

## Formation of a Missouri Fire Protection District

A Missouri fire protection district is a political subdivision of the state. That means it is a kind of government. It is also a "municipal corporation" meaning that it acts a lot like any other corporation.

A fire protection district is a "creature" of the state and is governed exclusively by laws passed by the Missouri General Assembly. These you will find in chapter 321 of the state statutes. You need to keep track of the changes in the chapter 321 to make certain that you keep up with the current version of the law.

Because a fire protection district is a mixture of politics and law, and functions both as a government and as a corporation, this paper will discuss a lot of things that are opinion, have to do with political issues, and are open to challenge or interpretation by almost anyone. Other parts of this paper are based upon the law and what absolutely must be done. You are advised to read this entire paper through before taking the first steps to start a fire protection district. Where you disagree with some of the recommendations contained here, you should first make certain that the state statute does not require what we propose. If you choose to disregard some of this advice, you should obtain counsel from your own attorney or (in the case of political suggestions) from trusted or knowledgeable people in your area who may assist you with the political decisions that must be made.

It is suggested that you early-on contact the county clerk in your county and ask for advice from that individual regarding political matters (particularly regarding the conduct of an election) and that you seek a local attorney to represent you in court. Certain formalities require judge approval, and it is best that you involve an attorney early in the process. We strongly advise that these matters should be reviewed with local counsel before proceeding.

You may wish to consult (particularly in a small county) with the prosecuting attorney. Those prosecuting attorneys who serve in a part time position may also be willing to represent the fire protection district. You should be aware that this is an extra service that the prosecuting attorney might perform and is not part of his duties as an elected official. You should be prepared to compensate the prosecuting attorney or any other attorney you select for services rendered.

If you are planning to hire an attorney to represent you in a formation of a fire protection district you should have a clear understanding as to the fees and expenses. You will be expected to pay the court costs for filing a petition with the circuit court to form the district, and you will probably be expected to pay attorney's fees. Where these funds will come from ought to be an early question that you address. If you plan to pay for these things out of anticipated tax revenues, you should let the attorney know that he will be paid only if the entire transaction is successful. If a fire protection association is going to put up these monies in advance with an expectation of repayment out of tax funds, then that also should be made clear to everyone. If you are advancing the money out of your own pocket (or if you have taken a collection from other interested people) you need to disclose fully to the attorney the limits on what you can not pay and what risks of non-payment the attorney must take. Frank and open discussion of these matters at the very beginning can save a lot of problems later on.

### Incorporation

In order to form a fire protection district you first have to submit a petition to the circuit court containing the signatures of one hundred registered voters. This rather simple procedure is described in RSMo §321.030. The rather simple requirements of the statute hide a number of very complicated questions that you need to address and decide before circulating the petition.

First of all, you need to figure out what boundaries you are going to propose for the fire protection district. The people who sign the petition must live within those boundaries. This is a matter that ought to be negotiated with adjoining fire departments and fire protection associations (not fire

protection districts because their boundaries have already been set by the courts). It is often a source of controversy because citizens will claim they are being forced to participate in a fire protection district that they do not want. You want a boundary that includes as many of the “yes” voters as you can get, but does not include “no” voters. On the other hand your tax revenue is going to depend upon the assessed valuation of the property located within the district. The larger the district, generally speaking, the higher your tax revenue will be. (However, you should recognize that agricultural property gets a very low rate of taxation when compared to commercial or residential property. If you have choice of including a square mile of agricultural property and an acre of commercial property almost invariably the acre of commercial property will generate higher tax revenues.)

The decision on the area ought to involve consultation with the county clerk or other political officials who generally is an expert on voter behavior and can tell you areas that will be favorable to the formation of the fire protection district, as well as those that are opposed. Those of us who are intimately involved in fire protection often find it inconceivable that people would be opposed to paying a small tax in order to save their lives; but the fact is that many people have an instinctive hatred of government and vote against everything that involves an increase in taxation. You need to anticipate and plan for opposition from the very beginning. Then if the opposition fails to materialize then you have either done your job well or been extraordinarily lucky.

Also you might consult with the county assessor in drawing your district. The assessor can estimate the tax revenue that will be available from your district and give you realistic projections as to what sort of income the district might anticipate. (You need to keep in mind that the income from the district that the district generates from taxes probably will not occur until well after the district is formed [perhaps as much as 15 months after the formation of the district]).

In the typical fire protection district formation there already has been a voluntary association which has existed for several years or decades. This association has reluctantly concluded that membership sales, bake sales and charitable donations are not enough to keep the operation afloat. There is a need for tax revenue to provide the required services. The usual thought about the boundaries is to make the boundaries of the fire protection district the same as the boundaries of the voluntary association so as to include every member.

However, at the edge of every fire protection association there are usually people that belong to other neighboring fire departments or fire protection associations. There will be an overlap of membership. The adjoining fire department or fire protection association might very well resent what they perceive as a grab for territory, if you select a boundary that is inclusive of all of the members in your volunteer association. Negotiate and discuss with these joining volunteer associations, because you do not want them to get so angry with you that you will stir up opposition to the formation of your district.

Once you get your boundaries decided you then have to gather signatures. The number of signatures that the statute says you have to have is one hundred. However, each of these one hundred people must (1) live within the district, and (2) be registered to vote. Large numbers of people will tell you that they are registered to vote, or that they live within the district, and they will be mistaken. Many people cannot locate where they live upon the map, and many people claim to be registered to vote when in fact they are not. Therefore, it would be prudent to gather two or three times the number of required signatures in order to make sure that you have a sufficient number.

The county clerk can be helpful. The county clerk can provide you with a list of all of the people in the county who are registered to vote. There may be a small charge for the preparation of this list, or you may be able to talk the county clerk into waiving the fee. If you find someone who lives within the district and is willing to sign the petition but is not registered you can march that individual over to the court house and make sure they get registered at once. Similarly, you can encourage that individual's spouse, adult children, and others who live within your boundaries to

become registered to sign your petition. Do not take the person's word that they have actually gone and registered: double check. Many people fail to register under the mistaken belief that doing so will result in them being called for jury duty. That used to be the case and many people refused to register or vote in fear of being called in as a juror. Recent changes to the law have indicated that driver's license holders are also called for jury duty. Most people will be selected for jury duty whether or not they register to vote.

Before you turn in your petition, it would be a good idea to have the county clerk check the signatures to make sure that at least one hundred people are registered voters. The statute does not require that this be done, but I presume some sort of evidence will be required to satisfy the judge on this point. The best individual to testify will be the county clerk. This is the usual function of the county clerk and they will not be surprised at being requested to verify the signatures.

Keep in mind that while you are circulating your petition to form the district that folks opposed to the district have the right under section 321.090 to circulate a counter petition. There is no minimum number of signatures required on a counter petition. You might want to keep quiet about your circulation of the petition, and only circulate it among known supporters, in order to prevent people from exercising their right to circulate a protesting petition. Or you may decide that being open, circulating the petition at all sorts of public events (the county fair, annual meeting of the local farmers cooperative, bake sales, and chili suppers) is an important way to identify positive voters and that you will undertake the risk of stirring up opposition. There is no clear way that is best, although my preference would be to keep matters relatively quiet at the beginning so that the real fight that comes after the judge has approved your application to form their district. Once your petition is finished, your attorney turns it into the circuit clerk. Generally a filing fee will have to be paid, although in some circuits it has been known for the court to waive the posting of a filing fee. The legalities on this point are not entirely clear. You might try to talk the circuit clerk into the idea that no fee should be required since this is not a typical lawsuit. In any event, the usual filing fees are relatively small (in the neighborhood of \$100) and it is not worth fighting over if you have to pay. After all, you do want the good will of the circuit clerk and the circuit judge, so do not make a big deal out of having to pay the filing fee.

Shortly after the petition is filed, the judge will hold a hearing to determine if there should be a fire protection district formed. The statute does not require that there be any sort of notice given to the citizenry of their right to appear at this hearing and to contest the formation of the district. Many circuit judges will want some sort of advertisement placed in the newspaper prior to this hearing so that citizens can say what they think about the idea of forming a new fire protection district. Similarly you should anticipate that the local newspaper will want to run a newspaper story about the proposal to form this new government. It would be wise to anticipate these matters and to be prepared to pay for a newspaper advertisement if that is what the circuit judge requests. Similarly you might prepare in advance a newspaper story about the formation of your district and give it to the local newspapers in the form of a "press release" to encourage favorable newspaper publicity.

After the circuit judge holds his hearing on the petition, the judge will enter an order creating the fire protection district and ordering an election.

It is impossible to predict how much a hearing will be required in a particular case. The statute says that the judge will decide that the formation of the fire protection district is reasonable, and that an election should be held. The judge has the power to change the boundaries from that which is listed on your petition. And he or she is empowered to give the new district a new name. One presumes that the judge will most likely use the name that you have proposed, and the boundaries that you have proposed particularly if there is no protest or visible opposition. If your proposal has created active opposition, the hearing on the proposed incorporation could last for several days. However, most of these things will require a hearing that lasts 5 minutes. You are much better off if you are able to get by with a hearing that lasts 5 minutes.

## Election

The judge's decision to incorporate a fire protection district is not final and conclusive. It must be approved by the voters who reside within the boundaries of the proposed district. Therefore the judge must order an election.

Under Missouri law there are only a few days available for an election. Elections cost money, and you may be required to pay the cost of holding the election. The date for the election is within the authority of the circuit judge to set; the conduct of the election will be by the county clerk (or in certain urban counties by the county election board).

The usual dates for holding an election in Missouri are:

- the first Tuesday after the first Monday in February (used only in certain municipal primary elections);
- the first Tuesday after the first Monday in March (used for certain other municipal primary elections);
- the first Tuesday after the first Monday in April (municipal election day, generally the cheapest election date in terms of cost);
- the first Tuesday after the first Monday in June (generally used for special elections);
- the first Tuesday after the first Monday in August (the general primary election usually held in even numbered years);
- the first Tuesday after the first Monday in November (a general election, generally only held in even numbered years); and
- the first Tuesday after the first Monday in October (generally available only to school districts for bond issues).

Most likely the circuit judge will order an election of the date you or your attorney suggests. It would be my recommendation that you choose the June election.

Certain factors need to be kept in mind in making your choice: First of all, the elections in April, August, and November generally have the highest turnout. Elections in February, March, June, and October generally have a very low turnout. Because your voters who are likely to vote "yes" will be motivated and you can get them to turn out it might be advantageous to have your election on a low turnout date. "No" voters might not have any other excuse to go to the polls on a special election date where nothing else is being voted, and might stay home.

A second factor to remember is that municipal tax levies, including the tax levy of a fire protection district, is supposed to be set by September 1<sup>st</sup> or October 1<sup>st</sup> if your fire protection district is located in a first class county. The tax bills are then prepared and mailed out and most tax payers pay their taxes on or before December 31<sup>st</sup> of each year. "Turnover" of money from the county collectors usually is in January. A fire protection district which is organized in the November or October election will generally not get any tax revenues at the end of the current calendar year, but will have to wait until the following year for income. For that reason I would avoid having your election in November or October unless it is absolutely necessary.

(The circuit judge may have the authority to order your tax bills sent out even though the district is not organized until after September 20<sup>th</sup>. If you are forced to use the October or November election dates you might want to ask the circuit judge to modify his decree of incorporation to provide that upon voter approval of the district and approval of the tax rate [see below] that the county clerk is ordered to accept late decision on taxes and to include the fire protection district taxes within the tax bill that is mailed out. The county clerk generally will not like such a judge doing that because it requires waiting to mail out the tax bills until after the election has been held. Before asking the circuit judge to do this you should see how much opposition the county

clerk will have to any such proposal.

A final consideration on the election date is the cost. Election cost money, and each political subdivision is expected to pay the cost for its election. The cheapest time to hold an election is in April, because the cost of the election is spread out over a larger number of political subdivisions. The county clerk could give you an estimate of what an April election would cost your proposed fire protection district. The June election date or any other special election is going to be more costly, particularly if the county clerk chooses to have multiple polling places.

In some counties the fire protection district has talked the county commission into the idea that the county commission should pay the cost of the fire protection district election for the first time, because it will be several months before the fire protection district has any money. However, the usual practice in most counties is to require advance payments by political subdivision before the election is held. You should talk to the county commission and/or the county clerk about the possibility of the county absorbing the cost of the first election. If the county will not do so, you should be prepared to pay that cost.

As mentioned above I recommend that you hold your election in June. That date will be more expensive than an April election, but the turn out will be much less. You can anticipate that maybe only 10% of the registered voters will show up at the June election. You are going to have to campaign actively for "yes" votes and get your voters to the polls. It is easier to get a majority where only 10 % show up at the polling place than it is if you get 30 % or 50% showing up.

## Sample Ballot Form

The statute relating to fire protection districts says at RSMo §321.120 that the form of ballots shall be as follows:

Shall there be incorporated a fire protection district?

Yes \_\_\_\_\_

No \_\_\_\_\_

However you should not blindly follow this form. In 1980 the voters of Missouri adopted an amendment to the constitution known as the Hancock Amendment. That amendment requires voter approval of each tax increase or new form of taxation.

The Hancock amendment may mean that any fire protection district that wants to have a tax will have to put up to the voters a second proposition relating to the maximum tax levy. The form of that question might be as follows:

Shall the \_\_\_\_\_ Fire Protection

District have authority to impose an ad valorem

property tax at the rate of \_\_\_\_\_ per \$100

assessed valuation?

Yes \_\_\_\_\_

No \_\_\_\_\_

The submission of two questions to the voters can result in the voters agreeing to form the district, but refusing to pay the taxes necessary to operate the district. Similarly they could approve the tax but disapprove of the district. This has led to some fire protection districts to combine the questions into a single one to be voted upon at one time, or to otherwise attempt to simplify the issues for the voters.

A researcher at the University of Missouri conducted a study in 1986 of ways various fire protection districts had reacted to the Hancock Amendment and reported that of the 34 districts studied, approximately 16 had presented only the first question to the voters and had ignored the Hancock Amendment. For these districts the legality of subsequent taxes is doubtful. The best alternative is to present voters with two separate ballot issues and with two separate boxes for yes and no. Some fire protection districts had presented two questions with one set of boxes, and others had combined the two questions into a single proposition with a single set of boxes for voting yes or no.

The proper way how to do this has not been litigated up to the appellate courts. I am aware of one circuit court decision that says having a combined question with only one set of boxes is improper.

It seems to me that the safest way to avoid litigation would be to choose to have two questions and two sets of boxes.

## Directors

In addition to the question about forming the district and imposing taxes that is submitted to the voters, the voters are asked to select directors for the fire protection district. These people are elected to office assuming that the fire protection district is going to be approved. The form of the ballot for the election of directors will be as follows:

### OFFICIAL BALLOT

#### Instructions to voters

Place a cross (X) mark in the square opposite the name of the candidate or candidates you favor. (Here state the number of directors to be elected and their term of office.)

### ELECTION

(Here insert name of district) Fire Protection District (Here insert date of election)

#### FOR BOARD OF DIRECTORS

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Keep in mind that Missouri law requires that there be a period of filing for office prior to the election. Generally filing for an office must be open from the thirteenth Tuesday prior to the

election through the ninth Tuesday prior to the election. In other words, if you are going to have an election in June, the date for filing for that office will generally be during the month of March. You must have your candidates selected to run for office and have them file for the office by the March date. Because of this open filing for the office it will be necessary to have your court hearing ordering election prior to the March filing period. Theoretically it is possible for the circuit court judge to shorten the filing period, but judges (like other politicians) have a bias in favor of democracy and do not like to cut off the people's right to be candidates or shorten the time for an election. You should anticipate that there will be some open filing for the election.

Missouri law requires that the fire protection district publish at least one time prior to the opening of the period of candidacy a notice in the newspaper to the public allowing the public to file for the office of fire protection district director. This notice will cost some money and you should be responsible for placing this in the newspaper. More importantly, you need to make sure that you recruit the necessary candidates and have them signed up early so as to preclude opponents making an effort to pack the board of directors.

Missouri law currently provides that the fire protection district directors serve six year terms and that there may be three or five directors. This is a decision that the organizers must make prior to the court appearance. It is my opinion that it would be better to have five directors instead of three. It seems that three directors have a tendency to fight all the time (two ganging up on one), while a board of five directors seems to run more smoothly. The circuit judge in his incorporation order will indicate how many directors there will be. The petition should spell out if there will be three or five directors. It should also be noted that you can start with three and expand to five at a later date.

The six year term for the board of directors as provided in the statute probably conflicts with the Missouri constitution's prohibition that no director's term should last longer than four years. However, the matter has not been litigated and most fire protection districts proceed on the assumption that the term of office for a director is six years.

There is no requirement that the fire protection district be divided into districts or wards, and all three or all five of the members of the first board of directors can live in the same geographical area. However in order to encourage support for your fire protection district it would be wise to get directors from geographically diverse locations. It would also be a good idea to encourage members of the board to be from diverse interest groups, again with the idea of increasing voter support of the district.

In order for a person to serve as a director on a fire protection district, he or she must be a registered voter for at least one year prior to his or her election of appointment, and he or she must be over the age of 25 years. There is a filing fee of \$5 that has to be paid to the treasurer of the county in order to file for the office.

## **Organization**

Once the voters have approved of the fire protection district, have authorized a tax levy, and have selected the directors, the real job begins. The new board of directors needs to be sworn in, the board organized, and the business of the district conducted.

It may be that you would want to have some sort of ceremony for the swearing-in of the new board members. The circuit judge is required after the election to enter a new order finalizing the district. At the same time that this order is entered you might want to schedule some sort of swearing-in of the elected officials who will constitute the new board of directors. This could be in the form of a victory celebration with persons invited who had been important to the formation of

the district. Maybe the circuit judge could be prevailed upon to participate in the ceremony and conduct it (You would need to ask in advance, of course.)

The Missouri constitution says that each person who takes a public office must swear an oath. (This requirement was once considered quite important—some persons who had fought for the Confederate States of America were unwilling to take such an oath.) The wording of the oath should be like this:

“I (state name) hereby swear an oath to support the Constitution of the United States and of this state, obey the statutes of Missouri relating to fire protection districts, support and enforce the ordinances of this fire protection district, and demean myself faithfully in office as a director of \_\_\_\_\_ Fire Protection District.”

Some people do not like to swear oaths, because they believe the Bible says you shouldn't do so. To accommodate the religious convictions the oath may be modified to:

“I (state name) hereby affirm an oath to support the Constitution of the United States and of this state, obey the statutes of Missouri relating to fire protection districts, support and enforce the ordinances of this fire protection district, and demean myself faithfully in office as a director of \_\_\_\_\_ Fire Protection District.”

Other people may want to add onto the end of the oath the statement:

“So help me God.”

This is a traditional part of an oath, but is not included in what the constitution requires to be said. (In fact, under our Constitution's separation of church and state, it is improper for a fire district to require inclusion of these 4 words. If the oath taker wishes to add them at the end, however, that is within his or her prerogatives. Most attorneys, however, would advise against the addition simply out of caution.)

Anyone who is a notary public or the county clerk can swear in these officers. I think that even the secretary to the fire protection district can do so (others are more cautious in this regard). However, on the first occasion you may want to make this a news-worth event and have some ceremony. That is up to you.

Before the board members can conduct any business, each board member must file with the circuit clerk a surety bond in the amount of \$1,000 from a corporate surety. The cost of these bonds is supposed to be paid by the district. (How the district, which has yet to receive any taxes, will pay is a good question for which there is no ready answer.) A surety bond is a type of insurance policy, which protects the taxpayers against any theft or loss of district property by the board member. This surety bond is supposed to be “approved” in form and amount by the circuit court.

[NOTE: the statute seems to say that the bond has to be procured and filed within 15 days after taking the oath. However, as a practical matter it is easier to get the bonds paperwork first, then take the oath, and then immediately file the bonds with the court and get immediate approval. That makes it easier for the judge, and also avoids you having to come back to court another time.

After the directors are sworn in, they need to organize themselves by selecting one person to serve as chair of the board and president of the district and another person to serve as secretary. The secretary does not have to be a member of the board of directors. If you are anticipating that

the district will have an employee to serve as part-time or full-time administrative officer, you may want to make that employee the secretary to the board.

The secretary of the board can also serve as treasurer of the board, or you may choose to select a different person to be treasurer. It is my opinion that it is wiser to have a different person serve as treasurer, so that there are two people watching the taxpayer's money, and one individual does not have complete discretion to write out checks. I have been involved in some litigation over a new fire protection district where the board of directors did not have sufficient control over the money and the individual who served as secretary/treasurer wrote out checks to herself that had apparently not been authorized by the board.

Another thing that should be done by the new board of directors is to immediately join the Missouri Association of Fire Protection Districts, if you have not already done so since a fire protection association may have free trial membership. There is also no charge for a fire protection district that does not have a tax and/or assessed valuation of less than \$10,000,000. So for the first year, at least, no dues will be owed. For more information, see the website at [www.mapfd.org](http://www.mapfd.org).

One of the major differences between a government and a private organization is the much tighter financial controls that are needed on government operations. For example, I believe it would be a wise idea to purchase a surety bond to cover anybody who handles the district finances (such as secretary and treasurer, and maybe the fire chief also.) The amount of the bond certainly should be more than the \$1,000 required for board members. The treasurer is also required to have a corporate fidelity bond of at least \$5,000; however, generally the upper limit on the bond should approach the maximum amount that could be stolen. So a treasurer might be required to have a bond of \$100,000 or more.

(Statistics show that about 4% of public employees will give into temptation to steal. Almost always the boards that employ these public employees will report that they had full confidence in the integrity of their employee, and believed that the employee "would never steal money from the public." In other words, don't put too much faith in your ability to tell who is honest.)

## **Transition**

A delicate bit of negotiation now must be undertaken by the board of directors. The board of directors of the new fire protection district does not own any piece of equipment, nor does it have a fire station or any firefighters. The old fire department or fire protection association continues to exist until properly dissolved. No doubt you want the fire department or fire protection association to give you its equipment and that its firefighters will agree to serve as firefighters for the new district. You should not assume that automatically these things will happen. Similarly you may want to take over the leases or ownership on the existing fire station(s) and use the same building(s). You should not assume that this is automatically going to happen.

I have been involved in some discussions with a fire protection district where the old fire department had been allowed to use the city hall as its fire station without paying any rent. However, once the new tax supported fire protection district came into existence, the city wanted to begin receiving rent payments. These are all matters of negotiation. It would be well for you to have worked out some agreement in advance of the election, but if that has not occurred the board will have to discuss all of these things with the appropriate parties. The board of the new fire protection district should consult the local attorney that is helping form the district to assist with these negotiations.

Also, the board needs to think about insurance coverage and maybe where it is going to get the money to operate until the receipt of taxes. All these problems involve the possibility of offending

or upsetting people and you need to be careful not to ruffle too many feathers—especially before the election to form the new district.

If you convince the fire department or fire protection association to turn over the fire trucks, the certificates of title for the fire trucks need to be transferred into the name of the new district. Similarly, if you convince the fire department or fire protection association to transfer its insurance (and perhaps continue to pay any premium that might come due before you get your tax money) you need to make sure the insurance policy is amended to indicate that it covers both the fire department or fire protection association and the new fire protection district.

It is likely that the fire protection association (or at least those members of the association who are not on the new board of directors for the fire protection district) will want something done about those persons who had paid memberships but who will be required to pay taxes at the end of the year. Are you going to return the money to the former members of the association? Are you going to return it only to those individuals who request the refund of their membership? Or are you going to take the position that the memberships continue until the end of the year and that the tax payments are to finance the upcoming year? You will find arguments in favor of each of these propositions; someone needs to make a decision. Probably the fire protection district board will have to negotiate with the association's board to reach some conclusions.

If you have additional questions, go to [www.mapfd.org](http://www.mapfd.org) to contact the Missouri Association of Fire Protection Districts.