

**To: The Honorable Ramon O. Valadez
Arizona State Senate**

May 21, 2001

**Re: Fire District Annexations
I01-013 (R01-002)**

Question Presented

May a fire district that is organized as a special taxing district pursuant to Arizona Revised Statutes ("A.R.S.") §§ 48-261 through -271 annex non-contiguous land?

Summary Answer

The statutes governing fire districts generally prohibit the expansion of a fire district's boundaries to non-contiguous land. Any exceptions to the contiguity requirement are specifically established by statute.

Analysis

A. Fire Districts Consist of Contiguous Land.

Special taxing districts have no powers except those conferred by statute or necessarily implied by those statutes. *Cf. Union Transportes De Nogales v. City of Nogales*, 195 Ariz. 166, 169, 985 P.2d 1025, 1028 (1999) (stating that local governmental entities possess only those powers that are delegated by state law). Thus, fire districts can only act in accordance with the statutes that govern them.

The statutes that govern fire districts and certain other special taxing districts generally require that their area be contiguous.⁽¹⁾ Section 48-261, A.R.S., describes the method for creating fire districts, community park maintenance districts, sanitary districts, and hospital districts. That statute specifies that, with an exception that does not apply to fire districts, "the area of a district created pursuant to this section shall be contiguous." A.R.S. § 48-261(F). Similarly, the statute that governs changing the boundaries of fire districts, community park maintenance districts, and sanitary districts requires that the new area include only contiguous property: "Except as provided in subsection C of this section and § 48-2002, no change in the boundaries of a district pursuant to this section shall result in a district which contains area that is not contiguous."⁽²⁾ A.R.S. § 48-262(G).

In its 2001 regular session, the Legislature amended A.R.S. § 48-262(C) to elaborate on the meaning of contiguity and to provide some limited exceptions to the contiguity requirement for fire districts and other special districts subject to that statute.⁽³⁾ See 2001 Ariz. Sess. Laws ch. 248, § 2. (amending A.R.S. § 48-262(C)). First, the 2001 legislation specifies that, with some limitations, additions to a district must be contiguous as prescribed in A.R.S. § 9-471(H), which governs city and town annexations.⁽⁴⁾ Second, under the 2001 amendments, the expanded district boundaries may not "result in a district that completely surrounds a territory that is in an unincorporated area . . . and that is not included in the district." *Id.* Third, an addition is "deemed contiguous notwithstanding that land owned by or under the . . .

. United States, this state or any political subdivision, other than an incorporated city, intervenes between the proposed addition and the district boundary." *Id.*

B. Land Annexed Under A.R.S. § 48-262(H) Must Be Contiguous to the Fire District.

The general process for changing a district's boundaries involves a lengthy, multi-step procedure. See A.R.S. § 48-262(A)(1) through (11). The major steps in the procedure for a boundary change are as follows: the proponent of the change must prepare and submit to the district a boundary change impact statement; the district must hold a hearing to determine whether the proposed change will promote the public health, comfort, convenience, necessity or welfare; if the district makes the required findings, the petitioners may circulate petitions and submit them to the district; the district holds a second hearing at which it must determine whether the signatures are valid and if it determines that the signatures are valid, it must order the change in boundaries. See A.R.S. § 48-262(A)(2), (5), (7), and (11).

In 1997, the Legislature added subsection (H) to A.R.S. § 48-262 to provide a simplified procedure for owners of property "adjacent" to a sanitary district or to a fire district. See 1997 Ariz. Sess. Laws, ch. 11, § 1. Subsection (H) permits owners of adjacent property to simply request in writing that their property be included in the district, and the governing board of the district may approve the request if the board "determines that the inclusion of that property will benefit the district and the property owner."⁽⁵⁾

A.R.S. § 48-262(H).

Subsection H does not create an exception from the contiguity requirement. Although "adjacent" and "contiguous" do not always mean the same thing, in this context they do. Absent some specific legislative directive to the contrary, "contiguous" means land that actually touches at some point. See Black's Law Dictionary 315 (7th ed. 1999) ("contiguous" means "touching at a point or along a boundary"); Webster's New Third International Dictionary 492 (1993) (contiguous means "touching along boundaries often for considerable distances"). In contrast, "adjacent" may mean "[l]ying near or close to, but not necessarily touching," Black's Law Dictionary 42 (7th ed. 1999). "Adjacent" may also mean "relatively near and having nothing of the same kind intervening: having a common border." Webster's Third New International Dictionary 26 (1993). In addition, Webster's notes that a synonym for "adjacent" is "contiguous." *Id.*

In this context, annexations of "adjacent" land under A.R.S. § 48-262(H) must satisfy the contiguity requirement in A.R.S. § 48-262(G). The 1997 legislation that added subsection (H) also added the phrase "[e]xcept as prescribed by subsection H of this section" to subsection (A) of § 48-262, which sets forth the usual boundary-changing procedures. By doing so, the Legislature made it clear that subsection (H) is an alternative to the lengthy boundary-changing procedures in subsection (A). Moreover, when it added the procedure in subsection (H), the Legislature did not amend A.R.S. § 48-261(F) or § 48-262(G), which generally

require that special taxing districts consist of contiguous area. The statutes as a whole demonstrate the Legislature's concern that property in special taxing districts be contiguous, with only certain specified exceptions, and subsection (H) is not an exception from this general requirement. See A.R.S. §§ 48-261(F); -262(G). The legislative history of the 1997 amendment also supports the conclusion that it was to provide an alternative, simplified, method for changing the boundaries of a sanitary or fire district, but that the Legislature did not intend to abandon the contiguity requirement. See *Minutes of House Committee on Rural & Native American Affairs*, 43rd Leg. 1st Reg. Sess. (January 22, 1997); *Minutes of House Committee on Gov't Operations*, 43rd Leg. 1st Reg. Sess (January 29, 1997); *Minutes of Senate Committee on Gov't* 43rd. Leg. 1st Reg. Sess. (February 24, 1997). Thus, annexations to fire districts under either A.R.S. § 48-262(A) or (H) must comply with the contiguity requirement in A.R.S. § 48-262(G).

Conclusion

A fire district may not annex property that is not contiguous to its existing boundaries, unless a specific statutory exception to the contiguity requirement applies. This applies to annexations under either subsection (A) or (H) of A.R.S. § 48-262.

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1. Sections 48-802 through -821, A.R.S., govern fire districts' administration, describe their powers and duties, and provide for mergers with other districts and annexation to cities or towns. These sections do not address fire districts' creation or boundary requirements.
2. Section 48-2002, A.R.S., permits non-contiguity in sanitary districts in specified instances.
3. This legislation takes effect August 9, 2001, which is 90 days after the Legislature adjourned. See Ariz. Const. art. IV, pt. 1 § (3).
4. Under A.R.S. § 9-471(H) land is not contiguous unless:
 1. It adjoins the exterior boundary of the annexing city or town for at least . . . [300] feet.
 2. It is, at all points, at least . . . [200] feet in width, excluding rights of way and roadways.
 3. The distance from the existing boundary of the annexing city or town where it adjoins the annexed territory to the furthest point of the annexed territory from such boundary is no more than twice the maximum width of the annexed territory.

Under A.R.S. § 48-262(C), as amended in 2001, fire districts, and other districts subject to that statute, must meet these requirements except that "any whole parcel may be added to the district notwithstanding the provisions of section 9-471(H) regarding minimum size limitations."

5. Subsection H to A.R.S. § 48-262 states:

Notwithstanding subsection A of this section, any property owner whose land is within a county that contains a . . . fire district and whose land is adjacent to the boundaries of the . . . fire district may request in writing that the governing body of the district amend the district boundaries to include that property owner's land. If the governing body determines that the inclusion of that property will benefit the district and the property owner, the boundary change may be made by order of the governing body and is final on the recording of the governing body's order that includes a description of the property that is added to the district. A petition and impact statement are not required for an amendment to a . . . fire district's boundaries made pursuant to this subsection.

• [Back to 2001 Opinions](#)

