

Opinion No. 2013-063

October 11, 2013

The Honorable Charlotte Vining Douglas
State Representative
5315 Ridge Road
Alma, Arkansas 72921-8254

Dear Representative Douglas:

This is my opinion on your questions about a volunteer fire department's rights and obligations *vis-à-vis* an adjacent city.

Butterfield District 5 Volunteer Fire Department ("District 5") serves part of Crawford County and is organized as a private nonprofit corporation.¹ It receives membership dues, county sales tax proceeds,² and Act 833 funds.³ It has an automatic aid agreement⁴ with a fire department whose coverage area once included a city adjacent to District 5's coverage area but no longer does because

¹ See Op. Att'y Gen. 2004-294 and opinions cited therein regarding the various forms fire departments may take.

² I assume for purposes of this opinion that District 5 receives county sales tax proceeds as consideration under a contract with Crawford County to provide fire protection services within its coverage area. See A.C.A. § 14-14-802(b)(2)(D)(iii) (Repl. 1998) (county may provide fire protection services); Op. Att'y Gen. 2012-007 (county may contract with private nonprofit corporation to provide public service, but *donation* of local tax funds to fire department organized as private nonprofit corporation may be subject to challenge under Ark. Const. art. 12, § 5).

³ See Act 833 of 1991 (codified as amended at A.C.A. §§ 14-284-401 to -411 (Repl. 1998, Supp. 2011) and A.C.A. § 26-57-614 (Repl. 2008)) (as further amended by Act 91 of 2013) (providing for distribution of insurance premium tax proceeds to fire departments).

⁴ It is my understanding that under an automatic aid agreement the combined firefighting resources of all party fire departments are treated for dispatch purposes as a single department serving the parties' combined coverage areas, and that under a mutual aid agreement a party fire department may call on another party as needed to fight a given fire.

the city started its own fire department. You state that the city fire department “does not intend to have a similar agreement” with District 5 but that you expect the city to ask District 5 to respond to some city fires.⁵

Your questions are:

1. Is District 5 required to respond outside of its coverage area, where there is no agreement? Is it permissible for District 5 to refuse aid? If so, under what circumstances?
2. If District 5 is required to render aid or chooses to render aid, can the adjacent city be charged for services rendered by District 5 not in its service area? And if the adjacent city refuses to pay for services, what recourse does the department have?
3. Can a county judge withhold funds to District 5 where it legally refuses to render aid? Can Act 833 funds be withheld under these circumstances?
4. What are the legal ramifications, duties and responsibilities to District 5 in relation to the adjacent city’s fire department?

RESPONSE

Question 1: Is District 5 required to respond outside of its coverage area, where there is no agreement? Is it permissible for District 5 to refuse aid? If so, under what circumstances?

In my opinion, District 5 need not fight fires outside its coverage area absent an agreement to do so.⁶ No law expressly requires a department like District 5 to fight fires outside its coverage area. Additionally, a statute requires departments like

⁵ You state that “District 5 is better equip[ped] and will likely be called for cases where adjacent city is inadequate.” In my view, however, the departments’ relative capabilities are not relevant to answering your questions.

⁶ Being a corporation, District 5 has articles of incorporation and presumably has bylaws. I assume for purposes of this opinion that these documents do not provide that District 5 must fight fires outside its coverage area.

District 5 to respond to “all fires occurring within their respective districts,”⁷ implying the absence of a duty to respond outside the district.

Question 2: If District 5 is required to render aid or chooses to render aid, can the adjacent city be charged for services rendered by District 5 not in its service area? And if the adjacent city refuses to pay for services, what recourse does the department have?

In my opinion, District 5 generally may not compel an adjacent city to pay for firefighting services rendered within the city. No law expressly provides that a department like District 5 may recover money for services rendered outside its coverage area.⁸ District 5 and the city might, of course, enter into a contract that provides for payment. And in a given case the equitable remedy *quantum meruit* might be invoked to support a claim for payment, though such a claim might ordinarily be expected to lie against the owner of the property on which the fire occurred rather than against the city itself.

Question 3: Can a county judge withhold funds to District 5 where it legally refuses to render aid? Can Act 833 funds be withheld under these circumstances?

In my opinion, neither county sales tax proceeds appropriated to pay amounts due under a contract between the county and District 5⁹ nor Act 833 funds may be withheld from District 5 solely for its lawful refusal to fight a fire outside its coverage area. No laws provide for such withholding.

Question 4: What are the legal ramifications, duties and responsibilities to District 5 in relation to the adjacent city’s fire department?

I interpret this question as a request that I answer your first three questions as if you had asked about a city fire department’s fighting fires within District 5.

⁷ A.C.A. § 20-22-901(a)(1)(A) (as amended by Act 1345 of 2013).

⁸ A department like District 5 may recover from a nonmember property owner the reasonable value of its services in responding to a fire *within* its coverage area. *See* A.C.A. § 20-22-901(b)(1)(A) (Supp. 2011).

⁹ *See* note 2. I assume for purposes of this opinion that the contract itself does not require District 5 to fight fires outside its coverage area.

In my opinion, a city fire department need not fight fires outside city limits absent an agreement to do so. A statute provides that a city fire department is formed “to extinguish fires and preserve the property of the city and of the inhabitants from conflagration.”¹⁰ The language clearly indicates that such a department’s mission is within the city.¹¹ No state law expressly requires a city fire department to fight fires outside city limits.

In my opinion, an adjacent city generally may not compel District 5 to pay for firefighting services rendered within District 5.¹² No law expressly provides that a city fire department may recover from an adjacent fire department like District 5 money for services rendered outside city limits. The city and District 5 might, of course, enter into a contract that provides for payment. And in a given case the equitable remedy *quantum meruit* might be invoked to support a claim for payment, though such a claim might ordinarily be expected to lie against the owner of the property on which the fire occurred rather than against District 5 itself.

Finally, in my opinion, neither Act 833 funds nor county sales tax proceeds distributed to a city¹³ and appropriated to its fire department may be withheld from such a department solely for its lawful refusal to fight a fire outside city limits. No laws expressly provide for such withholding, although a city may not receive Act 833 funds “unless it is willing to provide fire protection through mutual aid agreements” in areas within five miles of the city limits.¹⁴ This provision does not

¹⁰ A.C.A. § 14-53-101(a) (Repl. 1998).

¹¹ *But see* A.C.A. § 14-53-102 (Supp. 2011 and as amended by Act 1345 of 2013) (providing that a city may by ordinance authorize its fire department to fight fires outside city limits). I assume for purposes of this opinion that the city in question has not enacted an ordinance that *requires* extraterritorial firefighting.

¹² When a city fire department fights a fire outside city limits, “a reasonable effort shall be made . . . to obtain compensation or reimbursement . . . from the property owner involved.” A.C.A. § 14-53-102(b)(1)(A) (as amended by Act 1345 of 2013) (emphasis added). If the effort is unsuccessful, *the county wherein the fire occurred* “may reimburse the municipality . . . in an amount not to exceed two hundred dollars (\$200).” A.C.A. § 14-53-102(b)(1)(B) (as amended by Act 1345 of 2013).

¹³ *See, e.g.*, A.C.A. § 26-74-214(b) (Supp. 2011) (generally requiring *pro rata* share of county sales tax proceeds to be distributed to each municipality within county).

¹⁴ A.C.A. § 14-284-406(b)(1) (Supp. 2011).

The Honorable Charlotte Vining Douglas
State Representative
Opinion No. 2013-063
Page 5

mean that a city fire department may never receive Act 833 funds unless it actually fights fires outside city limits. It may be that a city is willing to enter into mutual aid agreements but that the fire departments serving the areas within five miles of the city limits are not.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh