



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

July 29, 1992

Honorable Allen Ross Hightower  
Chairman  
Environmental Affairs Committee  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 92-28

Re: Distribution of funds to fire  
departments by rural fire prevention  
district boards (RQ-348)

Dear Representative Hightower:

You ask the following questions:

1. Can a Fire District Board selectively make appropriations to existing fire departments within their jurisdiction of disproportionate amounts regardless of the performance of such fire department?
2. Does the Fire District Board have the authority to distribute such funds, provided to them by the County Commissioner's Court for fire protection, on a purely selective basis?
3. If a disparity between amounts received from one fire department to another within the same district can be shown, can a fire department appeal the amount received to either the Fire District Board or to the County Commissioner's Court of such district and can such appeal be based on the area such fire department protects and the amount of dollars they generate into that area as a basis be used for such appeal?

We understand your questions to refer to rural fire prevention districts authorized by chapter 794 of the Health and Safety Code. The governing board of a fire prevention district located wholly within one county consists of five members appointed by the commissioners court. Health & Safety Code § 794.033. Section 794.031, Health and Safety Code, lists the powers and duties of such a district:

(1) acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or an interest in property;

(2) enter into and perform necessary contracts;

(3) appoint and employ necessary officers, agents, and employees;

(4) sue and be sued;

(5) levy and enforce the collection of taxes as prescribed by this chapter;

(6) accept and receive donations;

(7) lease, own, maintain, operate, and provide fire engines and other necessary or proper fire protection equipment and machinery to prevent and extinguish fires in the district;

(8) lease, own, and maintain real property, improvements, and fixtures necessary to house, repair, and maintain fire protection equipment;

(9) contract with other entities, including other districts or municipalities, to make fire-fighting facilities, fire extinguishment services, and emergency rescue and ambulance services available to the district;

(10) contract with other entities, including other districts or municipalities, for reciprocal operation of services and facilities if the contracting parties find that reciprocal operation would be mutually beneficial and not detrimental to the district;

(11) lease, own, maintain, operate, and provide emergency rescue equipment, and emergency ambulance service, and other necessary and proper equipment to prevent loss of life or serious personal injury from fire or other hazards; and

(12) perform other acts necessary to carry out the intent of this chapter.

Health & Safety Code § 794.031. Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept 1, 1989. Chapter 794 contemplates that the district will be funded by means of "a tax on all real and personal property located in the district," by the issuance of bonds, and by the issuance of bond anticipation notes. Health & Safety Code §§ 794.075 - 794.081.

Your questions seem to be premised on the assumption that the rural fire prevention district acts merely as a conduit for the distribution of funds to fire departments within its jurisdiction, and that such funds are furnished initially to the district by the county. The scheme of chapter 794, however, contemplates that the district itself will perform the fire protection services. In Attorney General Opinion JM-1209 (1990), this office held that a county was authorized to contract with a rural fire prevention district in the county for the latter's provision of fire protection services. Likewise, section 794.031 of the Health and Safety Code authorizes the district to "contract with other entities" for the provision of "fire-fighting facilities, fire extinguishment services, and emergency rescue and ambulance services." Presumably, such "other entities" may include the various fire departments located within the district. See Attorney General Opinion JM-1209.

Chapter 794 makes no provision, however, for the simple *distribution* of funds by a district to the fire departments within its jurisdiction. As noted in Attorney General Opinion JM-1209, any such distribution would have to be made pursuant to contract, and such a contract "must be in consideration for services furthering" a legitimate purpose of the district, "with adequate controls to insure that benefits" to district residents are thereby realized. See Tex. Const. art. III, § 52. So long as the district complies with constitutional requirements, it may, pursuant to section 794.031, of the Health and Safety Code, contract with a fire department within its jurisdiction to provide the services which the district itself is authorized to perform. Whether any particular contract would be constitutionally adequate involves factual considerations which we cannot determine in the opinion process.

Since your second and third questions are premised on the assumption that a district is empowered to simply "distribute" its funds to the various fire departments within its jurisdiction, we need not address them.

**S U M M A R Y**

A rural fire prevention district is not authorized to "distribute" funds to fire departments within its jurisdiction, but, so long as there are adequate controls, the district may contract with such a fire department to provide services which the district itself is empowered to perform.

Yours very truly,

A handwritten signature in cursive script, reading "Rick Gilpin".

**Rick Gilpin  
Assistant Attorney General  
Opinion Committee**