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[Previous Case](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Case](#) [Print Only](#)

Question Submitted by: Rex Privett, Executive Director, Oklahoma Public Employees Retirement System

1984 OK AG 149

Decided: 02/04/1985

Oklahoma Attorney General

Cite as: 1984 OK AG 149, __ __

¶0 The Attorney General has received your request for an official opinion asking:

"Is an Emergency Medical Service District an 'Eligible Employer' within the meaning of Title 74 O.S. 902(14) (1981)?"

¶1 The most recent legislative enactment of section 902(14) is found in 74 O.S. 902(14) (1984), which provides in pertinent part as follows:

" 'Eligible employer' means the state and any county, county hospital, city or town, and any public or private trust in which a county, city or town participates and is the primary beneficiary is to be an eligible employer for the purpose of this act..."

¶2 Section 74 O.S. 902(14) is a part of the Oklahoma Public Employees Retirement Act, 74 O.S. 901 (1981) et seq. As noted in section 901, the purpose of the Act:

"[I]s to provide an orderly means whereby employees of the participating employers who qualify by reason of age, or condition, and service . . . may be transferred to inactive service without prejudice and without inflicting undue hardship upon the employees transferred, and to enable such employees to accumulate deferred income reserves for themselves and their dependents to provide for old age, death, and inactive service, and for the purpose of effecting economy and efficiency in the administration of governmental affairs." *See also, Oklahoma Public Employees Retirement System v. Nelson*, 421 P.2d 221 (Ok. 1966).

¶3 As can be seen from the above definition of the term "eligible employer" five general categories of governmental related entities fall within the definition. These are: (1) the State; (2) any county; (3) a county hospital; (4) a city or town; and (5) any public or private trust in which a county, city or town participates and is the primary beneficiary. *See*, A.G. Opin. No. 76-196.

¶4 In order for an Emergency Medical Service District to come within the ambit of section 74 O.S. 902(14) it would be necessary that such a District fall within one of the five categories outlined above. The beginning point of any inquiry as to whether any such District is an eligible employer is to determine what type of governmental entity an Emergency Medical Service District is.

¶5 Emergency Medical Service Districts may be established pursuant to the provisions of Article X , Section 9C of the Oklahoma Constitution for the purpose of providing ambulance service to persons residing in the District and those outside the District. A board of county commissioners or boards, if more than one county is involved, may call a special election in

order to determine whether such a District should be formed. Each District formed has a board of trustees who are chosen by the board or boards of county commissioners, as the case may be. The board of trustees has the power to hire appropriate personnel and to enter into contracts on behalf of the District. The board of trustees may also issue bonds for the purpose of acquiring emergency vehicles and other equipment and for maintaining and housing the same, if approved by a majority vote of the registered voters of any District voting at a special election. Such a District may be dissolved by a majority vote of the registered voters voting in a special election called for the purpose of dissolution.

¶6 The area of a District may include a county, a part thereof, or more than one county or parts thereof. If the area of any such District includes only a part or parts of one or more counties, the area is to follow school boundary lines.

¶7 Article X , Section 9C(o) of the Oklahoma Constitution further provides that, "[i]n lieu of proceeding to establish a district . . . through the county commissioners, the governing body of any incorporated city or town may . . . form a district, join an existing district or join with other incorporated cities or towns in forming a district." In such a situation the governing body of the city or town is substituted as to the powers and duties of the county commissioners, as set out above. Article X , Section 9C(o) further provides that a city or town forming a District, "shall be considered as being substituted as to the powers and duties of a district"

¶8 When one views the above constitutional scheme by which Emergency Medical Service Districts draw their existence it can be seen that said Districts do not easily fit within any of the five categories of eligible employers set forth in section 74 O.S. 902(14). Any District formed is a hybrid type governmental entity that can best be categorized as a constitutional body having a distinct identity separate from those governmental entities set forth in 74 O.S. 902(14) (1984).

¶9 In making the determination of whether or not an Emergency Medical Service District comes within the ambit of section 74 O.S. 902(14), one must keep in mind that the cardinal rule of statutory construction is that the intention of the Legislature must govern when ascertained. *Independent School District No. 89 of Oklahoma County v. Oklahoma Federation of Teachers, Local 2309 of the American Federation*, 612 P.2d 719, 721 (Okl.1980). Further, in this regard, by legislative enactment in Oklahoma:

"Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears...." 25 O.S. 1 (1981).

¶10 In conformity with the above principles, it is clear that any such District is not a county hospital which is authorized to be built pursuant to 19 O.S. 781 (1981) et seq. Further, it is not a county, city or town, or even a part thereof, even though such entities are involved in a District's creation or dissolution. As noted in Article X , Section 9C(a) of the Oklahoma Constitution, the area of a District "may embrace a county, a part thereof, or more than one county or parts thereof . . ." and, as such, the District is not necessarily confined to county or city boundary lines. The employees of any District formed are not employees of a county, city or town that may form a part of a District, but they are employees of the District. See, A.G. Opin. No. 83-154, pp. 3-4.

¶11 In *Board of County Commissioners v. Robertson*, 130 P.947 (Okl. 1913), the Oklahoma Supreme Court held that a drainage district was a separate, independent and distinct entity from a county. The Court there noted that a drainage district, "is not brought into existence or created for the purpose of either county, township or any other species of municipal government." *Id.* at 949.

¶12 Further, in *Armstrong v. Sewer Improvement District No. 1*, 199 P.2d 1012 (Okl. 1948), *rev'd on other grounds*, 207 P.2d 917, the Oklahoma Supreme Court concluded that a sewer improvement district was not a political subdivision of the state as contemplated by Article X, Section 26 of the Oklahoma Constitution and, thus, not subject to the debt limitations contained therein. Section 26 provides in relevant part, "no county, city, town, township, school district or other political corporation, or subdivision of the state, shall be allowed to become indebted, in any manner, or for any purpose"

¶13 In interpreting section Article X, Section 26 in relation to a sewer improvement district, the Court in *Armstrong* held that:

"[T]he district is not such a political subdivision or corporation [T]he sewer improvement districts therein provided for are not organized for political or governmental purposes and do not possess political or governmental powers other than those necessary to carry out the specific purposes for which they are created. They are in no sense additions to or agencies in aid of the general government of the state, or in the aid of any governmental agencies or functions, but are purely for the purpose of promoting the welfare and benefit of the inhabitants of that particular district." *Id.* at 1014-1015.

¶14 Emergency Medical Service Districts are similar to drainage and sewer improvement districts in that they are not organized for political or governmental purposes. They are created solely for the purpose of promoting the welfare and benefit of the inhabitants of such District by providing for ambulance service to the residents of the District. Accordingly, any District so formed is not a county, city or town, or part thereof, as contemplated by 74 O.S. 902(14) (1984).

¶15 It is further clear that an Emergency Medical Service District is not the State for purposes of 74 O.S. 902(14) (1984). The employees of any such District formed and the board of trustees thereof are not state employees or officers, but they are employees or officers of the District. See, A.G. Opin. No.83-154, pp. 3-4. None of the employees of the District are paid by the State and nowhere in Article X, Section 9C is reference made that any such District is a state agency or institution. Although A.G. Opin. No. 83-154, *supra*, found that the manager of a district ambulance service is subject to the nepotism laws of the State and that a District's board of trustees is subject to the Oklahoma Open Meeting Act (25 O.S. 301 - 25 O.S. 314 (1981)) these findings were not at all based on any conclusion that a District could be categorized as the State or a state agency. In fact, it is clear from reading the State's nepotism laws, 21 O.S. 481 - 21 O.S. 487 (1981), and the Open Meeting Act, that the broad inclusive language contained therein was meant to encompass virtually all public entities or bodies, including an Emergency Medical Service District. A review of 21 O.S. 481 and 21 O.S. 487 further makes clear by the inclusion of the term District therein, that when the Legislature intended to include a governmental entity such as an Emergency Medical Service District within the scope of a state law it specifically used the term District, in addition to reference to state departments, counties or municipal governmental entities. Thus, it can be seen that any District so formed is not the State for purposes of its inclusion as an eligible employer under section 74 O.S. 902(14) even though it may be subject to certain state laws because it is a public governmental entity or body.

¶16 It remains, then, to be determined whether an Emergency Medical Service District is either a public or private trust in which a county, city or town participates and is the primary beneficiary.

¶17 In the State of Oklahoma, by legislative enactment, it is provided that:

"Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears." 25 O.S. 2 (1981).

¶18 In this regard, although the terms private or public trusts are not specifically defined within the statutes of the State of Oklahoma, such trusts may be created pursuant to the Oklahoma Trust Act, 60 O.S. 175.1 (1981) et seq., or 60 O.S. 176 (1981) et seq. (trusts for furtherance of public functions). These statutes set forth a comprehensive scheme governing the manner or mode of creating a private or public trust in the State of Oklahoma. As to a definition of a trust the Oklahoma Trust Act provides that the term "means an express trust only...." 60 O.S. 175.3(F) (1981).

¶19 In section 60 O.S. 175.6 of the Oklahoma Trust Act, the various methods for creating a trust are set forth. Further, in sections 60 O.S. 176 and 60 O.S. 177, the mode for creating a public trust is outlined. As can be seen from a review of the above statutes, the creation of an Emergency Medical Service District is not even remotely related to the mode of creation of a private or public trust pursuant to sections 60 O.S. 175.6 / 60 O.S. 176 or 60 O.S. 177. The constitutional provisions which allow for the formation of these Districts do not provide that they are either private or public trusts and their formation is not accomplished in the traditional manner of creating a trust where some form of trust indenture, declaration, instrument or will is utilized. Emergency Medical Service Districts are politically created by a vote of the people in the area affected. In that Emergency Medical Service Districts do not draw their existence from any of the above statutory provisions, but are specifically formed pursuant to the provisions of Article X , Section 9C of the Oklahoma Constitution, any District formed pursuant to the provisions of Section 9C would not be a trust as contemplated by those statutory provisions and, therefore, any such District would not be a trust as contemplated by 74 O.S. 902(14) (1984) for "eligible employer" status thereunder.

¶20 As noted above, 60 O.S. 175.3 (1981) defines the term trust as meaning an express trust only. Section 60 O.S. 176 further speaks in terms of an express trust for the furtherance of public functions. Therefore, in conformity with 25 O.S. 2 (1981), the term trust as it is used in 74 O.S. 902(14) (1984) must be given the same meaning, that is an express trust only, unless a contrary intention plainly appears therein. No such contrary intention plainly appears and it is clear that Emergency Medical Service Districts formed pursuant to Article X , Section 9C of the Oklahoma Constitution are not express private or public trusts and they were not intended by the Legislature to be included under section 74 O.S. 902(14).

¶21 Furthermore, the Legislature, in defining the various emergency medical facilities available for providing emergency medical care to citizens of the State, appears to distinguish ambulance service districts created pursuant to either Article X , Section 9C of the Oklahoma Constitution or 19 O.S. 1201 (1981) et seq. (Rural Ambulance Service Districts Act) from ambulance authorities, which are defined as "any public trust established by the state or any unit of local government or combination of units of government...." 63 O.S. 330.77 (1981) (Emergency Medical Care, 63 O.S. 330.71 (1981) et seq.). All of the above factors point to the plain conclusion that the Legislature did not intend to include an Emergency Medical Service District as an eligible employer under the categorization of a private or public trust.

¶22 As noted in A.G. Opin. No. 76-196, an opinion concerning whether the employees of Manpower Program Operators, an entity created under the Interlocal Cooperation Act, 74 O.S. 1001 (1971) et seq., were eligible to participate in the Oklahoma Public Employees Retirement System, "if the intent of the Legislature be to include [such] entities. . as an 'eligible employer' . . . such an inclusion may be remedied by appropriate legislation." To date, the Legislature has not so provided

¶23 It is, therefore, the official opinion of the Attorney General that an Emergency Medical Service District is not an "eligible employer" within the meaning of 74 O.S. 902(14) (1984).

MICHAEL C. TURPEN
ATTORNEY GENERAL OF OKLAHOMA
JOHN GALOWITCH
ASSISTANT ATTORNEY GENERAL

Citationizer[®] Summary of Documents Citing This Document**Cite Name Level**

None Found.

Citationizer: Table of Authority**Cite Name****Level****Title 19. Counties and County Officers**

| Cite | Name | Level |
|----------------------|---------------------------------|-------|
| <u>19 O.S. 781,</u> | <u>Bonds - County Hospitals</u> | Cited |
| <u>19 O.S. 1201,</u> | <u>Short Title</u> | Cited |

Title 21. Crimes and Punishments

| Cite | Name | Level |
|---------------------|---|-----------|
| <u>21 O.S. 481,</u> | <u>Employment of Relatives Unlawful - Divorce Terminates Limitation - Exception</u> | Discussed |
| <u>21 O.S. 487,</u> | <u>Executive, Legislative, Ministerial or Judicial Officers</u> | Discussed |

Title 25. Definitions and General Provisions

| Cite | Name | Level |
|---------------------|---|-----------|
| <u>25 O.S. 1,</u> | <u>Meaning of Words</u> | Cited |
| <u>25 O.S. 2,</u> | <u>Application of Statutory Definitions</u> | Discussed |
| <u>25 O.S. 301,</u> | <u>Short Title</u> | Cited |
| <u>25 O.S. 314,</u> | <u>Violations - Criminal Penalties - Civil Relief</u> | Cited |

Title 60. Property

| Cite | Name | Level |
|-----------------------|--|---------------------|
| <u>60 O.S. 175.1,</u> | <u>Short Title</u> | Cited |
| <u>60 O.S. 175.3,</u> | <u>Definitions</u> | Discussed |
| <u>60 O.S. 175.6,</u> | <u>Creation of Trust</u> | Discussed |
| <u>60 O.S. 176,</u> | <u>Trusts for Benefit of State, County or Municipality - Approval - Expenditures - Bylaws - Amendments - Indebtedness - Bonds - Contracts.</u> | Discussed at Length |
| <u>60 O.S. 177,</u> | <u>Reformation of Offending Instruments</u> | Discussed |

Title 63. Public Health and Safety

| Cite | Name | Level |
|------------------------|-----------------|-------|
| <u>63 O.S. 330.71,</u> | <u>Repealed</u> | Cited |
| <u>63 O.S. 330.77,</u> | <u>Repealed</u> | Cited |

Title 74. State Government

| Cite | Name | Level |
|------|------|-------|
|------|------|-------|

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|----------------------|--------------------|---------------------|
| <u>74 O.S. 901,</u> | <u>Purpose</u> | Cited |
| <u>74 O.S. 902,</u> | <u>Definitions</u> | Discussed at Length |
| <u>74 O.S. 1001,</u> | <u>Purpose</u> | Cited |