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ATTORNEY GENERAL OPINION NO. 92- 161

David J. Adkins
Counsel for the Consolidated Fire
District No. 2 of Northeast Johnson County
P.O. Box 8030
Prairie Village, Kansas 66208-0030

Re: Counties and County Officers--Fire Protection--Fire
District; Authority to Contract for Fire Protection
Services

Synopsis: It is our opinion that K.S.A. 19-3621 allows
consolidated fire district no. 2 to enter into a
contract with Mission Fire Department, Inc. to
provide volunteers to augment the paid staff of
consolidated fire district no. 2. The method of
payment for such a contract is not restricted by
K.S.A. 19-3620. Cited herein: K.S.A. 19-3613;
19-3620; 19-3621.

* * *

Dear Mr. Adkins:

As legal counsel for the governing board of consolidated fire
district no. 2, Johnson county, you request our opinion
regarding a contractual relationship between consolidated fire
district no. 2 and the Mission Fire Department, Inc.

Consolidated fire district no. 2 of Johnson county was created
by K.S.A. 19-3613 et seq. Mission Fire Department, Inc is a
corporate entity which is separate and distinct from
consolidated fire district no. 2. Through a contractual
arrangement between consolidated fire district no. 2 and

Mission Fire Department, Inc., the latter provides volunteer firefighters to augment the paid personnel from consolidated fire district no. 2. Mission Fire Department, Inc. does not provide primary fire coverage in any part of the district.

Specifically you question whether K.S.A. 19-3621 allows consolidated fire district no. 2 to enter into this type of contract. Your second question, assuming that the first is answered in the affirmative, is whether a lump sum payment can be made to Mission Fire Department, Inc., or does K.S.A. 19-3620 require compensation at a specified rate to be paid to volunteers when attending fires.

K.S.A. 19-3616 reads in part:

"[t]he governing body of the fire district so created shall have authority to levy taxes and assessments, to enter into contracts, to acquire by lease or purchase, operate, maintain fire fighting equipment and to acquire, construct buildings to house same and to do all things necessary to effectuate the purposes of this act."

K.S.A. 19-3620 provides in part:

"The governing body . . . may also provide for the organization of volunteer members of such department to be compensated at a specified rate when attending fires. . . ." (Emphasis added).

Finally, K.S.A. 19-3621 reads:

"The governing body of the fire district may enter into contracts with cities and other fire districts, townships, or duly organized and incorporated volunteer fire departments whether within or without the county or state, for cooperation between fire departments of the respective cities, districts and townships, and may include in such contracts provisions by which the fire department of such cities, townships or other districts or volunteer fire departments will furnish fire protection to a part of the fire district in question

in consideration of cash payments or reciprocal services."

In construing statutes we are guided by certain established principals as noted in Kansas Racing Management, Inc. v. Kansas Racing Commission 240 Kan. 343, 353 (1989):

"It is the duty of the court to reconcile different statutory provisions so as to make them consistent, harmonious, and sensible. General and special statutes should be read together and harmonized whenever, possible, but to the extent a conflict between them exists, the special statute will prevail unless it appears the legislature intended to make the general statute controlling." (Citations omitted.)

Thus, we must read the statutes governing consolidated fire district no. 2 together. The district clearly has the authority to enter into contracts. K.S.A. 19-3621 extends this contractual authority to contract for cooperation with duly organized and incorporated volunteer fire departments. You are concerned that this law may be applicable only if the department determines that it is necessary for this second entity to provide fire protection services in an area not otherwise served with primary fire protection services. It is our opinion that your interpretation too narrowly construes the statute. You have focused on the permissive language of what the contract can include. May as opposed to shall is indicative of discretion or choice between two or more alternatives.

"A long held view of statutory construction is that primarily and as ordinarily used in a statute the word 'may' is permissive rather than peremptory. . . . It should be given its ordinary meaning, however, unless the terms and provisions of the statute compel the other view." State of Kansas v. School District No. 1 of Edwards County, 80 Kan. 667, 669 (1909).

We believe that in this case the may is permissive and the language does not exclude contracts for other types of cooperative agreements between the parties.

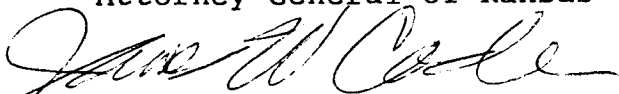
Your next question concerns whether payment for such a contract with a volunteer department can be made in a lump sum or is K.S.A. 19-3620 controlling which would require payments to volunteers "at a specified rate when attending fires." We believe the restrictions placed on compensation for volunteers in K.S.A. 19-3620 is not applicable to contracts with volunteer departments entered into pursuant to K.S.A. 19-3621. The limitations on compensation for volunteers is for "volunteer members of such department." In this case consolidated fire district no. 2 is contracting with a separate legal entity for furnishing volunteers rather than organizing the volunteers as part of the district department. The volunteers in your case would not be members of the consolidated fire district no. 2 and thus K.S.A. 19-3620 would be inapplicable.

In conclusion we believe that K.S.A. 19-3621 allows consolidated fire district no. 2 to enter into a contract with Mission Fire Department, Inc. to provide volunteers to augment the paid staff of consolidated fire district no. 2. The restrictions on payments for volunteers would not be applicable since the volunteers are not members of Consolidated Fire District No. 2.

Very truly yours,



ROBERT T. STEPHAN
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James W. Coder
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RTS:JLM:JWC:jm