

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-

ment, suspension or rescission thereof, but does not include the following:

- (a) A resolution or order of the state administrative board.
- (b) A formal opinion of the attorney general.
- (c) A rule or order establishing or fixing rates or tariffs.
- (d) A rule or order pertaining to game and fish and promulgated under Act No. 230 of the Public Acts of 1925, as amended, being sections 300.1 to 300.5 of the Compiled Laws of 1948, Act No. 165 of the Public Acts of 1929, as amended, being sections 301.1 to 306.3 of the Compiled Laws of 1948 and Act No. 286 of the Public Acts of 1929, as amended, being sections 311.1 to 315.2 of the Compiled Laws of 1948.
- (e) A rule relating to the use of streets or highways the substance of which is indicated to the public by means of signs or signals.
- (f) A determination, decision or order in a contested case.
- (g) An intergovernmental, interagency or intra-agency memorandum, directive or communication which does not affect the rights of, or procedures and practices available to, the public.
- (h) A form with instructions, an interpretive statement, a guideline, an informational pamphlet or other material which in itself does not have the force and effect of law, but is merely explanatory.
- (i) A declaratory ruling or other disposition of a particular matter as applied to a specific set of facts involved.
- (j) A decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected thereby."

An examination of the above definition indicates that it contains certain exclusions which are not to be considered in the category of rules.

It is, therefore, my opinion that to become effective, a rule must be adopted in accordance with the provisions of 1969 PA 306, *supra*, which includes, among other things, a public hearing, approval by the Legislative Service Bureau, approval by the Attorney General and a review by the Legislative Joint Committee on Administrative Rules, 1969 PA 306, *supra*, Sec. 45.

FRANK J. KELLEY,  
*Attorney General.*

Appendix A

#### DEPARTMENT OF NATURAL RESOURCES POLICY STATEMENT ON UPLAND CHANNELS

The Natural Resources Commission and the Department of Natural Resources will not abet, support, promote or give any encouragement to, and will in fact oppose by any legal means, the creation of any upland channel development anywhere in the State that will threaten the capacity of our land and water resources to sustain a quality environment for the citizens of our State. In particular, upland channel projects on our inland

lakes and streams will not be approved if the proposed development will cause over-crowding or over-use of the adjacent waters. In each project, the applicant must demonstrate to the administrative agency that the proposal will not result in over-use of these waters nor cause degradation of water quality. Therefore:

1. The Department of Natural Resources shall identify to the applicant all elements of the public trust or interest to be considered and protected in each project. Those projects that may involve a major or controversial development will be further supported with an Environmental Assessment submitted by the applicant or his agency following guidelines prepared by the Office of Environmental Quality Review.

2. The applicant must follow all requirements of the applicable Act and rules and any standards or specifications approved by the Natural Resources Commission in the preparation of an application for permit to the administering agency, as well as any local zoning or land use controls.

3. An upland channeling permit will be issued only if the project will not injure or be likely to injure the public trust or interest, including fish and wildlife habitat in the adjacent land and water area, or result or be likely to result in over-use of the adjacent waters; if the project meets the requirements of law for the platting of land and sanitation, if there is no material injury to the rights of any riparian owner on the affected water, and if the resulting channel project will not or is not likely to degrade, impair or destroy the quality of any of the waters of the State.

It is further stated that the following standards be adopted in reviewing upland channel projects:

1. Limit channeling for multi-residential or commercial purposes to mineral soils or on soils that will properly support construction of residences or other types of buildings. No channels will be permitted through wetlands.

2. Limit multi-residential channeling to only those projects that will be served from the beginning of use by a central sewerage system.

3. Channels in all multi-residential or commercial developments shall be of sufficient width to accommodate prospective traffic, watercraft dockage, and maintenance dredging.

4. Channels shall be constructed to a sufficient depth to minimize weed growth.

5. Require stabilization on all channel banks where there is a threat of soil erosion or surface runoff that will degrade existing water quality of the lake or stream.

6. Require, if necessary, provisions for the circulation of waters in channels to avoid problems of stagnation or D.O. depletion.

7. Require that all multi-residential or commercial channels be minimum of 200 feet from each adjacent riparian, except where riparian approval has been obtained.

8. Require a construction performance bond for any multi-residential or commercial channels.

Approved by DNR Commission: July 12, 1974