

implied under a statute conferring general police power on the counties. *State ex rel. Mitchell v. Superior Court of Dane County*, 14 Wis.2d 77, 109 N.W.2d 522 (1961); *Pruitt v. State*, 16 Wis.2d 169, 114 N.W.2d 148 (1962). Accordingly, the police power of the counties in the regulation of truck traffic on county trunk highways, is limited to sec. 349.15(2), Stats., which provides, in part:

“The county highway committee ... may designate all or parts of such highways to be class ‘B’ highways for the purpose of putting into effect the weight limitations set forth in s. 348.16 ....”

The question arising under sec. 349.15(2), Stats., is whether the designation of a county trunk highway as a Class “B” highway must be grounded on the physical condition of the highway. Another way of putting the issue is to ask, may the county highway committee designate a highway as a Class “B” highway even though it is fully capable of carrying the load limitations of a Class “A” highway?

I see no legitimate basis upon which to conclude that the police power under sec. 349.15(2), Stats., may only be exercised in reference to the physical carrying capacity of the highway. Cities and villages are not so restricted when they create “truck routes” under sec. 349.17, Stats. It appears the only limitation on cities and villages in the establishment of “truck routes” is the abutting residents’ right of ingress and egress. *Hartung v. Milwaukee County*, 2 Wis.2d 269, 86 N.W.2d 475 (1957).

At least, since *State ex rel. Saveland P. H. Corp. v. Wieland*, 269 Wis. 262, 69 N.W.2d 217 (1955), the court has recognized as legitimate the use of the police power to preserve or promote public convenience or general prosperity. Preservation of property values falls within the police power. *Wieland*, 269 Wis. at 290.

Unlike sec. 349.16, Stats., which does limit the exercise of the police power to situations involving the condition of the roadbed, sec. 349.15, Stats., is silent. Therefore, it is only reasonable to conclude the Legislature did not intend to restrict the counties’ police power under sec. 349.15, Stats., and such power may be exercised when it is deemed by the highway committee to be in the interest of the public welfare.

It is my opinion that counties do not have authority to permanently exclude all truck traffic from a county trunk highway.

Under the police power authority of sec. 349.15, Stats., counties may regulate or limit truck traffic by changing the highway classification from “A” to “B.” The county highway committee determination to change the highway classification, as authorized by sec. 349.15, Stats., need not be based on the physical condition of the roadbed, but may be based on other appropriate police power considerations such as to promote the general welfare of the public.

The question was not asked and no consideration was given to what effect, if any, such reclassification would have on eligibility for federal or state road aids.

BCL:CAB

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*Anti-Secrecy; Cities; Collective Bargaining; Fire Department; Municipal Corporations; Municipalities; Open Meeting; Towns; Villages; Volunteer fire department organized as a nonprofit corporation pursuant to sec. 213.05, Stats., is not a governmental or quasi-governmental corporation and is not subject to provisions of the open meeting law, secs. 19.81-19.98, Stats. OAG 32-77*

April 6, 1977.

JACK MILL, *Chief*

*Palmyra Volunteer Fire Department*

Pursuant to sec. 19.98, Stats., you ask whether the Palmyra Volunteer Fire Department is subject to the provisions of the open meeting law, secs. 19.81-19.98, Stats., as created by ch. 426, Laws of 1975.

You state:

“The Palmyra Volunteer Fire Department is incorporated under the laws of the State of Wisconsin and is a non-profit organization engaged in providing fire protection service to the Palmyra Fire Protection District, which consists of the Village of Palmyra and Town of Palmyra, Jefferson County, Wisconsin.

“The Department holds regular monthly meetings and on occasion special meetings. The Department is primarily engaged in personnel matters and the raising of money for the

purchase of fire equipment by the holding of carnivals, picnics, etc. The Department makes budget recommendations to the Palmyra Fire Protection District but has no other control over the budgeting process. The Palmyra Fire Protection District receives funds from the Village and Town to provide fire protection service but none of the money at any time is under the control of the Palmyra Volunteer Fire Department.”

The answer to your question depends on whether the Palmyra Fire Department is a “governmental or quasi-governmental corporation” within the meaning of sec. 19.82(1), Stats., which describes the governmental bodies subject to the open meeting law as follows:

“(1) ‘*Governmental body*’ means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a *governmental or quasi-governmental corporation*; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. IV or V of ch. 111.” (Emphasis added.)

I am of the opinion that the Palmyra Fire Department is not a “governmental or quasi-governmental corporation” within the meaning of sec. 19.82(1), Stats., and is not a governmental body subject to the provisions of secs. 19.81-19.98, Stats.

The Palmyra Volunteer Fire Department was apparently organized as a nonstock, nonprofit corporation under ch. 181, Stats., pursuant to authority granted in sec. 213.05, Stats. It qualifies as a fire department under sec. 213.08, Stats. If it is located in a village, powers of the trustees are in part governed by sec. 213.02, Stats., and under sec. 213.04, Stats., the village board of trustees would have power to disband the company.

In *Tonn v. Strehlau*, 265 Wis. 250, 61 N.W.2d 486 (1953), it was held that a volunteer fire company organized under sec. 213.05, Stats., was a privately organized corporation but that a town could appropriate money to such corporation for a public purpose.

Section 60.29(18), Stats., authorizes a town board to establish a fire department or join with other towns, cities or villages in establishing a joint fire department; to contract with any fire

department established by a town, city or village; or to contract “with any fire association, corporation or individual for the maintaining, housing and manning of the fire fighting equipment of such fire departments,” and sec. 60.29(18m), Stats., makes a town liable for the services of “any fire department ... appearing to fight fire in such town upon request” where the town does not provide protection under sec. 60.29(18), Stats.

In *Rockwood Volunteer Fire Dept. v. Town of Kossuth*, 260 Wis. 331, 50 N.W.2d 913 (1952), the court held that the Town of Kossuth which had no fire department and had not contracted with one for protection, was liable for services provided even where the request came from a private citizen.

However, the fact that a private corporation provides fire service and receives payment therefor, pursuant to sec. 60.29(18m), Stats., or under contract with a town pursuant to sec. 60.29(18), Stats., does not in my opinion change the status of such corporation to a “governmental or quasi-governmental corporation.” Even though a corporation may serve some public purpose, it is not a “governmental or quasi-governmental corporation” under sec. 19.82(1), Stats., unless it also is created directly by the Legislature or by some governmental body pursuant to specific statutory authorization or direction.

BCL:RJV

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*Automobiles And Motor Vehicles; Criminal Law; Highways; Indians; Land; Law Enforcement; Licenses And Permits; Motor Vehicle Department; Motor Vehicles; Public Lands; Right Of Way; Transportation;* The state has jurisdiction over members of the Menominee Tribe on public roads and highways within the Menominee Reservation in respect to the enforcement of state traffic laws that are necessary to protect the highways against depredation or that would impair their use as a public right-of-way. State law enforcement officers can arrest any person who commits a federal offense in their presence. OAG 33-77