

VOLUME NO. 38

OPINION NO. 87

FIRE DISTRICTS - Equipment purchases;
FIRE DISTRICTS - Finances, authority to obtain loans;
COUNTIES - Rural fire districts, authority to obtain loans;
MONTANA CODE ANNOTATED - Sections 7-33-2105(2), 7-33-2109;
OPINION OF THE ATTORNEY GENERAL - 26 Op. Att'y Gen. No. 84
(1956), 35 Op. Att'y Gen. No. 71 (1974), 36 Op. Att'y Gen.
No. 73 (1976).

HELD: Fire district trustees have authority to enter into loan agreements to finance the acquisition of equipment and facilities needed by the district for fire protection.

3 July 1980

Patrick F. Flaherty, Esq.
Jefferson County Attorney
Jefferson County Courthouse
Boulder, Montana 59632

Dear Mr. Flaherty:

You have requested my opinion concerning certain methods of financing the acquisition of a fire truck and a storage facility by a rural fire district established pursuant to Title 7, chapter 33, part 21, MCA. Specifically, you have asked whether the commissioners of the county involved or the trustees of the district have the authority to issue bonds or obtain a loan for this purpose.

Where powers of a local government unit are in question, the initial inquiry is whether there is an express grant of such powers. If not, the inquiry becomes whether there is a grant by necessary implication or whether the power is indispensable to the accomplishment of the object of the corporation. Deitrich v. City of Deer Lodge, 124 Mont. 8, 13, 218 P.2d 708 (1950). This test is regularly applied where powers of cities and counties are in question. See DeLong v. Downes, ___ Mont. ___, 573 P.2d 160, 162 (1977), and cases cited therein. In my opinion the test is applicable here as well, even though a fire district is not a local government unit. (Fire districts are political subdivisions of the counties in which they are located. See 35 Op. Att'y Gen. No. 71 (1974)).

The applicable statutes fall short of expressly granting county commissioners or fire district trustees the authority to either issue bonds on the credit of the district or obtain a loan on behalf of the district to acquire equipment and facilities. Prior to 1953, county commissioners, as ex-officio directors of fire districts, were authorized to issue such bonds, but the Legislature terminated the authority by repealing the statutes that permitted the issuance of fire district bonds. See, 1956 Mont. Laws, ch. 75, § 3. The Legislature's action effectively foreclosed the use of bonds for fire district purposes.

The remaining question is whether a loan may be obtained on behalf of the district, to be repaid from assessments levied upon property within the district. Since there is no express grant of this kind of authority, the question turns on whether it arises by necessary implication from expressly granted powers or is indispensable to the accomplishment of the object of a fire district. There is a presumption against the exercise of implied authority. DeLong v. Downes, 573 P.2d at 162. However, in my opinion the requisite conditions exist and accordingly I conclude that a fire district has implied authority to obtain a loan for fire district purposes.

A fire district's sole object is to provide fire protection within the district. To this end the trustees have been given express authority "to provide adequate and standard firefighting apparatus, equipment, housing, and facilities for the protection of the district." § 7-33-2105(2), MCA. The Legislature has not prescribed a specific mode of exercising the authority conferred under section 7-33-2105(2), MCA. It has simply authorized county commissioners

to levy a special tax upon property within the district, after submission of a levy by the trustees, as the means of generating revenue for the district. Significantly, the Legislature has specified that such special tax may be levied "for the purpose of buying or maintaining fire protection facilities and apparatus for such district." § 7-33-2109, MCA.

Prior opinions of the Attorney General have recognized the necessity of financing arrangements by which fire protection equipment and facilities can be acquired. The first such opinion, 26 Op. Att'y Gen. No. 84 (1956), found trustees of a newly formed fire district with no cash on hand had implied authority to enter into conditional sales contracts to purchase necessary equipment. That opinion was endorsed in 36 Op. Att'y Gen. No. 73 (1976). The earlier opinion was based on the premise that the district's purpose could not be fulfilled without resort to the proposed financing arrangement. I agree that a fire district has implied authority to secure financing for the equipment and facilities it needs to provide adequate fire protection where the equipment and facilities cannot be acquired otherwise. I see no reason to confine this authority to conditional sales contracts where an alternate arrangement, such as a direct loan, may be more appropriate as well as more economical.

I note both of the opinions referred to above conclude that fire district trustees are not bound by the bid solicitation requirements or installment contract term limitations which apply to county contracts under sections 7-5-2301 and 7-5-2306, MCA. Both opinions did advise compliance with those provisions, however, and I concur.

I have concluded that the authority of a fire district to obtain a loan to finance the acquisition of needed equipment and facilities and to repay the loan from assessments levied annually on property within the district is an indispensable power that may reasonably be implied.

THEREFORE, IT IS MY OPINION:

Fire district trustees have authority to enter into loan agreements to finance the acquisition of equipment and facilities needed by the district for fire protection.

Very truly yours,

MIKE GREELY
Attorney General