

MUNICIPALITIES: City of fourth class cannot annex a fire district until they have complied with Section 34 of the Fire District Act.

July 2, 1943



Hon. Forrest Mittendorf
House of Representatives
Jefferson City, Missouri

Dear Sir:

We are in receipt of your letter of July 1, 1943, wherein you request an opinion from this department, as follows:

"Please furnish me with an opinion on the following matter:

"In August of 1942, a fire district was incorporated in St. Louis County, known as the fire district of community, in accordance with a law passed by the 61st General Assembly, found on Page 505 of the Session Acts of 1941. At an election held in October of 1942 the City of Overland, a 4th class city, took in the entire corporate limits of the fire district of community. On July 6th there will be an election held by the people of the territory annexed by the City of Overland to diminish the city to its original corporate limits, under authority of Section 7097, Revised Statutes of Missouri, 1939. Please deliver me the opinion on this particular point - in the event that the city is diminished to its original limit, will the fire district of community remain at its status as before annexation by the city in October of 1942.

"Section 34 of the fire district law provides that no city shall annex any of the.

fire district unless it takes in the entire district. The law provides further that the city shall assume all property, real and personal, and pay all debts and obligations of the district. The City of Overland has not taken over the books of the fire district nor paid any of the costs of the incorporation of the district, and it did not pay any of the salaries of the fire district trustees prior to the annexation of the fire district.

"I am of the opinion that since the City of Overland did not take over the books of the district nor pay any of the obligations of the fire district, that the district was not taken over by the city. Kindly furnish me an opinion in the event that the people of the fire district who were annexed by the city, in the election of July 6th, vote to return the city to its original limits, if the fire district will still be as it was before it was annexed by the City of Overland."

Section 34, Laws of Missouri, 1941, page 516, reads as follows:

"No village or city shall annex any part of any fire district herein created unless said city shall annex the whole of said district. In the event of annexation, said village or city shall assume all debts and obligations of the district, and thereafter all property, real or personal, owned by the district shall be vested in said village or city. No village or city shall be incorporated within the boundaries of any district unless said village or city shall include the area of the entire district."

Section 7097, R. S. Mo. 1939, partially reads as follows:

"* * * The mayor and board of aldermen of such city, whether the same shall have been incorporated before becoming a city of the fourth class or not, with the consent of a majority of the legal voters of such city voting at an election therefor, shall have power to extend the limits of the city over territory adjacent thereto, and to diminish the limits of the city by excluding territory therefrom, and shall, in every case, have power, with the consent of the legal voters as aforesaid, to extend or diminish the city limits in such manner as in their judgment and discretion may redound to the benefit of the city: * * * * *"

Section 34 being a later section is an implied conditional amendment to Section 7097, R. S. Mo. 1939, which is a general law in so far as to territory included in a fire district as set out in the Laws of Missouri, 1941, page 505.

Section 34 is also a special statute, in reference to the conditions imposed on extension of territory of a city of the fourth class to obtain territory which consists of a fire district.

Where general terms, or expressions, in one part of a statute are inconsistent with a more specific or particular provision, or provisions, in another part of a statute, the particular provision must govern unless the statute as a whole clearly shows the contrary intention, and it must be given effect notwithstanding the general provision is broad enough to include the subject to which the particular provision relates. *Jacoby v. Missouri Valley Drainage District of Holt Co.*, 163 S. W. (2d) 930.

Where there is a general statute and a special statute in reference to the same matters, the special statute controls. *State v. Richman*, 148 S. W. (2d) 796.

Two statutes relating to the same subject must be read together and the provisions of the one having special application to a particular subject will be deemed a qualification of, or "exception" to the other statute general in its terms. *Eagleton v. Murphy*, 156 S. W. (2d) 683. Since Section 7097, supra, applies generally to the annexation of adjacent territory and since Section 34, Laws of Missouri, 1941, page 516, applies particularly to the annexation of territory in which there is a fire district, Section 34 is the controlling section.

Section 34 of the Laws of Missouri, 1941, page 516, specifically sets out the procedure of the annexation of a district where a fire district is located. And, in that section, it specifically states "* * * said village or city shall assume all debts and obligations of the district, and thereafter all property, real or personal, owned by the district shall be vested in said village or city." Under the facts in your request the city has not paid any of the costs of incorporation of the fire district or any of the salaries and wages due the district trustees, which, we are assuming, has not been paid, and has not taken over any of the books of the fire district. The city, therefore, has not complied with the procedure set out in Section 34 for the annexation of the territory containing the fire district. The mention of one thing in a statute implies the exclusion of another thing. *Kansas City v. J. I. Case Threshing Machine Co.*, 87 S. W. (2d) 195. Also, the expression of one thing in a statute is the exclusion of another. *State ex rel. Kansas City Power and Light Co. v. Smith*, 111 S. W. (2d) 513.

Section 34, supra, specifically states "* * * the village or city shall assume all debts * * *." Section 34, as worded, is mandatory and before the annexation is completed the city must comply with that section. It clearly shows that it was the intention of the Legislature that before the annexation is completed that the city should assume all debts and obligations of the district and that thereafter all property, real or personal, owned by the district shall be vested in said city. Under the facts as stated in your request, we are assuming that the city has not taken the steps described in Section 34. And, in that event, if the city should, under Section 7097, supra, with the consent of the legal voters, diminish the city limits so as to exclude the

territory consisting of the fire district, the fire district has the same status as before the alleged annexation of the territory was voted upon by the people in the city. In reading Section 34 it can only be said that the conditions set out therein are mandatory. *Morris v. Karr*, 114 S. W. (2d) 962.

CONCLUSION

It is, therefore, the opinion of this department that the fire district which was incorporated in St. Louis County in August of 1942, which was known as the fire district of the community, has not lost its identity as a fire district incorporated under the Session Acts of 1941, page 505, for the reason that the annexation of the territory, including the fire district had not been completed for the reason that the city had not complied with Section 34 of the Fire District Act.

It is further the opinion of this department that the territory consisting of the fire district has not been annexed at this time for the reason that the city has not complied with Section 34 of the Fire District Act as set out on page 505, Laws of Missouri, 1941.

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

WJB:CP