


OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan  
County Executive

Charles W. Thompson, Jr.  
County Attorney

**MEMORANDUM**

TO: Bruce Romer, CAO

FROM: Charles W. Thompson, Jr. 

SUBJECT: Acquisition, construction and operation of DFRS Fire Station

DATE: June 19, 2003

You have asked me whether the County has the necessary legal authority to acquire property to build and operate a fire station without transferring that station's title and operation to a local fire department and if so authorized, what steps are necessary to achieve that goal.

The answer to your question is governed almost entirely by Chapter 21 of the Montgomery County Code. Section 21-26(g) requires the Commission to assign operational control of new fire stations to a local fire and rescue department, unless both the Executive and Council concur in an assignment to the Fire and Rescue Service.

For purposes of operation, the Commission must assign fire stations when built or acquired to a local fire and rescue department or, with the concurrence of the County Executive and County Council, to the Fire and Rescue Service. This Section does not preclude the Fire and Rescue Service from operating a fire station as otherwise provided by law.

The last sentence of this provision specifically notes that the section was not intended to prohibit the Fire and Rescue Service from operating fire stations "as otherwise provided by law." I am unaware of any other provision that authorizes the Fire and Rescue Service to operate a fire station under the Montgomery County Code. Thus, upon opening a new fire station, the Commission assigns authority for operating the station and can only make that assignment to the Fire and Rescue Service with the concurrence of both the Executive and Council. (An approved CIP reflecting assignment of operational control to the Department of Fire and Rescue Services arguably suffices to reflect this joint concurrence.) Similarly, the Commission must also designate response areas for each station. Chapter 21, §21-10.

There are a number of other pertinent provisions of which you should be aware. As with

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any capital facility, the project must be reviewed by the Planning Commission under a process known as "mandatory referral." Article 28, §7-112 Md. Code Ann. In addition, Article 28 also discusses "functional plans" as part of the Master Plan process. Functional plans include plans for fire stations among a number of other important public facilities. Article 28, §7-108(c). The County Code, in §21-12, provides direction to the Commission to develop a master fire and rescue plan that arguably includes planning for the location of fire stations. Neither Article 28, §7-108(c), nor County Code §21-12, however, prohibit the acquisition or construction of fire stations that do not comply with those respective plans.

Another provision that applies to construction of a new fire station directs the Executive not to designate a site for a new fire station (either new, or relocated) without first securing the Council's approval of the site.

A local fire and rescue department must not change the location of any facility used to provide fire and rescue services in the County without receiving approval of the County Council. The County Executive must not approve a site for any fire or rescue squad station or other facility used to provide fire or rescue services unless the County Council has first approved the location or relocation of the facility.

Montgomery County Code, §21-5(b). As you know, fire stations acquired with tax funds must be titled in the name of the County since July 30, 1980 with one exception. If a station is built after July 1, 1999 and the County and the local department agree, the two can hold the title to the station in concurrent ownership provided, the station fits within the adopted mater fire, rescue, and emergency services plan; the local department contributes roughly half of the cost; and the CAO contracts with the local department to assure continued operation of the station. Montgomery County Code, Chapter 21, §21-26(b).

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