



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

April 4, 1990

Mr. Hal Messick, President
Garden Valley Rural Fire Department
Garden Valley, Idaho 83622

Re: Fire Protection District

Dear Mr. Messick:

You have presented the following questions relating to the possible formation of a fire protection district in Garden Valley:

1. Can the district be formed with two parcels, i.e., one in the Valley and one at Banks?
2. Can the City of Crouch be included in the district without an ordinance or resolution by the city council (in other words, without their expressed approval)?
3. Is a district legally bound to provide fire protection to other properties within the district that are tax-exempt -- schools, city hall, churches, etc.?
4. Can a district contract with a church, school, the city, or a public utility -- within the district -- for fire protection?
5. Can a district contract for fire protection -- a. With a private individual, or b. With a public agency (the state Dept. of Transportation) -- outside the district?
6. Can district equipment/personnel go outside the legal boundaries of the district -- without a formal agreement with someone/agency -- to address emergencies?

Mr. Hal Messick
April 4, 1990
page 2

7. The Garden Valley Fire Dept. -- now and after a district is formed, if one is -- is the closest and most logical organization to respond to highway/river accidents within several miles of the proposed district where fire and/or rescue operations are required. We would like to be able to continue to "legally" respond in such cases if a District is formed. Can we? If the answer is "no" -- what has to be done to make it "legal"?

The answer to question No. 1 is no. Idaho Code § 63-2215 was amended in 1988 to require that "unless specifically authorized to form with noncontiguous boundaries, or to annex or de-annex properties so as to make noncontiguous boundaries, all taxing districts shall form with and maintain contiguous boundaries." Although the Fire Protection District Law was amended in 1984 to remove the requirement of contiguous territory for the formation of a fire protection district, and to strike the requirement that lands must be adjoining in order to be annexed, the law does not specifically authorize formation or annexation with noncontiguous boundaries. Currently, Idaho Code §§ 31-1402 and 31-1411 refer only to "territory" for the organization of a fire protection district or annexation. Also, when two statutes conflict, the one enacted later in time generally controls.

The answer to question No. 2 is also no. Idaho Code § 31-1429 addresses the inclusion, annexation or withdrawal of areas in cities and villages and provides that "any area embraced within the limits of any village or city may, with the consent of the governing board thereof expressed by ordinance or resolution, be included within the limits of a fire protection district, when formed." (Emphasis added.) The statute requires the consent of the governing board of the city for inclusion of the city within the fire protection district.

Question No. 3 requires an analysis of Idaho Code § 31-1422. This statute provides exemptions from taxation for all public utilities and unimproved real property (by ordinance of the Board of County Commissioners). Idaho Code § 31-1422(1) provides that public utilities "shall not be entitled to the privileges or protection hereby provided without their consent in writing." Presumably, exempt unimproved real property would also not be entitled to fire protection. Because public utilities and unimproved real property are the only two types of property addressed, other tax-exempt properties would be entitled to fire protection. Generally, when a statute specifies certain things the designation of such things excludes all others. See State v. Michael, 111 Idaho 930, 729 P.2d 405 (1986). Therefore, the answer to question No. 3 is yes.

Question No. 4 must be broken into two parts. First, a fire protection district may not contract with a church, school or other tax-exempt property for fire protection within the

Mr. Hal Messick
April 4, 1990
page 3

district. These properties are already entitled to fire protection. See answer to question No. 3. Second, Idaho Code § 31-1422(1) allows an otherwise exempt public utility to consent in writing to taxation to gain fire protection. Therefore, a contract with a public utility would not be necessary.

The answer to question No. 5 is yes, with a distance limitation. Idaho Code § 31-1430B allows a fire protection district to contract with property owners outside the boundaries of the district for fire protection. The statute provides that the contracts shall be for a term of one year, and that monetary consideration shall be paid in advance by such property owner. The monetary consideration must take into account the distance between the property and the fire station and may not be less than the amount that would have been paid in taxes under the provisions of the Fire Protection District Law. However, Idaho Code § 31-1430B further provides:

"No such contract may be entered into with any property owner whose house and outbuildings are situated further distant from the fire house or other facility wherein such district's fire protection equipment is kept than the point on the external boundary of such district that is furthest distant from the fire house or other facility wherein such district's fire protection equipment is kept."

The answer to question No. 6 is no, for several reasons. First, generally a political subdivision, such as a fire protection district, has no authority to furnish service beyond its boundaries. 56 Am.Jur. 2d, Municipal Corporations, etc., §§ 228 and 568. Second, the Fire Protection District Law is specifically intended to allow the creation of an entity to provide fire protection within the district, to adjoining cities with or without a contract, to other fire protection districts under written agreement, and to individual property owners outside the district under contract. The mention of these specific instances of fire protection service outside the district implies the exclusion of all other services outside the district. Third, if fire protection district equipment or personnel go outside district boundaries, there is potential liability for fires which occur within the district at properties entitled to protection that the absent equipment and personnel cannot respond to. Whether this problem is also addressed in your liability insurance policy would require analysis of the specific policy provisions.

The answer to question No. 7 is also no. A fire protection district is not authorized to respond outside the boundaries of the district except as noted in Idaho Code §§ 31-1430, 31-1430(A), and 31-1430(B). The Fire Protection District Law is intended to provide fire protection, not accident or rescue

Mr. Hal Messick
April 4, 1990
page 4

assistance. A statutory amendment would be required to allow a fire protection district to respond to highway or river accidents outside district boundaries. Additionally, Idaho Code §§ 31-3901 through 3910 provide for the creation of an ambulance district within a county "whenever existing ambulance service is not reasonably available to the inhabitants of the county or any portion thereof." The solution to your problem may lie in the creation of both a fire protection district and an ambulance district.

This letter is provided to assist you. The response is an informal and unofficial expression of the view of this office based upon the research of its author.

Yours very truly,



W. Dallas Burkhalter
Deputy Attorney General
Intergovernmental Affairs Division

WDB:eo

cc: Steve Schuster
Dept. of Lands

Maj. Gen. (Ret.) James Brooks
Garden Valley