

***1078 N.M. A.G. Op. No. 80-35**

Office of the Attorney General

State of New Mexico

Opinion 80-35

November 14, 1980

An independent fire district cannot own property in its own right. The ownership and control of all funds and property credited to independent fire districts vests in the county.

Independent fire districts are established pursuant to the Fire Protection Act (Act), Sections 59-15-1 to 59-15-17 NMSA 1978. The intent of the Act is to distribute funds for the operation and maintenance of fire departments “to incorporated cities, towns, villages and counties. Section 59-15-2 NMSA 1978. An independent fire district exists for the purpose of organizing the distribution of these funds throughout the state and is nowhere referenced outside the provision of the Act.

The Act provides that “county commissioners of any county may establish one or more independent fire districts within the county outside the corporate limits of any municipality.” Section 59-15-6 (A) NMSA 1978. Counties may also, however, contract with municipalities to provide fire fighting services if it is determined that such an arrangement is more economical for the county. Section 4-36-5 NMSA 1978. Fire protection throughout the state is therefore provided either by municipalities or by counties which establish independent fire districts in these areas of the county not governed by a municipality.

That an independent fire district exists only within the framework of county government is clear from the various provisions of the Act and other applicable laws. First, the board of county commissioners of any county may determine, in its discretion, how many and within which geographic boundaries independent fire districts are to be established in the county. Section 59-15-6 (A) NMSA 1978. Second, the extension of services of an independent fire district into an adjacent county is essentially determined by the boards of county commissioners of the affected counties. Section 59-15-6 (B) NMSA 1978.

Third, distribution from the Fire Protection Fund to an independent fire district are made to the county treasurer “for credit to such independent fire district.” Section 59-15-6 (B) NMSA 1978. These distributions “shall be expended under the direction of the chief of the fire department.....upon duly executed vouchers approved as required by law.” Section 59-15-8 NMSA 1978. Generally, funds lawfully in the custody of the county treasurer belong to the county. Section 6-10-51 NMSA 1978, and may be paid out only upon the order of the board of county commissioners. See, Sections 4-38-16, 4-10-6 and 4-45-4, NMSA 1978.

County control over independent fire districts is also evident from the rules and regulations promulgated by the superintendent of insurance pursuant to Section 59-15-13 NMSA 1978, for example, Rule 1.2 implicitly defines the board of county commissioners as the governing body for an independent fire district. Rule 3.2 provides that any purchase made with money from the Fire Protection Fund for the independent fire district shall be made in the name of the county.

Thus, the Act and the regulations promulgated thereunder clearly provide that money distributed to an independent fire district from the Fire Protection Fund is to be expended by the county, under the direction of the fire chief, and whatever property is acquired with that money belongs to the county. Accordingly, Section 59-15-11 NMSA 1978 of the Act, which prohibits the expenditure or obligation of distributions from the Fire Protection Fund for the purpose of constructing fire station unless the independent fire district “holds fee simple title, not encumbered by any lien, to the land on which it proposes to construct any such building,” must also be read in the context of the relationship between the county and the independent fire district. As the county establishes and defines the boundaries of an independent fire district, it is the county, and not the independent fire district, which must hold clear title to the land on which fire stations are to be constructed. When the legislature confers a duty upon the county and a method for discharging it, that method is exclusive. El Dorado at Santa Fe, Inc. v Santa Fe County Board of County Commissioners, 89 N.M. 313, 551 P. 2d 1360 (1976).

Although the Act does not refer to money or property received on behalf of independent fire districts from sources other than the Fire Protection Fund, neither does it establish independent fire districts as corporate entities which may hold such other property in their own right. Compare, e.g., Drainage districts, Sections 73-6-1 to 73-6-44 NMSA 1978; Irrigation districts, Sections 73-9-1 to 73-9-62 NMSA 1978.

***1079** Independent fire districts were created solely for the purposes of allocating state funds for fire protection services. It was not intended by the Act that they be independent governmental entities or political subdivisions. That is they were not “formed or maintained for the more effectual or convenient exercise of political power within certain boundaries or localities, to whom the electors residing therein are, to some extent, granted power to locally self-govern themselves.” Gibbany v Ford, 29 N.M. 621, 626, 225 P. 577 (1924). Having been granted no power or authority independent of that of the county, the ownership and control of all funds and property credited to independent fire districts, from whatever source, vests in the county.

Jeff Bingamen

Attorney General