FIRE PROTECTION DISTRICTS:
MUNICIPAL CORPORATIONS:
TAXATION:
MUNICIPALITY:

The board of directors of a fire protection district in a county of the first class has the power to provide for the pensioning of the salaried members of its organized fire department of the district if such authority is approved as provided for in Section 321.220 (15), RSMo Supp. 1961, H.B. No. 12, Section 1, 71st General Assembly, and that by reason of Section 321.240, RSMo 1959, the rate of tax levy for such district's operation costs, to include "a pension and retirement plan" "shall not exceed thirty cents on the one hundred dollars valuation."

September 27, 1962

FILED
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Honorable E. J. Cantrell
Member, Missouri House of
Representatives
Third District
St. Louis County
3406 Airway
Breckenridge Hills, Missouri

Dear Mr. Cantrell:

Reference is made to your request for an official opinion of this office which reads in part as follows:

> "I would like to have an opinion from your office concerning H.B. 12 passed and signed into law at this last legislature.
>
> "Through H.B. 12 would it be legal for Fire Districts in first class Counties to formulate a retirement plan for its employees if a favorable vote is given by the people in a fire district? If the people in a fire district give their approval, would it be possible for this fire district to tax its people more than the present thirty cents maximum for the sole purpose of a pension and retirement plan?"

As to your question, "Would it be legal for Fire Districts in first class Counties to formulate a retirement plan for its employees if a favorable vote is given by the people in a fire district?", your attention is directed to H.B. 12, 71st General Assembly, now Section 321.220, RSMo Supp. 1961, subparagraph 15, which provides in part that the board of directors of such a fire protection district has the power to provide for the pensioning of the salaried members of its district if authorized by a majority of the qualified voters of the district concerned.

As to the legality or constitutionality of such a statutory provision, your attention is directed to Section 25, Article VI, of the Constitution of Missouri, 1945, relating to the limitation of the use of credit and grants of public funds by local governments.

Note in reading this section that one of the exceptions made to the principle "that no county, city or other political corporation or subdivision of this State shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation, * * *" is that the General Assembly may authorize any municipality to provide for the pensioning of the salaried members of its organized fire department.

But, is a fire protection district a "municipality" as contemplated and as that word is used in Section 25 of Article VI of the Constitution?

The Supreme Court of Missouri, en banc, in the case of Intercity Fire Protection District v. Gambrell, 231 SW2d 193, (360 Mo. 924), discussing such a district stated at page 197:

> (It is) "a different type of political subdivision, to wit, a type of municipal corporation duly organized and existing under a general law providing for its incorporation by the decree of the circuit court." (Emphasis Supplied)

This concept is further magnified in the language of the recent decision by the Missouri Supreme Court in the case of City of Olivette v. Graeler, 338 SW2d 827, wherein the Court said at page 835:

> "'In its strict and primary sense the term "municipal corporation" applies only to incorporated cities, towns, and villages, having subordinate and local powers of legislation. * * * But in the larger and ordinarily accepted sense the term is applied to any public local corporation, exercising some function of government, and hence includes counties, school districts, townships under township organization, special road districts and drainage districts.' * * *
>
> "Many public agencies, rendering services of a municipal nature for which a corporate form of organization is provided by law, may properly be included in the category

> of '<u>municipal corporations</u>' in the broader sense. <u>To those mentioned</u> in the Caldwell case could be added county health departments and hospitals, <u>fire districts</u>, and, notably in St. Louis County, the Metropolitan St. Louis Sewer District, 'a body corporate, a municipal corporation and a political subdivision of the state' * * *."
> (Emphasis Supplied)

But, again, is such a "municipal corporation" necessarily a "<u>municipality</u>" in the sense as contemplated by the aforesaid Section 25, Article VI of the Constitution? The Supreme Court of Missouri, en banc, in considering the term "municipality" as used in Section 16 of the same Article VI of the Constitution stated in the case of St. Louis Housing Authority v. City of St. Louis, 239 SW2d 289, (361 Mo. 1170), at pages 294-295 the following:

> "<u>A 'municipal corporation' is commonly called a 'municipality.'</u> 62 C.J.S., Municipal Corporations, § 1, page 64; State ex rel. Koontz v. Board of Park Commissioners, 131 W. Va. 417, 47 SE 2d 689, 694. <u>By both judicial recognition and common usage 'municipality' is a modern synonym of 'municipal corporation.' 'Municipality' is all embracing.</u> It includes, of course, cities of all classes, as well as towns, but it includes also a non-profit agency, such as plaintiff, which is authorized to exercise public and essential governmental functions. By the General Assembly plaintiff's status is declared to be a municipal corporation exercising public and essential government functions. Webster's New International Dictionary, 2nd Ed., defines municipality as a municipal corporation. The suffix 'ity' denotes state, or condition of being. Thus municipality connotes the state or condition of being municipal in nature. The word 'municipal' is derived from the latin 'municipalis' and implies the right of local self government. <u>Municipality now has a broader meaning than 'city' or 'town', and presently includes bodies public or essentially govern-</u>

<u>mental in character and function and distinguishes public bodies, such as plaintiff, from corporations only quasi-public in nature.</u> 42 C.J. p. 1413; 61 C.J.S., Municipal, page 945; Curry v. Sioux City Dist. TP.., 62 Iowa 102, 17 M.W. 191. <u>But the two terms (municipality and municipal corporation) are often interchangeably used.</u> Likewise, <u>'municipal corporation', in the broader sense now includes public corporations created to perform an essential public service and 'is applied to any public local corporation exercising some function of government.' 'Municipal corporation' now also includes a corporation created principally as an instrumentality of the state but not for the purpose of regulating the internal local and special affairs of a compact community.</u> * * *" (Emphasis supplied.)

In view of the aforesaid authorities, it is the opinion of this office that a fire protection district as provided for "class one counties" in Chapter 321, RSMo, is a "<u>municipality</u>" within the meaning of the term as used in Section 25 of Article VI of our present State Constitution and that, therefore, the Legislature of the State of Missouri had the constitutional authority to enact Subdivision 15 of Section 321.220, RSMo Cum. Supp. 1961, giving the board of directors of such a fire district the power to provide for the pensioning of the salaried members of its organized fire department of the district if such authority is approved as provided therein. This conclusion is further substantiated by the rule of law as stated in the recent case of Borden Company v. Thomason, 353 SW2d 735, when the Supreme Court of Missouri, en banc, quoted with approval at page 743 the language as used in State ex rel. Fire Protection District of Lamay v. Smith, 184 SW2d 593, l.c. 594, to-wit:

> "An act of the Legislature carries the presumption of constitutionality. The court will not declare an act unconstitutional unless it plainly contravenes the Constitution."

As to your final question, "If the people in a fire protection district give their approval, would it be possible for this fire district to tax its people more than the present thirty cents maximum for the sole purpose of a pension and retirement plan?", we direct your attention to Subsection 15 of Section 321.220, supra, which states in part:

> "* * * If a majority of the qualified voters casting votes thereon at the election be in favor of the question, this subdivision shall take effect in the district forthwith and the board shall then and thereafter effect such a program for the pension and benefit payments authorized at the election as shall be necessary for the operation of the district. * * *" (Emphasis supplied.)

Your attention is then directed to Section 321.230, RSMo 1959, which states in part:

> "For the purpose of providing revenue for such districts, the board shall have the power and authority to order the levy and collection of ad valorem taxes on and against all taxable tangible property within the district, * * *"

Then note Section 321.240, RSMo 1959, which states in part, to-wit:

> "To levy and collect taxes as herein provided, the board shall in each year determine the amount of money necessary to be raised by taxation, and shall fix a rate of levy which, when levied upon every dollar of the taxable tangible property within the district as shown by the last completed assessment, and with other revenues, will raise the amount required by the district annually to supply funds for paying the expenses of organization and operation * * * which rate of levy shall not exceed thirty cents on the one hundred dollars valuation; * * *." (Emphasis supplied.)

As indicated by Subsection 15 of Section 321.220, supra, the "program for pension and benefit payments" is an operating expense of the district. The rate of levy for such operating expenses shall not exceed thirty cents on the one hundred dollars valuation pursuant to Section 321.240, supra.

Therefore, under the present law pertaining to fire protection districts in counties of the first class, the rate of tax levy for operation costs, to include "a pension and retirement plan" "shall not exceed thirty cents on the one hundred dollar valuation."

CONCLUSION

The board of directors of a fire protection district in a county of the first class has the power to provide for the pensioning of the salaried members of its organized fire department of the district if such authority is approved as provided for in Section 321.220 (15), RSMo Cum.Supp. 1961, H. B. No. 12, Section 1, 71st General Assembly, and that by reason of Section 321.240, RSMo 1959, the rate of tax levy for such district's operation costs, to include "a pension and retirement plan" "shall not exceed thirty cents on the one hundred dollars valuation."

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul A. Slicer, Jr.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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