

Opinion No. 117**County Commissioners—Fire Districts.**

Held: 1. The Board of County Commissioners does not have the power or authority under law to add adjacent unincorporated territory to an established fire district.

June 15th, 1950.

Mr. John M. Comfort
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Comfort:

You have requested my opinion upon the following set of facts:

"Our Board of County Commissioners has established a fire district in territory that is not incorporated. It is desired to add adjacent unincorporated territory to the established fire district rather than establish a separate fire district. Does the Board of County Commissioners have power to join or add adjacent area to an established fire district?"

The pertinent statutory provision providing for the establishment of fire districts is Section 11-2008, Revised Codes of Montana, 1947, which provides as follows in part:

"The Board of County Commissioners is authorized to establish fire districts in any unincorporated territory, town or village whenever requested in writing so to do by the owners of fifty per cent (50%) or more, of the area included within the proposed district and who constitute a majority of the taxpayers who are freeholders of such territory, town or village, and whose names appear upon the last completed preceding assessment roll; . . . Any fire district organized under the Act may be dissolved when the Board of County Commissioners is requested in writing so to do by the owners of fifty per cent (50%) or more, of the area included within such fire district and who constitute a majority of the taxpayers who are freeholders of such territory, town or village and whose names appear upon the last completed assessment roll."

Under the terms of the above-quoted statute, the Board of County Commissioners is authorized to create or to dissolve a fire district upon the request in writing by the owners of fifty per cent (50%) of the area included within such a district. The statute does not in specific terms provide for the addition of adjacent unincorporated territory at the instance of the Board of County Commissioners.

County Commissioners can exercise only those powers conferred upon them by organic or statutory laws, or such as may arise by neces-

sary implication from an express power. *State v. Cronin*, 41 Mont. 293, 298 Pac. 356; *Roosevelt County v. State Board of Equalization*, 118 Mont. 109 Pac., 144; *Judith Basin County v. Livingston*, 89 Mont. 438, Pac. 356; *Roosevelt County v. State Board of Equalization*, 118 Mont. 31, 162 Pac. (2d) 887.

Nowhere in Section 11-2008, *supra*, and succeeding Sections relating to fire districts and the financing thereof is there any language from which it could be implied that the Board of County Commissioners has the power to add adjacent territory to an established fire district. On the contrary, there are several considerations that would make such an extension of power to the Board of County Commissioners an unwise and unwarranted interpretation of the statute.

First, there is a possibility of confusion over the bonded indebtedness of the fire district. Section 11-2010, Revised Codes of Montana, 1947, provides for an election to determine if the Board of Directors of the fire district shall be authorized to issue bonds for fire district purposes. If an established district had authorized and issued bonds and then a Board of County Commissioners added adjacent territory to such district, several questions would at once arise as to whether or not the adjacent territory should be required to pay into the fund to retire the bonds and if so to what extent. It would be extremely unlikely that persons who did not vote to authorize the bond issue could be made responsible for such bonds.

In the second place it cannot be assumed that the owners of land within the established district will in all instances welcome the addition of adjacent territory. It may be that they would have strenuous objections to increasing the size of the fire district and would vote against such expansion if an election were held. Since the district was established at the instance of the majority of land owners it is only reasonable to rule that the district may not be expanded without the approval of the majority of land owners therein.

In a situation such as exists in your county where the owners of adjacent unincorporated territory desire to be added to an existing district, I would recommend that the most feasible procedure would be to dissolve the existing district if the owners of fifty per cent (50%) of the area included within the district so request and to then create a new district consisting of the territory embraced by the old district and the adjacent territory, if and when the owners of fifty per cent (50%) of such area request the formation of a new fire district.

It is therefore my opinion that a Board of County Commissioners does not have the power or authority under law to add adjacent unincorporated territory to an established fire district.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.