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October 28, 1985

The Honorable Jeffrey J. Hill
Arizona State Senator
State Capitol - Senate Wing
1700 W. Washington
Phoenix, Arizona 85007

The Honorable Peter Rios
Arizona State Senator
State Capitol - Senate Wing
1700 W. Washington
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

RE: I85-115 (R85-097)

Dear Senators Hill & Rios:

Each of you has raised questions regarding the funding of volunteer fire districts under the provisions of A.R.S. § 9-1005. Accordingly we have consolidated your requests for response. You have asked whether a county treasurer must allocate fire district tax levy revenues to the "fire district fund" immediately upon receipt or may the monies be used for other purposes, and, assuming the proceeds must be allocated directly to the fund, what remedy does a fire district have to compel the county treasurer to timely place the tax revenues in the fund? Furthermore, the question has been asked whether a county may immediately reduce the amount of money it pays to a fire district proportional to the territory of the fire district included in a newly incorporated city or town? In answer to these questions, our opinion will focus principally upon an analysis of the language of the applicable statutes.

A.R.S. § 9-1005 establishes two separate funding sources for fire districts. The first is a "county

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contribution" to be paid from the county general fund equal to sixty cents per one hundred dollars of taxable valuation for all property within the district, subject to certain minimum and maximum limitations. A.R.S. § 9-1005(A). The second is a separate fire district tax levy on all property located within the district to be collected by the county at the same time and in the same manner as other state and county taxes. A.R.S. § 9-1005(C). If the voters in the fire district approve the issuance of bonds, their sale would be a third source of revenue and result in a separate tax levy. A.R.S. § 9-1004.01.

A.R.S. § 9-1005(D) specifically directs the county treasurer to place the receipts of the "county contribution" and the fire district tax into a separate fire district fund:

D. The county treasurer shall keep the money received from such taxes in a separate fund known as the "fire district fund" of the town or settlement for which collected. Any surplus remaining in the fund at the end of the fiscal year shall be credited to the "fire district fund" of the town or settlement for which collected for the succeeding fiscal year.

(Emphasis added.) See also A.R.S. §§ 9-1004.01(F) and (G) relating to special funds for bond revenues and bond tax levy receipts.

A.R.S. § 11-492 governs, generally, the apportionment of taxes and public monies by the county treasurer:

All taxes collected upon real and personal property of the county, and all public monies arising from any source, or accruing under the provisions of law to a county, shall be paid into the treasury of the county, and the county treasurer shall apportion and apply the same to the several special and general funds as provided by law.

(Emphasis added.)

Under the statutory provisions quoted above, the county treasurer must credit the monies collected from the fire district tax levy to the fire district fund immediately upon

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receipt. The statutes, read in conjunction, make clear that the county treasurer has no discretion over the allocation or use of the revenues. Counties may not spend monies raised by the fire district levy for any other purpose. As we said in a prior opinion: "[m]onies placed in volunteer fire district and water delivery funds can be used only for those special purposes and may not be commingled with other county funds." Ariz. Atty. Gen. Op. I78-149.

The remedy available to a fire district in order to compel a county treasurer to allocate the applicable revenues to the fire district fund is a mandamus action, now treated as a statutory special action. Rule 1(b), Rules of Procedure for Special Actions; A.R.S. § 12-2021. A statutory special action in nature of mandamus seeks an order of the court compelling a public official to perform a statutorily prescribed duty. Significantly, precedent exists for mandamus actions in the context of disputes between fire districts and counties. Board of County Supervisors v. Rio Rico Volunteer Fire Dept., 119 Ariz. 361, 580 P.2d 1215 (1978), and Avra Valley Fire District v. Board of Supervisors, 134 Ariz. 468, 657 P.2d 881 (1982).

We turn now to the last question asked relating to the procedure to be followed when a portion of the territory of a fire district is included within a newly incorporated city or town. A.R.S. § 9-1007.03, in pertinent parts, provides:

A. If any part or all of the territory of a district is annexed to a city or town, or is included within a newly organized city or town, the territory within the city or town remains a part of the district until the next July 1 following the time when the city or town elects to provide regular fire department services to the annexed or included area. The annexed or included area remains subject to taxes levied as provided in § 9-1004.01 for bonds for the district outstanding at the time of filing of the petition seeking annexation or incorporation until final payment on the bonds and is subject to taxes levied pursuant to § 9-1005 until the termination date.

B. On and after the termination date, no taxes may be levied pursuant to § 9-1005 on

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such area except as necessary to pay valid claims existing against the district on the termination date.

C. If a city or town provides regular fire protection to its residents and is unable to provide equal fire protection to annexed or included territory, the city or town may contract with a fire district in proximity to the annexed or included territory for the purpose of supplying fire protection until the city or town is able to provide equal fire protection to the annexed or included territory.

* * *

(Emphasis added.)

The plain language of subparagraph (A), in our opinion, mandates that the territory included within the newly organized city or town remain a part of the fire district until July 1 following the decision to provide the service. Although the phrase "termination date" as used in subsections (A) and (B) is not defined, construing the subsections as a whole, it appears that the legislature intended the phrase to refer to the July 1st following a decision by the city or town to provide regular fire department services. Accordingly, the county may not reduce or adjust the amount of money paid to the district under the provisions of A.R.S. § 9-1005 until after the July 1st following such decision.

Sincerely,



BOB CORBIN
Attorney General

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