

760409.1

COUNTIES: Fire apparatus and equipment

COUNTIES: Federal revenue sharing

Counties with 5,000 or more inhabitants are authorized to use federal revenue sharing funds to purchase fire equipment and to lend or lease such equipment to volunteer fire departments for the benefit of areas outside of incorporated cities.

Opinion No. 4951

April 9, 1976.

Honorable Russell Hellman
State Representative
The Capitol
Lansing, Michigan 48901

You have asked for my opinion as to whether a county may use federal revenue sharing funds either to directly assist volunteer fire departments within the county or to purchase fire-fighting equipment for lease to volunteer fire departments. As an enclosure to your letter, there is an opinion from the Houghton County Prosecuting Attorney on the matter.

Federal regulations clearly provide that expenditures of federal revenue sharing funds for fire equipment and protection are permissible provided that the expenditures are authorized under applicable state law. 31 CFR Sections 51.31a and 51.40(c). Thus it is necessary to determine whether state law authorizes counties to assist volunteer fire departments and, if so, what manner of assistance is permitted.

In considering the powers of counties, it is important to remember the mandate of Const 1963, art 7, § 34, which provides:

"The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution."

Among the statutes governing counties, 1942 PA 2nd Ex Sess 15, as amended, being MCLA 46.301 *et seq*; MSA 5.2586(1) *et seq* ("the Act") is the only one dealing with the authority of counties in the area of fire protection. The Act permits counties with 5,000 or more inhabitants to provide fire equipment *or* fire protection to areas, excluding incorporated cities, where adequate fire protection is not provided. Fire protection, as distinguished from the loan of fire equipment, may be furnished only to those townships that agree to reimburse the county for no less than 50% of the cost of such protection.

Section 1 of the Act permits counties to purchase fire equipment and to provide for its housing, maintenance and operation. MCLA 46.301; MSA 5.2586(1). Such equipment may be used for the benefit of areas outside of incorporated cities where adequate fire protection is not provided. A liberal interpretation of Section 1 of the Act permits counties to purchase fire-fighting equipment and to lease or lend such equipment to

volunteer or salaried fire departments in areas, other than incorporated cities, where the county commissioners have determined fire protection to be inadequate. The terms and conditions imposed by the commissioners on any lease or loan of fire equipment should reflect the commissioners' responsibility to provide for the housing, maintenance and operation of such equipment.

While the Act was adopted in wartime, it has been in force for over 30 years thereafter. The legislature declared in Section 3 that such legislation was necessary for the public good and welfare of the people of this State and for the protection of property. MCLA 46.303; MSA 5.2586(3). These purposes continue to be valid in a time of peace.

For the reasons stated above, it is my opinion that counties are authorized to use federal revenue sharing funds to purchase fire equipment and to lend or lease such equipment to volunteer fire departments pursuant to the statutory provisions outlined in this opinion.

FRANK J. KELLEY,
Attorney General.

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ADMINISTRATIVE LAW AND PROCEDURE: Rulemaking

NATURAL RESOURCES: Inland Waters

The Department of Natural Resources may not adopt and enforce a policy of general applicability without compliance with the procedures for the adoption of rules contained in the Administrative Procedures Act.

Opinion No. 4961

April 9, 1976.

Honorable Quincy Hoffman
State Representative
The Capitol
Lansing, Michigan

Referring to 1972 PA 346, MCLA 281.951 *et seq*; MSA 11.475(1) *et seq*, and a policy adopted by the Natural Resources Commission on July 12, 1974, you have requested my opinion on the following question:

"Is ['policy'] within the purview of the act or should the administrative rules be amended or can a department arbitrarily adopt a ['policy'] and enforce that ['policy'] as though it [were] in fact law?"

The policy statement involved, attached as Appendix A, sets forth a course of action determining the rights of applicants for permit under 1972 PA 346, *supra*.

A rule is defined in Section 7 of the Administrative Procedures Act, 1969 PA 306, § 7; MCLA 24.207; MSA 3.560(107), as follows:

'Rule' means an agency regulation, statement, standard, *policy*, ruling or instruction of general applicability, which implements or applies law enforced or administered by the agency, or which prescribes the organization, procedure or practice of the agency, including the amend-