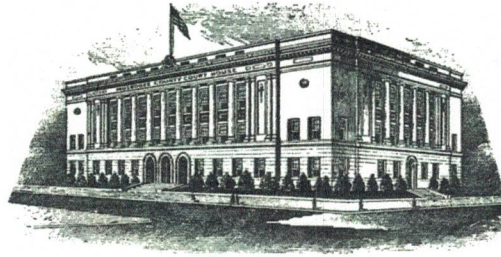


KEN DOKE
MUSKOGEE DISTRICT 1

KEITH HYSLOP
MUSKOGEE DISTRICT 2

KENNY PAYNE
MUSKOGEE DISTRICT 3



POLLY IRVING
COUNTY CLERK

SHEILA SHAMBLIN
SECRETARY

MUSKOGEE BOARD OF COUNTY COMMISSIONERS
P.O. BOX 2307 MUSKOGEE, OK 74402-2307 PHONE (918)682-9601 * FAX (918) 684-1697

RESOLUTION

Whereas: The Muskogee Board of County Commissioners met on the 23rd day of January, 20 23 to consider:

Whereas: The Muskogee Board of County Commissioners received a report from John Tyler Hammons concerning compliance of Title 19 Fire Departments in Muskogee County.

Whereas: Mr. Hammons reported that some of the Title 19 Fire Departments are not in compliance with state statutes


Whereas: It is the recommendation of Mr. Hammons that efforts should be made to bring these fire departments into compliance

NOW, THEREFORE, BE IT RESOLVED;

The Muskogee Board of County Commissioners does hereby require the following:

- Emergency Management Director, Jeff Smith, is appointed as Requisitioning Officer for all purchase orders for all Title 19 county fire departments until further notice
- A three member selection committee (one appointed by each commissioner) will be appointed to nominate individuals to serve on the boards of the various Title 19 fire departments within 30 days
- All Title 19 Fire Departments are required to file an inventory of all county purchased equipment with the County Clerk within 30 days
- All Title 19 county fire departments are required to surrender all funds in their possession within 30 days
- Request will be made to the State Fire Pension system to conduct a membership audit of all Title 19 county fire departments
- Request will be made for the State Auditor to audit all Title 19 county fire departments

MUSKOGEE BOARD OF COUNTY COMMISSIONERS


ATTEST: POLLY IRVING
COUNTY CLERK


KENNY PAYNE, CHAIRMAN


KEN DOKE, MEMBER


KEITH HYSLOP, MEMBER





OFFICE of GENERAL COUNSEL
Muskogee County

John Tyler Hammons
General Counsel

330 N 4th Street
Muskogee, OK 74401
918-683-0309

OPINION OF THE GENERAL COUNSEL
Opinion No. 2023-01

QUESTION BY: Shelly Sumpter, County Treasurer
DATE: January 23, 2023
SUBJECT: County Fire Department Funds

INTRODUCTION

This office has received your request for an official opinion from the General Counsel in which you ask, in effect, the following question:

What is the role of the County Treasurer concerning Title 19 county fire departments?

SHORT ANSWER

The County Treasurer is responsible for safeguarding all revenues associated with a Title 19 county fire department until the board of county commissioners authorizes payments of warrants for the department's necessary expenses.

DISCUSSION

Oklahoma state law provides that "all public funds of any county... shall be disturbed only in the payment of legal warrants." 68 OS §471(A). A warrant is any instrument amounting to a claim "against the public funds of any county." 68 OS § 472. All warrants must be delivered by the County Clerk to the County Treasurer for payment. 68 OS § 474. However, all such warrants must first be "issued upon the order of the board of county commissioners." 19 OS § 347(B). The warrant must direct the County Treasurer from which "fund, department [or] appropriation account" the County Treasurer is to use to satisfying the warrant. *Id.*

To ensure there are sufficient funds to pay the warrants so approved, the County Treasurer is charged with custody of all funds belonging to the county. "It shall be the duty of *each and every county officer*, county board, county commission and *all members and employees of either thereof*, to deposit daily in the [county's] official depository" all revenues belonging to the county.

68 OS § 681 (emphasis added). This includes all funds without regard for its particular classification, including “all monies, checks, drafts, orders, vouchers, funds, rentals, penalties, costs, proceeds of sale of property, fees, fines, forfeitures and public charges of very kind *received or collected by virtue or under color of office.*” *Id.* (emphasis added). The county’s official depository is the County Treasurer (68 OS § 681), who must “deposit daily... all funds and monies of whatever kind that shall come into [the County Treasurer’s] possession” into bank accounts “designated and approved by the county commissioners.” 19 OS § 121. The bank receiving such deposits must give the County Treasurer adequate security to ensure the deposited funds are protected against loss. 62 OS §§ 517.4; 517.5.

As the foregoing makes clear, Oklahoma state law provides a strict procedure to ensure all public funds are protected and only spent for lawful purposes. Your question concerns your relationship with the various county fire departments and corresponding obligation thereunder. The board of county commissioners is authorized to provide “firefighting service in the county” and may use county funds and personnel “to provide such service.” 19 OS § 351(A). While the board of county commissioners may simply establish a single unified county-wide fire department, the board may also “convert to a county fire department” any nonprofit fire department if the board of county commissioners determines the same “will be conducive to the public safety.” 19 OS § 351(D)(1). Such conversion transforms an otherwise private entity into a governmental agency of the county at issue and are colloquially referred to as a “Title 19 county fire department.”

To ensure appropriate levels of governmental control, the board of county commissioners is responsible for appointing a five-member board of directors for each Title 19 county fire department (19 OS § 351(D)(3)) which is responsible to the board of county commissioners for “manag[ing] and conduct[ing] the business” of the Title 19 county fire department. 19 OS § 351(D)(5)(a). In particular, all funds coming into the possession of the Title 19 county fire department must be safeguarded as required by law. 19 OS § 351(D)(8)(a). Because each Title 19 county fire department is an instrument of the county government, this includes the obligation to deposit daily with the County Treasurer all funds they receive in the course of their duties. By way of example and not as a limitation, this includes all “charges for firefighting service performed by the county” received by each Title 19 county fire department. 19 OS § 351(A). Because public funds “shall not be commingled” with any private funds (19 OS § 351(D)(8)(b)), the various Title 19 county fire department do not have authority to conduct banking operations outside of the purview of the County Treasurer. Further, the involvement of the County Treasurer is necessary to ensure a “deficit in any fund” associated with any Title 19 county fire department is not created. 19 OS § 351(D)(8)(c).

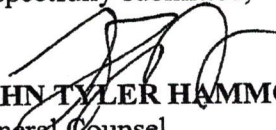
In accordance with the rules announced by this Opinion, any officer of any Title 19 county fire department who receives funds in the course of their public duties must surrender such funds to the County Treasurer on a daily basis. It is then the duty of the County Treasurer to safeguard such funds in the approved county bank accounts until such times as the board of county commissioners approves warrants authorizing payment of necessary expenses of the Title 19 county fire department.

CONCLUSION

It is, therefore, the official opinion of the General Counsel that:

1. All county officers, regardless of job duties or function, who receive revenue while in the performance of their official duties must surrender those funds to the County Treasurer on no less than a daily basis.
2. It is the duty of the County Treasurer to deposit all revenues so surrendered into the approved county bank accounts at least daily for safekeeping until the board of county commissioners lawfully approves expenditures from such accounts.
3. The obligation to daily surrender revenues to the County Treasurer applies to the various officers of a Title 19 county fire department because the same are county officers.

Respectfully submitted,


JOHN TYLER HAMMONS
General Counsel

CC: Board of County Commissioners
County Clerk



OFFICE of GENERAL COUNSEL
Muskogee County

330 N 4th Street
Muskogee, OK 74401
918-683-0309

John Tyler Hammons
General Counsel

OPINION OF THE GENERAL COUNSEL
Opinion No. 2023-02

QUESTION BY: Ken Doke, County Commissioner District 1
DATE: January 23, 2023
SUBJECT: Title 19 County Fire Departments

INTRODUCTION

This office has received your request for an official opinion from the General Counsel in which you ask, in effect, the following question:

Are Title 19 county fire departments subject to the authority and direction of the Board of County Commissioners?

SHORT ANSWER

Yes. Fire departments organized under Title 19 of the Oklahoma Statutes are subject to the oversight of the Board of County Commissioners.

DISCUSSION

Since at least the early 1990s, state statute has authorized the various boards of county commissioners to “provide firefighting service in the county” and may use county funds and personnel “to provide such service.” 19 OS § 351(A). The Attorney General has determined this power is “discretionary” and the county “is not under an affirmative legal duty to provide such services.” *Oklahoma Attorney General Opinion No. 2014-05* (April 11, 2014). While the county may contract with another entity to provide this service (19 OS §§ 351.1; 351.3), the Board of County Commissioners may alternatively “convert to a county fire department” a certain private fire department if the Board of County Commissioners the same “will be conducive to the public safety.” 19 OS § 351(D)(1). Such conversion transforms an otherwise private entity into a governmental agency of the county at issue and are colloquially referred to as a “Title 19 county fire department.”

To ensure appropriate levels of governmental control over this converted fire department, the Board of County Commissioners is responsible for appointing a five-member board of directors for the Title 19 fire department (19 OS § 351(D)(3)) which is responsible to the Board of County Commissioners for “manag[ing] and conduct[ing] the business” of the Title 19 county fire department. 19 OS § 351(D)(5)(a). In particular, it is the responsibility of the board of directors to appoint the fire chief of the department (19 OS § 351(D)(5)(d)) and approving the annual budget for the department. 19 OS § 351(D)(5)(j). No Title 19 county fire department may make an expenditure of any funds except as authorized by the annual budget adopted by the board of directors. 19 OS § 351(D)(8)(c). All funds in the possession of the Title 19 county fire department must be held consistent with the rules “prescribed by the State Auditor and Inspector” (19 OS § 351(D)(8)(a)) and must keep an inventory of all “fixed assets” of the department. 19 OS § 351(D)(8)(a)(4). Because they are county officers, all Title 19 county fire department are required to make purchases with the County Purchasing Agent. 19 OS § 1501(A)(1). As this Office has previously observed, “the various Title 19 county fire department do not have authority to conduct banking operations outside of the purview of the County Treasurer.” *General Counsel Opinion No. 2023-01* (January 23, 2023).

According to the Oklahoma State Firefighter Pension System, the various fire departments in Muskogee County are as follows:

FIRE DEPARTMENT	LEGAL AUTHORITY	STATUS
Boynnton	Title 11 Municipal Fire Department	Volunteer ¹
Braggs	Title 11 Municipal Fire Department	Volunteer
Brushy Mountain	Title 19 County Fire Department	Volunteer
Buckhorn	Title 19 County Fire Department	Volunteer
Council Hill	Title 11 Municipal Fire Department	Volunteer
Fort Gibson	Title 11 Municipal Fire Department	Combination ²
Gooseneck Bend	Fire Protection District	Volunteer
Haskell	Title 11 Municipal Fire Department	Volunteer
Keefeton	Title 19 County Fire Department	Volunteer
Mountain View	Title 19 County Fire Department	Volunteer
Muskogee	Title 11 Municipal Fire Department	Paid ³

¹ A “volunteer fire department” is a fire department which has no more than two (2) paid full-time salaried firefighters but not more than thirty (30) volunteer firefighters.

² A “combination fire department” is a fire department which has more than two (2) paid full-time salaries firefighters which also has not more than twenty-five (25) volunteer firefighters. 11 OS § 29-301(1).

³ A “paid fire department” is a fire department with more than two (2) full-time salaried firefighters but which has no volunteer firefighters. 11 OS § 29-104.1

Oktaha	Title 11 Municipal Fire Department ⁴	Volunteer
Porum	Title 11 Municipal Fire Department	Volunteer
Summit	Title 11 Municipal Fire Department	Volunteer
Taft	Title 11 Municipal Fire Department	Volunteer
Wainwright	Title 11 Municipal Fire Department	Volunteer
Warner	Title 11 Municipal Fire Department	Volunteer
Webbers Falls	Title 11 Municipal Fire Department	Volunteer

Most of the fire departments in Muskogee County (13 out of 18) are classified by the firefighters' pension system as municipal fire departments. A municipal fire department (a "Title 11 municipal fire department") is controlled by the various cities and towns in Muskogee County, such as the City of Muskogee or the Town of Fort Gibson. The respective locally elected officials are directly responsible to the people for the oversight of these departments. One department (namely, Gooseneck Bend) is classified as a "fire protection district." While not subject to control by a city or town, neither is it subject to control by the Board of County Commissioners. Instead, a fire protection district operates as its own unit of government separate and distinct from the county similar to that of a rural water district. The board of a fire protection district is popularly elected rather than appointed by the board of county commissioners and even receives a portion of *ad valorem* taxes to support its operations separate from the larger county budget. Due to existence of other elected officials filling this role, the Board of County Commissioners' oversight of both Title 11 municipal fire departments and fire protection districts is comparatively minimal. However, four of the departments are currently classified by the state fire pensions system as Title 19 county fire departments. As explained above, because there are no other elected officials responsible, such departments are squarely within the jurisdiction of the Board of County Commissioners.

Complicating matters is the possibility of a fourth version of a fire department in Oklahoma: a private fire department organized pursuant to 18 OS § 592. Such private fire departments (also known as a "Title 18 corporate fire departments") are not governmental agencies and instead are more similar to a private business. They have their own board of directors which runs the department in whatever manner their board determines best. No oversight or control by any level of government is involved. While Title 18 corporate fire departments do provide firefighting service, they are not government employees. For example, a firefighter must be a member of a Title 11 municipal fire department, a Title 19 county fire department, or a fire protection district to be eligible to receive a pension from the State Firefighters Pension System. 11 OS § 49-100.1(6); (9). Because members of a Title 18 corporate fire department do not satisfy this definition, their members are not eligible for a state pension.

⁴ This Office notes that while the entity commonly referred to as the "Oktaha Volunteer Fire Department" is not currently classified as a Title 19 county fire department, the various members of the department are currently resisting classification as a Title 11 municipal fire department. As they are unquestionably not a fire protection district, the only remaining possibility is a Title 18 corporate fire department. Additional action may be required by the Board of County Commissioners to determine their true legal status.

The status of the various fire departments as a Title 18 corporate fire department is relevant because this Office has learned that several of the supposed Title 19 county fire departments, in an effort to resist oversight by the Board of County Commissioners, have begun claiming to be Title 18 corporate fire departments. A review of the records in the Office of the Oklahoma Secretary of State reveal that all three of the supposed Title 19 county fire departments do maintain active Title 18 corporate fire departments: Brushy Mountain since 1989, Keefeton since 1990, and Buckhorn since 1996. Of additional concern, a review of the records of the Office of the Muskogee County Clerk indicates that boards of directors of these Title 19 county fire departments have not regularly submitted annual budgets, annual audits, current equipment inventories, or meetings noticed as required by the Oklahoma Open Meeting Act (25 OS § 301 *et seq.*).

Further complicating matters is Muskogee County's dedicated sales tax for firefighting services. In 2005, the Board of County Commissioners approved a resolution establishing a 0.15% sales tax to provide funding for the various fire departments in Muskogee County. The resolution directed that the funds from such tax be divided into two categories: (A) ninety-five percent (95%) for the support for the various fire departments in Muskogee County and (B) five percent (5%) is reserved to the Board of County Commissioners to provide for the general improvement of all fire departments in Muskogee County. Of the funds reserved to the various fire departments, all monies are to be divided equally between the 18 various fire departments in Muskogee County. Since the adoption of the tax, each department has received approximately One Million Dollars (\$1,000,000) in county tax funds.

The ability of the various fire departments to receive any portion of these tax dollars is controlled by the provisions of the Oklahoma Constitution. The state Constitution provides that "[t]axes shall be levied and collected by general law, and *for public purposes.*" OKLA CONST. Art. X, Sec. 14 (emphasis added). Further, counties and other governmental agencies may not make a "gift" of their money or property to private businesses. OKLA CONST. Art. X, Sec. 17. These provisions have long stood for the proposition that governmental funds at both the state and local level "may not be appropriated to a private [purpose]." *Veterans of Foreign Wars v. Childers*, 1946 OK 211, 171 P.2d 618, 623. This is true "no matter how wholesome" the purpose and even if the purpose is "beneficial... to that portion of the public with which it comes in contact." *Id.* Instead, all expenditures of public funds must be for a public purpose only. This does not require that benefits from the expenditure be spread "equally over the whole community" but must represent the county fulfilling its "governmental functions." *Way v. Grand Lake Association, Inc.*, 1981 OK 70, 635 P.2d 1010, 1016. Because a Title 18 fire department is a private entity and not a governmental agency, the transfer of county funds to them cannot satisfy the requirements of Section 14 and, accordingly, is an unconstitutional gift prohibited by Section 17.⁵

In short, while three of the Title 19 county fire departments appear to enjoy the benefits of being a Title 19 county fire department (such as use of county tax dollars and pensions for their members)

⁵ This Office is aware that state statute permits, but does not require, the Board of County Commissioners to contract with Title 18 corporate fire departments to provide fire protection services, including providing necessary funding to support those operations. 19 OS § 351.3. However, as of this writing, this Office has been unable to locate any written contract between the Board of County Commissioners and such a Title 18 corporate fire department in the Office of the Muskogee County Clerk. In the absence of such a written contract, the general prohibitions contained within the Oklahoma Constitution remain in full force and effect.

they operate as a Title 18 corporate fire department (such as separate bank accounts not under county control) and thereby avoid any meaningful governmental oversight by the Board of County Commissioners. This resistance to the rules and regulations applicable to county government requires intervention by the Board of County Commissioners. Such intervention includes (1) requiring all purchase order for the Title 19 county fire departments be approved by the County Emergency Management Director pending further investigation, (2) appointment of a selection committee to populate the boards of the various Title 19 county fire departments, (3) require all Title 19 county fire departments to produce an inventory of all county-purchased equipment, (4) require all Title 19 county fire departments to surrender all funds in their possession to the County Treasurer, (5) contact the State Firefighters Pension System and request a membership audit of any department which claims status as a Title 18 corporate fire department, and (6) contact the State Auditor's Office and request an audit of the operations of the various Title 19 county fire departments since their conversation from Title 18 corporate fire departments.

CONCLUSION

It is, therefore, the official opinion of the General Counsel that:

- 1. The Board of County Commissioners has authority, but not the obligation, to provide fire protection services in Muskogee County under 19 OS § 351, including converting a private Title 18 corporate fire department into a public Title 19 county fire department.**
- 2. Once a private Title 18 corporate fire department has converted into a public Title 19 county fire department, such department become an instrumentality of the county government and is subject to all relevant county rules and regulations, including supervision by the Board of County Commissioners.**

Respectfully submitted,


JOHN TYLER HAMMONS
General Counsel

CC: Board of County Commissioners
County Clerk