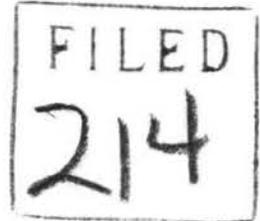


MS

FIRE PROTECTION DISTRICTS: Section 321.220, RSMo Cum.Supp.
COUNTIES OF FIRST CLASS: 1967, granting certain powers to
BOARD OF DIRECTORS: board of directors of fire protection
POWERS OF: district of first class county em-
powers directors to require removal
of obstructions in streets within district.

OPINION NO. 214-1968

December 12, 1968



Honorable Jack J. Schramm
State Representative
District 37
7529 Gannon Avenue
University City, Missouri 63130

Dear Representative Schramm:

This office is in receipt of your request for a legal opinion of this office reading in part as follows:

"The Creve Coeur Fire Protection District is confronted with quite a problem on so-called private streets, although open to the public, in which obstructions in various forms are placed in such streets. Some of these obstructions are predominant humps. In attempting to maneuver these streets with our fire engines, the driver is confronted with quite a problem and, in the case of humps in the street, can cause injury to both the equipment and personnel. The Board of Directors would like to have an opinion from the Attorney General's office whether they have the power in the interest of safety and under their fire-fighting powers, to require removal of such obstructions in the streets within the Fire Protection District"
(underscoring ours).

The question for which a legal opinion has been requested is found in the above quoted, underscored portion of your letter. We understand such inquiry to be whether or not the Board of Directors of the Creve Coeur Fire Protection District is authorized to require removal of obstructions in the streets from the Fire Protection District.

Honorable Jack J. Schramm

Apparently the obstructions in the streets referred to in the opinion request, as well as the Creve Coeur Fire Protection District are located within the first class county of St. Louis. Chapter 321, RSMo 1959, as amended, is in regard to fire protection districts in the four classes of Missouri counties. Sections 321.010 to 321.450 of said chapter, as amended, is applicable to fire protection districts of first class counties including the one referred to in the opinion request.

Section 321.220, RSMo Cum.Supp. 1967, gives the powers of a fire protection district of a first class county and reads in part as follows:

"For the purpose of providing fire protection to the property within the district, the district and, on its behalf, the board shall have the following powers, authority and privileges:

- (1) To have perpetual existence
- (2) To have and use a corporate seal
- (3) To sue and be sued, and to be a party to suits, actions and proceedings
- (4) To enter into contracts, franchises and agreements with any person, partnership, association or corporation, public or private, affecting the affairs of the district, including contracts with any municipality, district or state, or the United States of America, and any of their agencies, political subdivisions or instrumentalities, for the planning, development, construction, or operation of any public improvement or facility, or for a common service relating to the control or prevention of fires, including the installation, operation and maintenance of water supply distribution, fire hydrant and fire alarm systems; provided, that a notice shall be published for bids on all construction or purchase contracts for work or material or both, outside the authority contained in subdivision (9) below, involving an expense of two thousand dollars or more
- (5) Upon approval of the qualified electors, as herein provided, to borrow money and incur indebtedness * * *
- (6) To acquire, construct, purchase, maintain, dispose of and encumber real and

Honorable Jack J. Schramm

personal property, fire stations, fire protection and fire fighting apparatus and auxiliary equipment therefore, and any interest herein, including leases and easements.

(7) To refund any bonded indebtedness of the district without an election * * *

(8) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of the district improvements therein.

(9) To hire and retain agents, employees * * *

(10) To have and exercise the power of eminent domain and in the manner provided by law for the condemnation of private property for public use * * *

(11) To receive and accept by bequest gift or donation any kind of property

(12) To adopt and amend by laws, fire protection and fire prevention ordinances, and any other rules and regulations not in conflict with the Constitution and laws of this state, necessary for the carrying on of the business, objects and affairs of the board and of the district, and refer to the proper authorities for prosecution for any infraction thereof detrimental to the district. Any person violating any such ordinance, rules and regulations is hereby declared to be guilty of a misdemeanor, and upon conviction shall be punished as is provided by law therefor.

(13) To pay all court costs and expenses connected with the first election or any subsequent election in the district

(14) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of Sections 321.010 to 321.450

(15) To provide for pensioning * * * "

Honorable Jack J. Schramm

In subdivision 12, Section 321.220, supra, a legislative grant of power has been given fire protection districts to adopt and amend by laws, fire protection and fire prevention ordinances, rules and other regulations necessary for carrying on the business, objects and affairs of the board of directors and of the district.

The importance and supremacy of the rules of the board of directors within the fire protection field has been passed upon by the appellate courts of Missouri. In this connection we call attention to the case of Wellston Fire Protection District vs. State Bank and Trust Company of Wellston, 282 SW 2d 171, in which the St. Louis Court of Appeals held that the Fire Protection Building Code promulgated by the Wellston Fire Protection District, prevailed over the Building Code of the City. At l.c. 176, the court said:

"After analysis of the fire protection district statute, the evident purpose thereof, the broad scope of the law, the vesting of police power in a district created pursuant thereto, and the state of confusion which could be precipitated if both the city and the district attempted to function in the same field, we hold that the Legislature intended to and did withdraw the authority from the city to regulate and control construction of buildings and other structures with respect to preventing and protecting against fires and lodged that authority in the district

* * *

"Our ruling herein simply means that the city has lost the right to regulate and control construction of buildings and structures within its limits for the purpose of preventing fires and protecting property and members of the public from the hazards thereof."

In view of the holding in the above cited case and of the broad rule-making powers granted to fire protection districts for the purposes mentioned in subdivision 12, Section 321.220, supra, it is believed the board of directors of the Creve Coeur Fire Protection District may, within their discretion, enact an ordinance requiring the removal of obstructions in the streets within the district, including all public streets and so-called private streets open to public use.

CONCLUSION

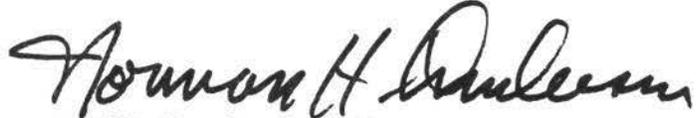
Therefore, it is the opinion of this office that Section

Honorable Jack J. Schramm

321.220, RSMo Supp. 1967, granting certain powers to the board of directors of a fire protection district of a first class county empowers the board of directors of such district to enact an ordinance requiring the removal of obstructions in the streets within the district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Norman H. Anderson".

NORMAN H. ANDERSON
Attorney General