

Answer by Letter (Wieler)

September 11, 1970

OPINION LETTER NO. 417
Answer by letter-Wieler

Honorable J. Anthony Dill
State Representative
District No. 44
8011 Grandvista Avenue
Affton, Missouri 63123



Dear Representative Dill:

This is in response to your request for an opinion as to the question of whether the directors of a fire protection district located in the first class county having a charter form of government, said district organized pursuant to Chapter 321, RSMo 1959, must follow the procedures set forth in the Missouri Administrative Procedure Act, Chapter 536, RSMo, when such directors discharge or suspend a fireman employee of the district.

It is our understanding that the procedures mentioned in your request are those contained in Section 536.060 to 536.095, RSMo 1969, which set forth the methods to be followed by an agency when instituting a proceeding in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.

Section 536.010, RSMo 1969, reads as follows:

"For the purpose of this chapter

"(1) 'Agency' means any administrative officer or body existing under the constitution or by law and authorized by law to make rules or to adjudicate contested cases;

"(2) 'Contested case' means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing;

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"(3) the term 'decision' includes decisions and orders whether negative or affirmative in form;

"(4) 'Rule' includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by an agency, whether with or without prior hearing, to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations concerning only the internal management of the agency and not directly affecting the legal rights or privileges of, or procedures available to the public."

Fire protection districts are organized and given the power to make rules and regulations pursuant to Chapter 321, RSMo 1969. As such, they fall within the definition of an "agency" as set forth in Section 536.010, RSMo 1969. The question here, however, involves the definition of "contested case" and its application to fire protection districts organized pursuant to Chapter 321, RSMo 1969. The procedural requirements of Sections 536.060 to 536.095 apply only in those instances where rights, duties or privileges of specific parties are required by law to be determined after a hearing. To make these provisions applicable here, there must be a showing that the directors of a fire protection district organized pursuant to Chapter 321, RSMo, are required by law to hold a hearing before discharging or suspending a fireman employee of the district.

In *State ex rel. Leggett v. Jensen*, 318 S.W.2d 353 (Mo. 1958), the Supreme Court granted a writ of prohibition against a judge of a circuit court and prohibited him from exercising jurisdiction in an action against the State Superintendent of Insurance. In reaching this decision, the Supreme Court determined that the review provisions of the Administrative Procedure Act did not apply to plaintiffs' action against the superintendent. The Supreme Court stated:

" . . . There is no doubt whatever that plaintiffs' claim is a claim about which there is a contest, but a 'contested case', to which the provisions of the statutes invoked by plaintiffs apply, has a much narrower meaning than that." *Id.* at 355

In discussing the term "contested case," the Supreme Court said:

" . . . The definition section . . . states that 'contested case' means a proceeding before an

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agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.' (Emphasis ours throughout.) We think this means that a 'contested case' (to which the Administrative Procedure Act and its judicial review provisions apply) is a case which must be contested before an administrative agency because of a requirement (by constitutional provision, statute, municipal charter provision or ordinance; . . .) for a hearing before it of which a record must be made unless waived. . . ." Id. at 356

* * *

"The trouble with plaintiffs' contention (as to their right to invoke the review procedure of Secs. 536.100 and 536.110) is that they can point to no law requiring a hearing on their claim before the Superintendent such as is required to make it a contested case before him within the meaning of the Act. . . ." Id. at 358

The reasoning of this decision was followed in the recent case of *Kopper Kettle Restaurants, Inc. v. City of St. Robert*, 439 S.W.2d 1, 3 (Spr.Ct.App. 1969):

". . . This [Section 536.010, RSMo 1969] means that a contested case, in the context of the Administrative Procedure Act, is a case which must be contested because of some requirement by statute, municipal charter, ordinance or constitutional provision for a hearing of which a record must be made unless waived. State ex rel. Leggett v. Jensen, supra, 318 S.W.2d at 356[2]."

We have surveyed Chapter 321, RSMo 1969, and are unable to find language requiring that a hearing be held before a fireman employee can be discharged or suspended. Thus, there can be no "contested case" before a fire protection district organized pursuant to this chapter and, therefore, the procedures set out in Sections 536.060 to 536.095, RSMo 1969, are not applicable to this agency.

Yours very truly,

JOHN C. DANFORTH
Attorney General