



Christian County Commission

100 West Church St, Room 100
Ozark, MO 65721

SCHEDULED

MEETING ATTACHMENTS (ID # 5412)

Meeting: 07/27/23 09:00 AM

Department: County Clerk

Category: Meeting Items

Prepared By: Madi Hires

Initiator: IQM2 Admin

Sponsors:

DOC ID: 5412

Meeting Attachments

ATTACHMENTS:

- COUNTY COUNSELOR - OPINION LETTER - PILT FUNDING (PDF)



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July 26, 2023

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RE: **Opinion Letter—PILT Money**
Matter ID 23385-000

Dear Commissioners:

After speaking with Commissioner Morris the other day, he has tasked me with researching whether and/or how the County may utilize its PILT money, and whether the same can be provided to the Chadwick Fire Department. PILT (or PILOT) money, or "Payment In Lieu of Taxes," is governed by federal law. Commonly referred to as the "Payment in Lieu of Taxes Act," 31 U.S.C. § 6901, *et. seq.* provides the statutory authority and framework for the federal government to pay money to local governments to fill in the property-tax-revenue gap caused by federally owned land's tax-exempt status.

PILT money is not specifically earmarked by the federal government for any given purpose. Instead, "a unit of general local government may use [PILT money] for any governmental purpose." 31 U.S.C. §6902(a)(1); *see also* 43 C.F.R. §44.50 ("What are the local governments' responsibilities after receiving payments under this part? (a) The local government may use section 6902 payments for any governmental purpose.").

The meaning of the phrase "any governmental purpose" can be inferred from the statute's definition of "governmental services." "Governmental services" are defined as "those services that relate to public safety, the environment, housing, social services, transportation, and governmental administration." 31 U.S.C. § 6901(2)(B). A narrow construction of "governmental purpose" includes those services listed under the definition of "governmental services."

A "governmental purpose" under federal law also appears to be mostly synonymous with case law establishing that government expenditures must be

for a “public purpose.” Ordinarily, a “public purpose” requires a showing that some benefit or convenience must flow directly to the public. *State ex. rel. Wagner v. St. Louis County Port Auth.*, 604 S.W.2d 592 (Mo. banc 1980). Government expenditures for private purposes (or for the benefit of private or unrelated entities) is prohibited. Our Supreme Court has held that contractual expenditures procuring fire patrol services may be considered a public purpose. *State ex rel. Kansas City Ins. Agent's Ass'n v. Kansas City*, 319 Mo. 386, 400, 4 S.W.2d 427, 433 (Mo. 1928).

When dealing with public expenditures, there is an expectation of a reciprocal exchange of goods or services. If the County is providing money out of its general revenue, there should be an expectation of public benefit—that the public receives something in return. Expenditures that appear in nature to be that of a gift, so to speak, are also prohibited.

With that framework in mind, we turn to the Chadwick Fire Department. From the outset, I note that the Chadwick Fire Department is its own, separate, legal entity with its own set of revenue sources and its own budget. It answers to its own Board of Directors. The Chadwick Fire Department is not a subset or office of Christian County government. There is no statutory obligation that I could find requiring Christian County to fund the Chadwick Fire Department.

After speaking to Commissioner Morris and researching what I could find, it remains a little unclear to me what statutory entity the Chadwick Fire Department is.¹ If the Chadwick Fire Department is a Chapter 320 volunteer fire protection association, then PILT money from general revenue cannot be used to fund their budget. RSMo. § 320.300 provides that volunteer fire protection associations shall be “either partially or wholly funded by membership or subscriber fees and [the provisions of this chapter] **shall not apply to fire protection districts supported by local tax revenues**, or which have contracted with a political subdivision to respond to fires within the area of an association’s boundaries.”

It is axiomatic that tax revenues are meant to support governmental functions that all its citizens may enjoy or derive benefit from. Considering Chapter 320 does not apply when a volunteer fire protection association is funded by local tax revenue, the Missouri legislature’s intent was to prevent subscription-based fire protection associations from receiving *any* tax revenues, including payments in lieu of taxes. That makes sense in light of the fact that volunteer fire protection associations provide benefits only to their members, not everyone within the district. Aside from perhaps grants and gifts, under Chapter 320 the sole funding mechanism provided for a volunteer fire protection association is derived from membership or subscriber fees. Christian County cannot, and should not, provide PILT money to a Chapter 320 volunteer fire protection association.

A more difficult question arises relating to a Chapter 321 public fire protection district. As with a Chapter 320 volunteer fire protection association, a Chapter 321 fire protection district is also a separate legal entity with its own Board of Directors. RSMo. § 321.220 (and RSMo. § 321.600 for districts in first class counties) defines the powers, authority and privileges that the Board of Directors may exercise. That includes, among other things, the authority to “**enter into contracts, franchises and agreements with any person, partnership, association or corporation, public or private**, affecting the affairs of the district, including contracts with any municipality, district or state, or the United States of America, and any of their agencies, political subdivisions or instrumentalities, **for the planning, development,**

¹ An internet search refers to them as the Chadwick Fire Department, the Chadwick Rural Fire Department, and the Chadwick Rural Fire Protection District. The entity does not appear to have a website, but their Facebook page describes them as the latter. Commissioner Morris was under the impression they were a Chapter 320 volunteer fire protection association. But he believed they may receive tax money through a levy (which would indicate they are not). The Chadwick Fire Department may also be a Chapter 321 public fire protection district. I have analyzed both for purposes of this opinion letter.

construction, acquisition or operation of any public improvement or facility, or for a common service relating to the control or prevention of fires, including the installation, operation and maintenance of water supply distribution, fire hydrant and fire alarm systems; provided, that a notice shall be published for bids on all construction or purchase contracts for work or material or both, outside the authority contained in subdivision (9) of this section, involving an expense of ten thousand dollars or more.”

A Chapter 321 fire protection district has the authority upon the approval of the voters to “borrow money and incur indebtedness and evidence the same by certificates, notes or debentures, and to issue bonds.” RSMo. § 321.220 and 321.600; *See also* RSMo. § 321.340. The district may also “contract for services with any rural, volunteer or subscription fire department or organization, or volunteer fire protection association” (RSMo. § 321.220(18) and 321.600(17)) and in certain cases may have the authority to “contract with any municipality that is contiguous to a fire protection district for the fire protection district to provide fire protection to the municipality for a fee as hereinafter provided.” *See* RSMo. § 321.220(16).

A Chapter 321 fire protection district has the authority and power to “to order the levy and collection of ad valorem taxes on and against all taxable tangible property within the district, and to make timely demand and to sue for and collect any and all other taxes, contributions or allocations to which the district may be entitled.” RSMo. § 321.230. That appears to be the primary funding mechanism for the district. Upon submission to the voters, the Board of Directors has the authority to increase the tax levy and then certify that increased rate of levy to the County Commission. *See, i.e.*, RSMo. §§ 321.241, 321.250, 321.610.

In certain districts, a sales tax may be imposed. *See, i.e.*, RSMo. §§ 321.242, 321.246, 321.552. Finally, a Chapter 321 fire protection district has the authority to “to receive and accept by bequest, gift or donation any kind of property,” which would include grants, both public and private. RSMo. §§ 321.220(11), 321.600(11).

By statute, these are the only funding mechanisms I could determine for a Chapter 321 fire protection district. The Chapter makes no mention of PILT funds. Of course, a Chapter 321 fire protection district does have the authority to enter into a contract with Christian County “for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service relating to the control or prevention of fires.” The district could also enter into a contract with Christian County for any authorized public purpose.

An example I have given that I believe would be a permissible expenditure would be if the County entered into an agreement with a Chapter 321 first protection district, whereby the County used PILT money to pay the department to host fire prevention and protection seminars available to the public or Christian County residents at low or no cost. Christian County would be providing the money, while the Chadwick Fire Department would be providing the service—a reciprocal exchange.

I believe there are potentially creative ways, like the above, that PILT funds can be used for public purposes (or “governmental purposes” under the statute) that benefit a Chapter 321 fire protection district, by way of contract or other agreement whereby a reciprocal benefit is given.

I am uncomfortable, however, with the idea of writing a check out of general revenue to just provide for the operating budget of such an organization without any expectation of a specific good or service being provided to the County (other than what the district is already statutorily required to do). Chapter

321 provides specific procedures for how such an organization's operating expenses shall be funded. Those do not include the use of PILT money.

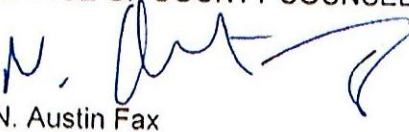
In conclusion, PILT funds are not earmarked by the federal government for any specific purpose, but may be used by the County for "any governmental purpose," which includes "those services that relate to public safety, the environment, housing, social services, transportation, and governmental administration." Any expenditure by the County must necessarily be for a "public purpose," which ordinarily requires a showing that some benefit or convenience (by way of a good or a service) must flow directly to the public. Gifts or expenditures for private purposes are prohibited.

A Chapter 320 volunteer fire protection association cannot receive PILT funds. A Chapter 321 fire protection district is primarily funded through ad valorem property taxes, but could receive PILT money from Christian County and can contract with the County "for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service relating to the control or prevention of fires." Any such contract or agreement would require an expenditure for a public purpose—with the expectation of some reciprocal benefit being provided by the Chadwick Fire Department.

If you have any questions on the above or would like any additional research done, please let me know. As always, it remains a pleasure to serve you all.

Very truly yours,

OFFICE OF COUNTY COUNSELOR,



N. Austin Fax

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