

VOLUME NO. 43

OPINION NO. 2

CORPORATIONS - Incorporation of trustee-operated rural fire district under Montana Nonprofit Corporation Act;

COUNTIES - Trustee-operated rural fire districts as distinct political subdivisions; obligation to indemnify employees;

FIRE DISTRICTS - Trustee-operated rural fire districts as distinct political subdivisions; obligation to indemnify employees;

INSURANCE - Obligation of trustee-operated rural fire district to indemnify employees;

MONTANA TORT CLAIMS ACT - Indemnification of rural fire district employees;

MONTANA CODE ANNOTATED - Sections 1-3-225, 2-9-101(2), 2-9-305, 7-33-2101 to 7-33-2128;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 84 (1988).

- HELD: 1. For the purposes of the Montana Comprehensive State Insurance Plan and Tort Claims Act, a trustee-operated rural fire district is a political subdivision separate and distinct from the county in which it is located.
2. The trustees of a rural fire district may not incorporate under the Montana Nonprofit Corporation Act.

January 26, 1989

Steven Howard
Sheridan County Attorney
Sheridan County Courthouse
Plentywood MT 59254

Dear Mr. Howard:

You have asked my opinion concerning the following questions:

1. Whether, for indemnification purposes, a trustee-operated rural fire district is a political subdivision of the county in which it is located.
2. Whether the trustees of a trustee-operated rural fire district can avoid personal liability by incorporating as a nonprofit corporation under the Montana Nonprofit Corporation Act.

42 Op. Att'y Gen. No. 84 (1988) held that a trustee-operated rural fire district is a political subdivision distinct from a county for the purposes of the Montana Comprehensive State Insurance Plan and Tort Claims Act of 1973 (hereinafter "the Montana Tort Claims Act"). As a political subdivision distinct from the county in which it is found, a trustee-operated rural fire district therefore has an obligation to indemnify its own employees and appointed officials under the Montana Tort Claims Act. §§ 2-9-101(2), 2-9-305, MCA; 42 Op. Att'y Gen. No. 84 (1988).

Regarding your second question, the formation and operation of nonprofit corporations are controlled by the Montana Nonprofit Corporation Act, §§ 35-2-101 to 1203, MCA. However, the particular process relating to the creation and operation of fire districts is specifically mandated by Title 7, chapter 33, part 21, MCA, entitled "Rural Fire Districts."

When more than one statute can be applied to the same subject matter, the particular statutes control over the general: Whitty v. Pluid, 43 St. Rptr. 354, 356, 714 P.2d 169, 170 (1986); Ford v. Montana Dept. of Fish, Wildlife and Parks, 208 Mont. 132, 136, 676 P.2d 207, 209 (1984); Department of Revenue v. Davidson Cattle Co., 37 St. Rptr. 2074, 2077, 620 P.2d 1232, 1234 (1980). See also § 1-3-225, MCA. Because the establishment and operation of rural fire districts are specifically controlled by sections 7-33-2101 to 2128, MCA, I conclude that a rural fire district may not be established or reestablished and operated under the statutes governing nonprofit corporations found in the Montana Nonprofit Corporation Act in order to avoid personal liability. This conclusion is buttressed by the fact that the Legislature has specifically provided for the indemnification of the employees and appointed officials of a rural fire district by enacting the Montana Tort Claims Act, making recourse to the Nonprofit Corporation Act unnecessary.

THEREFORE, IT IS MY OPINION:

1. For the purposes of the Montana Comprehensive State Insurance Plan and Tort Claims Act, a trustee-operated rural fire district is a political subdivision separate and distinct from the county in which it is located.
2. The trustees of a rural fire district may not incorporate under the Montana Nonprofit Corporation Act.

Sincerely,

MARC RACICOT
Attorney General