Fire protection outside municipal boundaries

Number: AGO 74-211

Date: November 04, 1998

Subject:
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MUNICIPALITIES--FIRE PROTECTION--EXTRATERRITORIALITY

To: Jonathan H. Hancock, Avon Park City Attorney, Sebring

Prepared by: Gerald L. Knight, Assistant Attorney General

QUESTION:

May the City of Avon Park, Florida, extend fire protection beyond municipal boundaries?

SUMMARY:

In the absence of authority contained in general or special law, a municipality may not extend fire protection beyond its territorial limits.

Section 166.021, F. S., of the Municipal Home Rule Powers Act (Ch. 73-129, Laws of Florida), generally provides that municipalities may legislate concerning any subject matter, with certain specified exceptions, upon which the state legislature may act. One of these exceptions in which area a municipality may not legislate is "[t]he subjects of annexation, merger, and *exercise of extra territorial power*, which require general or special law pursuant to s. 2(c), Art. VIII of the state constitution." (Emphasis supplied.) Section 166.021(3)(a). *See also* s. 166.021(4), which provides that nothing in Ch. 166, id., shall be construed to permit any changes in a special law or municipal charter "which affect the exercise of extraterritorial powers." Article VIII, s. 2(c), State Const., provides as follows:

"Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law."

It is a general rule that a municipality may exercise its police power to pass ordinances reasonably necessary to prevent fires. Lester v. City of St. Petersburg, 183 So.2d 589 (2 D.C.A. Fla., 1966), *appeal dismissed*, 190 So.2d 307. However, pursuant to the foregoing statutory and constitutional authority, in order for a municipality to exercise such power beyond its territorial limits, there must be a general or special law authorizing the municipality to do so. In this regard, I am aware of no provision of general law which authorizes municipalities to extend fire protection beyond municipal boundaries.

Neither do I find any provision of special law authorizing the City of Avon Park to extend fire protection beyond its municipal boundaries. Section 24 of the Charter of the City of Avon Park,

Ch. 12714, 1927, Laws of Florida, as subsequently amended, provides that the city council shall have the power "to arrange for and provide a fire department and to regulate the same so as to protect the city from fire." Nowhere in its charter is the City of Avon Park authorized to extend fire protection beyond its municipal boundaries. Therefore, in the absence of authority contained in general or special law, I am of the opinion that the City of Avon Park may not extend fire protection beyond its territorial limits. *Cf*. State v. City of Melbourne, 93 So.2d 371 (Fla. 1957), in which it was held that certain provisions of the Charter of the City of Melbourne authorized municipal extension of water distribution and sewer facilities outside municipal boundaries; and Ch. 180, F. S., authorizing municipalities to extend utility services beyond municipal boundaries.