

November 1, 1974

OPINION LETTER NO. 266
Answer by letter-Card

Mr. Charles M. Kiefner
Adjutant General of Missouri
1717 Industrial Drive
Jefferson City, Missouri 65101

Dear General Kiefner:

This letter is in response to your request asking whether the Missouri National Guard can enter into a contract with a fire protection district under which the National Guard makes an annual payment to the fire protection district and the district provides fire protection to the National Guard buildings outside the limits of the fire protection district.

You state that the Jefferson Barracks National Guard facility in St. Louis County encompasses an area of land that lies adjacent to, but not within, the incorporated Mehlville Fire Protection District. The district has proposed to provide fire protection service to the facility under contract with the National Guard for an annual fee.

Upon review of the powers of both the fire district and the National Guard, we believe that such a contract can be entered into.

The statutory powers of the fire district include the following:

"For the purpose of providing fire protection to the property within the district, the district, and on its behalf the board, shall have the following powers, authority and privileges:

* * *

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(4) To enter into contracts, franchises and agreements with any person, partnership, association or corporation, public or private, affecting the affairs of the district, including contracts with any municipality, district or state, or the United States of America, and any of their agencies, political subdivisions or instrumentalities, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service relating to the control or prevention of fires, including the installation, operation and maintenance of water supply distribution, fire hydrant and fire alarm systems; provided, that a notice shall be published for bids on all construction or purchase contracts for work or material or both, outside the authority contained in subdivision (9) below, involving an expense of two thousand dollars or more;" (Emphasis supplied) Section 321.600, RSMo 1969

It would be possible to interpret the foregoing provisions to limit the exercise of powers by the fire protection district to their geographic boundaries. However, we believe that such an interpretation would be unduly narrow and contrary to the legislative intent.

The basic rule of statutory construction is to seek the legislative intent. State ex rel. State Highway Commission v. Wiggins, 454 S.W.2d 899 (Mo. Banc 1970). If a statute is susceptible of more than one construction, it must be given that which will best effectuate its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation. Household Finance Corporation v. Robertson, 364 S.W.2d 595 (Mo. Banc 1963).

Subdivision (4), by its language, purports to provide broad authority to a fire district to enter into cooperative arrangements with other public entities such as other fire districts, the state of Missouri or the United States or any of their agencies. It is to be noted that the underlined portions of subdivision (4) generally follow the provisions of Section 70.220 implementing the provisions of Article VI, Section 16, Constitution of Missouri. In Opinion No. 213, 1963 (copy enclosed), this office in interpreting the phrase "common service" stated:

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". . . The construction of the meaning of the words 'common service' does present difficulty. We believe it should be given a rather broad meaning. This is necessary to accomplish the purposes and economies in local government that the writers of the Constitution envisioned. We believe that the courts would be inclined to give it a meaning which would permit municipalities or other political subdivisions to contract with one another to perform almost any administrative service which they each have a duty at one time or another to perform. Therefore, it would seem that services like assessment and collection of taxes, street maintenance and repair, fire prevention and fire fighting, and police service, are the character of services included within the meaning of this language on the theory that each of these services would be common services required to be performed by each municipality and would therefore fall within the meaning of the language 'common service' of the Constitution, referred to above."

See also, Opinion No. 258, 1963 (copy enclosed). Clearly, under Section 70.220 fire districts have the authority to enter into a cooperative arrangement with another fire district. We do not believe by enacting Section 321.600, the legislature intended to restrict the power of a fire protection district to enter into cooperative arrangements to provide service outside the district. Had it intended to do so, portions of subdivision (4) would be superfluous.

The Adjutant General is charged by Section 41.160(13) with the control and management of armories which includes the Jefferson Barracks. It is clear that under such section he has the duty to insure that there is adequate fire protection for these armories.

Since the fire protection district and the National Guard both have authority to provide fire protection for buildings, a cooperative agreement for fire protection for buildings in the fire protection district and buildings of the National Guard is an agreement for a common service under provisions of Sections 321.600 and 70.220, RSMo.

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For the foregoing reasons, it is our view that the Missouri National Guard can contract with the Mehlville Fire District for fire protection services at Jefferson Barracks.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 213
5-15-63, Cantrell

Op. No. 258
11-4-63, Avery