

FIRE PROTECTION
DISTRICTS:

A fire protection district may be formed in a third class county under Chapter 321, RSMo as amended. A fire protection district cannot be formed to encompass an area or territory in more than one county.

OPINION NO. 335

July 1, 1970

Honorable John E. Parrish
Prosecuting Attorney
Camden County Court House
Camdenton, Missouri 65020



Dear Mr. Parrish:

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

"(1) Can a Fire Protection District under Chapter 321, RSMo, be formed in a third class county?

"(2) Can a Fire Protection District be formed encompassing an area within more than one county and, if so, in what county is the petition for organization of a district filed?"

The establishment and maintenance of fire protection districts is covered under Chapter 321, RSMo.

Sections 321.510 to and including 321.715, RSMo, which applied to the formation and maintenance of fire protection districts in class two, three and four counties, were repealed by Senate Committee Substitute for House Bill No. 322, Seventy-fifth General Assembly, hereinafter referred to as House Bill 322. Under these statutes, a fire protection district could be wholly within a county or in two or more counties, but had to consist of contiguous tracts or parcels of property. They also provided that the circuit court in the county in which a major portion of the area was located had authority to establish such districts and retain jurisdiction in any subsequent action involving the district. They further provided for the decree of incorporation to be filed with the recorder of deeds in each county. They also provided for the tax rate to be certified to the county court of

Honorable John E. Parrish

each county and for the officers to levy and collect taxes in the county and to levy and collect the taxes for such district.

Sections 321.010 to and including Sections 321.470, RSMo provided for the establishment and maintenance of fire protection districts in class one counties. Section 321.010, RSMo, Supp. 1967, provided such district must be wholly within a county of class one. House Bill No. 322 contains a new section known as 321.010. Under this section the district must consist of contiguous tracts or parcels of property and may include within its boundaries, or may be contiguous with, any city, town or village. The provision which required the territory to be wholly within a county in class one, has been omitted.

Section 321.020 as reenacted provides that the circuit court, "sitting in and for any county of this state" or any judge in vacation may, as provided in this chapter, establish fire protection districts. Section 321.080 as reenacted provides that the circuit court, "in and for the county in which the petition for the organization of the district has been filed shall thereafter maintain and have original and exclusive jurisdiction over all matters connected with or affected by said district." Section 321.030 RSMo provides that organization of a district shall be initiated by a petition filed in the office of the circuit clerk in the county in which the real property in the proposed district is situated.

Section 321.625, RSMo which was repealed, provided for the board of directors, on or before the 15th day of May each year, to certify the rate of levy, "to the county courts of the counties within which the district is located." This section was not reenacted. Section 321.250, RSMo provides that on or before the 15th day of May, the director shall certify, "to the county court of the county within which the district is located" a rate of levy so fixed by the board. Section 321.220, as reenacted, provides for the prosecuting attorney, "for the county in which the fire protection district is located" to prosecute any violations of this law. It further provides for the pensioning of the members of the fire department by a vote of a majority of the voters after a notice of such election is published in a newspaper of general circulation, "in the county in which the district is located."

There is no provision in House Bill No. 322 for the tax levy to be certified to the county court in more than one county or for the collection of taxes in more than one county. Those provisions were in the statutes that were repealed and have been omitted from the statutes as reenacted.

A fire protection district organized under Chapter 321,

Honorable John E. Parrish

RSMo is a political subdivision. Section 321.010, RSMo. Political subdivisions of this state have only such authority as it is expressly granted by statute in express words and such authority as is necessarily fairly implied as essential and necessary in the performance of those powers and authority that are expressly granted. Lancaster v. Atchison County, 180 S.W.2d 706, 352 Mo. 1039.

In answer to your question whether a fire protection district can be formed in a class three county, it is our opinion that the provisions of House Bill No. 322, as enacted by the Seventy-fifth General Assembly, 1969, applies to all counties of the state and that a fire protection district may be established in a third class county.

In answer to your question whether a fire protection district can be formed to encompass an area within more than one county, it is our opinion that a fire protection district cannot be formed to include an area or territory in more than one county. Those provisions of the statute providing for fire protection districts to include territory in more than one county were repealed and there is no statutory authority under the present statutes to form districts to include territory in more than one county. Since a fire protection district has only such authority as is expressly given by statute, it is our opinion that a fire protection district cannot be formed to include territory in more than one county.

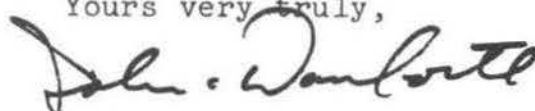
CONCLUSION

It is the opinion of this office that:

1. A fire protection district may be formed in a third class county under Chapter 321, RSMo as amended.
2. A fire protection district cannot be formed to encompass an area or territory in more than one county.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General