



2009-038

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

February 3, 2009

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Joseph E. Powell
Attorney, Carroll's Creek Fire
Protection District
Spruell & Powell, L.L.C.
911 Main Avenue
Northport, Alabama 35476

Fire Protection – Fire Districts – Annexation
– Municipalities – Tuscaloosa County

An annexing municipality may pay the withdrawal fee to a fire protection district pursuant to Act 97-665, and such properties may be withdrawn from a fire district without the consent of the property owners.

Act 97-665 does not require the annexing municipality to make its request to withdraw property from the fire protection district simultaneous to or within a reasonable time after the annexation of the property.

Because Act 97-665 specifically states that the withdrawal fee must be paid in advance to the district prior to any property being withdrawn, districts may not elect to accept a promissory note or other structured payment from an annexing municipality.

An annexing municipality may request withdrawal of certain properties from a fire protection district and pay the fee for just those properties.

Dear Mr. Powell:

This opinion of the Attorney General is issued in response to your request on behalf of the Carroll's Creek Fire Protection District.

QUESTION 1

May an annexing municipality request withdrawal and pay the withdrawal fee to a fire protection district pursuant to Act 97-665 without the consent of the property owner?

FACTS AND ANALYSIS

As noted in your letter of request, your questions involve a matter of interpretation regarding the application of Act 97-665 as it relates to the contracting of a fire district located within Tuscaloosa County. Your letter states, in pertinent part, as follows:

The Carroll's Creek Fire Protection District (the District) is confronted with the request to withdraw from it by property owners. Currently, portions of the District sit entirely within the corporate limits of the City of Northport (the City), which is serviced by a full-time fire and rescue service funded by general public tax dollars. Those property owners located within the boundaries of both the District and the City are paying duplicative taxes and receiving duplicative fire protection. Although that is not inherently undesirable, . . . it does yield confusion in the provision of services and some consternation by taxpayers within the District. Property owners usually don't realize the overlap of charges until the receipt of their property tax notice indicating the fee for the District. These citizens routinely voice complaints to the District about the fee for services provided already by their general taxes to the City.

The City has gradually expanded its corporate limits such that 486 parcels of property with annual fire protection fees totaling \$79,230.20 are now included within the boundaries of both the City and the District. Although this is certainly a source of revenue, the District may choose to better focus its efforts, even with the loss of revenue, if the District could be contracted uniformly to eliminate entirely such of its service area as is in the City or by portions that are easily identifiable and bounded. Moreover, in these times of skyrocketing fuel prices, it is counter productive to have

two departments responding to the same service area, except in cases where mutual aid is warranted.

Section 14(c) of Act 97-665 sets forth the mechanism in which a fire district may be contracted. This sections states as follows:

(c) A district may be contracted as hereinafter provided upon the written request to the board from the owner of property seeking withdrawal from the district or by an annexing municipality. No property shall be permitted to withdraw from a district unless the district is paid in advance, by the property owner and/or the annexing municipality as they may agree, a withdrawal fee equal to five (5) times the service charge or fee assessed to such property for the previous year. For property being withdrawn for annexation, upon receipt of such withdrawal fee by the district, the president of such district shall, within thirty (30) days or by the last business day of the district's assessment year, which ever is shorter, notify the tax assessor and tax collector for the county, or such other party that may be assessing and collecting the fire district's service charges or fees, of such withdrawal and request that the fire district charge or fee for such property be immediately deleted from the ad valorem tax records or other fire district fee assessment records for such property. For property requesting withdrawal for any reason other than annexation, such withdrawal request shall in addition to payment of the withdrawal fee, be made in writing to the district board at least sixty (60) days prior to an annual meeting and shall be subject to the approval by majority vote of the members at that annual meeting. The property owner withdrawing from the district shall pay the entire service charge or fee for the tax year of withdrawal without proration separate and apart from the withdrawal fee.

Thereafter no service charge or fee shall be charged against such property unless subsequently brought back into the district.

1997 Ala. Acts 97-665, 1278, 1284.

In your initial question, you ask whether an annexing municipality may request a withdrawal from a fire district and pay the withdrawal fee to that fire protection district pursuant to the act without the consent of the property

owners. Section 14(c) is silent with regard to whether an annexing municipality must seek the consent of property owners prior to withdrawing such properties from the service offered by the District. The Act merely mandates the payment of the withdrawal fee. Thus, it is the opinion of this Office that a municipality does not have to have the consent of property owners prior to withdrawing such properties for annexation purposes pursuant to section 14(c) of Act 97-665.

CONCLUSION

An annexing municipality may pay the withdrawal fee to a fire protection district pursuant to Act 97-665, and such properties may be withdrawn from that district without the consent of the property owners.

QUESTION 2

Must the annexing municipality make its request to withdraw property from the fire protection district simultaneous to or within a reasonable time after the annexation of the property?

FACTS AND ANALYSIS

Initially, the Carroll's Creek Fire District was formed as a result of an election held pursuant to Act 86-656 as authorized by Amendment 358 of the Constitution of Alabama. This initial act was later amended by Act 93-517. Although Act 93-517 made minor amendatory changes, it also provided that fire districts could expand to include areas located within municipalities when advance consent was given by the municipality. In May 1997, the Legislature passed Act 97-665, which amended and reenacted Act 86-656. More importantly, Act 97-665 finally provided a mechanism by which property may be withdrawn from a district.

Based on the foregoing, prior to the enactment of Act 97-665, a municipality could annex property, but the municipality would not be able to annex the property for purposes of incorporating that property within its fire district or providing local public services. Instead, property owners would receive an overlap in these services from both the district and the municipality. As such, it is the opinion of this Office that section 14(c) was added to Act 97-665 to provide a mechanism by which municipalities may offer fire protection service to properties within its jurisdiction. Accordingly, it is the opinion of this Office that a municipality is not required to make its request to withdraw property from the fire protection district either simultaneous to or within a reasonable time after annexation of property.

CONCLUSION

Act 97-665 does not require the annexing municipality to make its request to withdraw property from the fire protection district simultaneous to or within a reasonable time after the annexation of the property.

QUESTION 3

May an annexing municipality request the withdrawal and pay the fee for such at any time after annexation, with or without the consent of the property owner?

FACTS, ANALYSIS, AND CONCLUSION

The answer to Question 3 has been addressed by the answers given to the foregoing questions.

QUESTION 4

May districts elect to accept a promissory note or other structured payment from an annexing municipality?

FACTS, ANALYSIS, AND CONCLUSION

Because Act 97-665 specifically states that the withdrawal fee must be paid in advance to the district prior to any property being withdrawn, districts may not elect to accept a promissory note or other structured payment from an annexing municipality. *See* § 14(c), 1997 Ala. Acts No. 97-665; opinion to the Honorable Scott Donaldson, Attorney for Carroll's Creek Fire District, dated October 5, 2001, A.G. No. 2002-013.

QUESTION 5

May an annexing municipality request withdrawal of properties from a fire protection district and pay the fee for such discriminately, to-wit: withdrawing only entire neighborhood subdivisions or all properties

bearing addresses along a certain street, and so on, to allow for the functional response by fire service personnel from the respective fire and rescue services?

FACTS AND ANALYSIS

In the preamble to Act 97-665, there is information that sets out the purpose for the act. Specifically, it states that the act was passed to "establish[] a fire district . . . for the purpose of preventing fires or for fire protection and certain public service in Tuscaloosa County . . ." 1997 Ala. Act No. 97-665, 1278. Hence, it is the opinion of this Office that municipal fire services and district fire services should, to the extent possible, work to prevent fires and provide for protection.

Further, section 3 of Act 97-665 sets forth the property that should comprise a district. This section states as follows:

Any area situated entirely within the county may be established as a district for fighting fires pursuant to this act. No land lying within the boundaries of a municipality at the time a district is formed shall be included in the district unless the municipality adopts a resolution to be included in the district. Nothing in this act shall be construed to limit or impede a municipality's right or ability to provide fire protection within its corporate limits or its police jurisdiction.

1997 Ala. Acts No. 97-665, 1278, 1279.

Section 3 gives a municipality the opportunity to allow portions of property within its jurisdiction to be included within the fire district. Such an arrangement may be made in instances where the municipality had determined that such property would be better served by the district.

Moreover, section 14 of Act 97-665 gives individual property owners the ability to withdraw their property from the district. Requests for withdrawal by property owners, which are made for reasons other than annexation, are subject to the approval of the district board. Accordingly, all requests to withdraw made by property owners where annexation is the reason for withdrawal must be granted unconditionally by the Board upon payment of the withdrawal fee. 1997 Ala. Acts 97-665, 1278; *see Donaldson* at 6. Local municipalities and the district should work in a cohesive manner to fulfill the overall objective of providing public service that is aimed at preventing and protecting property within the community from fires.

Honorable Joseph E. Powell
Page 7

CONCLUSION

An annexing municipality may request withdrawal of certain properties from a fire protection district and pay the fee for just those properties.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/MMG
730073/124772