

FILE

Subject

Counties  
Fire Districts

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STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
*Attorney General*

March 21, 1974

Opinion No. 74- 96

Kenton C. Granger  
Anderson, Granger, Nagels & Lastelic  
Capitol Federal Building  
Suite 306, 95th and Nall  
Overland Park, Kansas 66207

Dear Mr. Granger:

We have your letter of March 7, concerning a proposed contract between Mission Fire District No. 1, organized pursuant to K.S.A. 19-3613 *et seq.*, and Mission Fire Department No. 1, Inc., a volunteer nonprofit corporation.

In Opinion No. 73-291, dated August 24, 1973, we concluded that an appropriation of a portion of the Fire District's budget, raised by levy pursuant to K.S.A. 19-3622 "for the purposes of paying the expenses of operating and maintaining a fire department and other legal expenses of the fire district," would constitute a violation of the Kansas budget law, and particularly K.S.A. 79-2923, which provides in part that "[n]o part of any fund shall be diverted to any other fund . . . except as provided by law."

You advise that by its levy for the 1974 fiscal year, the Mission Fire District raised \$180,577.74. The amount of \$154,987.00 was budgeted to cover a contract with the Mission Fire Department No. 1, Inc., (hereinafter referred to as the "Department"), a portion of which was intended to be used by the Department toward a reserve for capital expenditures, such as for major fire equipment and a fire station. After receipt of the opinion in August, 1973, the District took the position that it could

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not lawfully pay the Department funds other than for operation and maintenance. The amount of \$72,000.00 has been determined to be a fair sum for operation and maintenance of the Department, and the District has refused to enter into a contract with the Department involving payment of any portion of the remainder of the budgeted amount, which would be used for capital expenditures or reserves therefor.

K.S.A. 19-3621 provides in pertinent part thus:

"The governing body of the fire district may enter into contracts with . . . incorporated volunteer fire departments . . . for co-operation between fire departments . . . and may include in such contracts provisions by which the . . . volunteer fire departments will furnish fire protection to a part of the fire district in question in consideration of cash payments or reciprocal services . . . ."

The levy of not to exceed seven and one-half mills authorized by K.S.A. 19-3622 is to be "for the purpose of paying the expenses of operating and maintaining a fire department and other legal expenses of the fire district." Under K.S.A. 19-3617,

"Where such fire district does enter into a contract with any other fire district, city or township within the vicinity of the fire district for furnishing fire protection service to the residents thereof, said fire district governing board shall have the power to levy a tax not to exceed seven and one-half (7-1/2) mills . . . for the purpose of carrying out the provision of the contract so made . . . Provided, That no other levies for fire department purposes shall be made on such property."

The question thus presented becomes whether it is within the authority of a fire district organized pursuant to K.S.A. 19-3613, to contract with a private nonprofit corporation operating a volunteer fire department to pay over public funds of the district to the corporation for the purchase of firefighting equipment. Under K.S.A. 19-3621, the fire district may contract for "fire protection." In its ordinary acceptation, this term imports a contract for services.

The contract proposal prepared in December, 1973, contains the following pertinent agreements:

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"That the said party of the first part, [Mission Fire Department No. 1, Inc.] in consideration of the agreements of the party of the second part hereinafter states, agrees and covenants with the said party of the second part [Mission Fire District No. 1] to furnish fire protection, to the best of said party's ability, to said party of the second part for the year 1974 for the entire area of the second party.

In consideration of which the said party of the second part agrees and covenants with the said party of the first part to pay said party of the first part for the year 1974, the amount of \$72,000 . . . ."

It is impossible to determine what additional consideration may be offered to support an additional agreement by the District, as proposed in the addendum, to make available the sum of \$82,987 for "capital improvements necessary to Mission Fire Department in the conduct of its activities as a firefighting Unit serving Mission Fire District No. 1."

Article 11, § 5 of the Kansas Constitution states thus:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied."

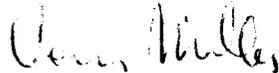
The notice of budget hearing enclosed with your letter states that the levy of the District is made pursuant to K.S.A. 19-3622. That statute authorizes a levy specifically for operation and maintenance, a use clearly distinguishable from capital expenditures. In our view, the use of the proceeds of that levy for capital improvements as proposed in the addendum to the contract for fire protection services is prohibited by the provision of the state constitution cited above, and would constitute a circumvention of the Kansas budget law, which prohibits the diversion of monies from any fund, such as here, a fund for operation and maintenance of a fire department of a fire district, to another and different fund, one for capital improvements deemed necessary to a nonprofit voluntary corporation contracting with the District for fire protection services.

In view of the importance of continuing adequate fire protection to the area involved, we have made every effort to consider the

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proposed contracts in the light most favorable to their validity. However, with due regard for the constitutional and statutory provisions cited herein, we cannot but conclude that the proposed addendum would be an unlawful contract and beyond the authority of Mission Fire District No. 1.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm

cc: William A. Baker  
Stuart Mitchelson  
Lyndus Henry