negative and the third question by stating that the county Civil Defense Agency has duties and responsibilities only within the areas of the county lying outside any of the statutorily defined political subdivisions having its own local organization for disaster planning.

The foregoing opinion, which I hereby approve, was prepared by my Assistant Louren R. Wood.

Very truly yours,


NORMAN H. ANDERSON
Attorney General