

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 102

FIRE DEPARTMENTS - Powers and duties of fire service area trustees;

FIRE DISTRICTS - Powers and duties of fire service area trustees;

TAXATION AND REVENUE - Establishing rate schedules in fire service areas;

MONTANA CODE ANNOTATED - Sections 7-33-2105, 7-33-2401 to 7-33-2404;

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OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 75 (1988).

- HELD: 1. If the county commissioners appoint a board of trustees to govern and manage the affairs of a fire service area, the fire service area trustees must "prepare and adopt" suitable bylaws.
2. The county commissioners have the sole power to set the rate schedules in fire service area to finance the budget which has been prepared by the fire service area board of trustees.
3. Because the commissioners have the sole power to set the rate schedules in the fire service area, the fire service area trustees may not require that rates be modified by popular vote of the residents located in the fire service area.

26 July 1988

Patrick L. Paul
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Paul:

You have requested my opinion concerning the following questions:

1. May the board of trustees of a fire service area write its own bylaws?
2. May the board of trustees of a fire service area set the rate schedule?
3. May the board of trustees require that rates be established and modified only by popular vote of the residents located in the fire service area?

The 1987 Legislature authorized county commissioners to establish fire service areas within unincorporated areas of Montana counties. §§ 7-33-2401 to 2404, MCA. This legislation enables small rural property owners to create a district for protection of structures located on their property, and to finance the district's

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operation by a special assessment on the structures benefited by the service area. See Hearing on House Bill 579 before House Committee on Local Government, Feb. 9, 1987. See also 42 Op. Att'y Gen. No. 75 (1988).

Section 7-33-2401(1), MCA, empowers county commissioners to create a fire service area upon receipt of a petition signed by at least 30 "owners of real property" or a majority of the owners of real property if there are more than 30 such owners in the proposed service area. Subsection (2) of that section sets forth the procedure for establishing a fire service area. Once the county commissioners establish a fire service area, they may operate the area or appoint "five qualified trustees to govern and manage the affairs of the area." § 7-33-2403(1)(b), MCA.

Your first question is whether boards of trustees may write their own bylaws. Section 7-33-2403, MCA, states that "[i]f the commissioners appoint trustees [to govern and manage the affairs of the district] the provisions of 7-33-2105 ... shall apply, except that the trustees shall prepare annual budgets and request a schedule of rates therefor." Section 7-33-2105, MCA, regarding powers and duties of fire district trustees provides:

(1) The trustees shall prepare and adopt suitable bylaws.

(2) The trustees shall have the authority to provide adequate and standard firefighting apparatus, equipment, housing, and facilities for the protection of the district. They shall appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies.

(3) The trustees shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets shall, as far as applicable, apply to fire districts. [Emphasis added.]

Under well-established principles of statutory construction, when the language of a statute is plain and unambiguous the statute speaks for itself. Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968). The above statutes clearly provide that fire service trustees have the powers and duties of fire district trustees, except that fire service trustees request rates instead of levies to finance the area's operation. Therefore, I conclude that pursuant to section 7-33-2105, MCA, fire service area trustees are

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to prepare and adopt suitable bylaws for the service area.

Your next question is whether the board of trustees may set the rate schedule to finance the cost of operating the service area. This question presents two issues: (1) who has power to establish the initial rates, and (2) once established, who has the power to change the rates. For the reasons set forth below, I conclude that the county commissioners have the sole power to set and change the rate schedule in fire service areas.

Section 7-33-2404(1), MCA, expressly provides that in the first instance the county commissioners set the rate schedule: "In the resolution creating the fire service area ... the board of county commissioners shall establish a schedule of rates to be charged owners of structures that are benefited by the fire services offered by the fire service area." Moreover, fire service area trustees cannot set the initial rates because they are not appointed until after the commissioners create the district and adopt the initial fee schedule. See §§ 7-33-2403(1) and (3), MCA.

Once the commissioners appoint trustees to "govern and manage the affairs of the area," the trustees have the duty to "prepare annual budgets and request a schedule of rates therefor." § 7-33-2403(2), MCA. (Emphasis added.) As section 7-33-2404(1), MCA, clearly provides, the commissioners then set the rate schedule to finance the budget which has been prepared by the trustees: "In the resolution creating the fire service area and by resolution as necessary thereafter, the board of county commissioners shall establish a schedule of rates" (Emphasis added.) In construing a statute, the intent of the Legislature must first be determined from the plain meaning of the words used. State ex rel. Board of Commissioners of Valley County v. Bruce, 106 Mont. 322, 332, 77 P.2d 403, 408 (1938), aff'd, 305 U.S. 577, 59 S. Ct. 465, 83 L. Ed. 363 (1938). Accordingly, I conclude that the plain language of the statute requires the county commissioners to set the rate schedules.

Your final question is whether the board of trustees may require that rates be established and modified only by popular vote of the residents located in the fire service area. As established above, the county commissioners have the sole power to set the rates in the fire service area. Consequently, fire service area trustees may not submit to the residents of the fire service area the issue of rate modification.

THEREFORE, IT IS MY OPINION:

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1. If the county commissioners appoint a board of trustees to govern and manage the affairs of a fire service area, the fire service area trustees must "prepare and adopt" suitable bylaws.
2. The county commissioners have the sole power to set the rate schedules in fire service areas to finance the budget which has been prepared by the fire service area board of trustees.
3. Because the commissioners have the sole power to set the rate schedules in the fire service area, the fire service area trustees may not require that rates be modified by popular vote of the residents located in the fire service area.

Very truly yours,

MIKE GREELY
Attorney General