

ORDINANCE
97-02

AN ORDINANCE PURSUANT TO KRS 65.182, THE CREATION OF THE SPECIAL TAXING DISTRICT, KNOWN AS THE FAIRDEALING/OLIVE FIRE PROTECTION DISTRICT AND, THE FIXING OF THE BOUNDARIES AND AD VALOREM PROPERTY TAX.

Be it ordained and enacted by the Fiscal Court by the county of Marshall, Commonwealth of Kentucky; that:

1. A petition was submitted and accepted by the Marshall County Fiscal Court to hold a public hearing to determine whether there is justification for the formation of a special taxing district for Fairdealing/Olive Volunteer Fire Department. The public hearing was set for June 5, 1995 at 7:00 P.M.

2. After advertisement in the Tribune Courier, a public hearing was held on June 5, 1996 at 7:00 P.M. Marshall County Judge/Executive, Mike Miller, gave an opportunity to everyone in opposition or those in favor of said petition to speak.

3. On June 27, 1995, the Marshall County Fiscal Court in regular court business voted on whether to change Fairdealing/Olive Fire Protection District to a special taxing district. The vote was two(2) for and two(2) against, which was a tie vote, therefore, the Motion to create a taxing district failed.

4. Thereafter the 28th day of March, 1997, by order of Judge Bill Cunningham, special judge for the Circuit Judge of Marshall County voted to overturn the Marshall County Fiscal Court decision and ordered the approval for the petition for the establishment for the Fairdealing/Olive Fire Protection District.

Wherefore, it be further ordained and enacted by the Fiscal Court, County of Marshall, Commonwealth of Kentucky that:

5. The following areas shall be designated as the Fairdealing/Olive Fire Protection District:

The eastern boundary of the district consists of Jonathan Creek and Kentucky Lake, beginning at the center of the Barnett Cemetery Road where its line extended intersects with the western bank of Jonathan Creek; thence in a northerly and northeasterly direction along the western and northwestern shore of Jonathan Creek to its confluence with Kentucky Lake; thence in a northwesterly direction along the western bank of Kentucky Lake to the point of divergence into Big Bear Creek; thence in a westerly and southwesterly direction along the eastern bank of Big Bear Creek following said

bank until it turns in a northerly direction to the point where King Creek Road extended would intersect with the bank of Big Bear Creek; thence in an easterly direction along the southern boundary of the East Marshall Fire District running generally south of highway 58 to the point where highway 58 intersects with highway 68 and the Benton-Birmingham Road, which is also the corner of Palma-Briensburg Fire District; thence continuing in a westerly direction along the southern boundary of the Palma-Briensburg Fire District to the intersection of Tubbs Road and the Benton Birmingham Road; Thence in a southerly direction along Tubbs Road to its intersection with highway 408; thence in a westerly direction along the highway of 408 to the East Fork of the Clarks River, to include Stephen J. Trail and Steve Poole Road; thence in a generally southeasterly direction along the eastern bank of the aforesaid east fork of Clarks River, thence in a westerly direction along the center of Bismark Lane extended and so crossing highway 962; thence continuing along the extended center line of Barnett Cemetery Road to the point of beginning. The district shall include the entirety of any parcel or tract of real estate which is divided by, lies along, adjoins, or contacts the above described boundary line, in all instances other than where the above described boundary line runs along the center line of Bismark Lane extended and Barnett Cemetery Road extended. The district specifically excludes any tract or parcel of real estate that is located in another fire protection taxing district.

6. Pursuant to the Petition filed the ad valorem tax to be levied to all tax bills within this particular district of the county shall be at a rate of 10.0 cents per \$100.00 assessed value.

7. The creation of the Fairdealing/Olive Fire Protection District special taxing district shall be of legal effect upon the adoption of this Ordinance in accordance with the requirements of KRS 67-075 and KRS 67.077, and compliance with the requirements of KRS 65.055.

8. A Certified Copy of this Ordinance creating the Fairdealing/Olive Fire Protection Special Taxing District shall be filed with the County Clerk who shall add the levy to the tax bills of the county. For taxing purposes, the effective date of the tax levy shall January 1, 1998, which is the year following the certification of the creation of the special taxing district.

9. Nothing in this Ordinance shall be construed to enlarge upon or to restrict the powers granted to a Special Taxing District under the taxing district specific authorizing statutes.

SUBMITTED BY:

DONALD E. THOMAS
MARSHALL COUNTY ATTORNEY

INTRODUCED AT A REGULAR MEETING OF THE MARSHALL COUNTY FISCAL COURT HELD ON THE 15th DAY OF APRIL, 1997, ADVERTISING IN MARSHALL COUNTY AND ADOPTED BY THE FISCAL COURT OF MARSHALL COUNTY AT A REGULAR MEETING ON THE 6th DAY OF May, 1997 AND OF THE SAME OCCASION SIGNED IN OPEN SESSION BY THE COUNTY JUDGE/EXECUTIVE AND THE COUNTY COMMISSIONERS AS EVIDENCE OF THEIR APPROVAL, ATTESTED UNDER SEAL OF THE CLERK OF THE MARSHALL COUNTY COURT CLERK AND DECLARED TO BE IN FULL FORCE AND EFFECT.

Mike Miller
MIKE MILLER
COUNTY JUDGE/EXECUTIVE

Jerome L. Hicks
JEROME HICKS
COMMISSIONER DISTRICT 1

Gordon Hargrove
GORDON HARGROVE
COMMISSIONER DISTRICT 2

Jerry English
JERRY ENGLISH
COMMISSIONER DISTRICT 3

ATTESTED:

Dan Duke
DANIEL E. DUKE
MARSHALL COUNTY COURT CLERK

COMMONWEALTH OF KENTUCKY
MARSHALL CIRCUIT COURT
CIVIL ACTION NO. 95-CI-00251; 97-CI-00042

ENTERED 3-31-97
LINDA CAROL FISK
CIRCUIT CLERK
MARSHALL COUNTY
BY P. B. [signature]

TED DEZUTTER, ET AL

PLAINTIFFS

VS

ORDER REVERSING

MARSHALL COUNTY FISCAL COURT

DEFENDANT

This is a consolidated action arising out of a decision made by the Marshall County Fiscal Court concerning the creation of a special taxing district for the Fairdealing-Olive Volunteer Fire Department. At its meeting on June 27, 1995, which was held after a public convocation on June 5, 1995, the Marshall County Fiscal Court was deadlocked on the creation of such a district; and therefore the action died for lack of a majority.

The Plaintiffs appealed the decision to this Court and pursuant to a Court Order entered December 23, 1996, this matter was remanded to the Marshall County Fiscal Court for the purpose of adopting new written findings of fact, either approving or disapproving the formation of the taxing district for the Fairdealing-Olive Volunteer Fire Department, which would be known as the Fairdealing Fire Protection District.

On January 22, 1997, Findings of Fact pursuant to KRS 65.182 and the Court's Order entered on December 23, 1996, were filed.

The Court must now once again review the findings and record of the public hearing to determine whether it should approve or

disapprove the action of the Marshall County Fiscal Court in failing to establish the fire protection district. The Court may reverse the action of the Fiscal Court only if after reviewing the findings and record, it finds the decision in denying the establishment of the fire district to be arbitrary or capricious. (KRS 65.186(2))

In the Court's Order entered on December 23, 1996, the Court suggested the type of questions the Fiscal Court should confront in composing its new Findings of Fact. These were simply put forth by the Court to provide guidance for the Fiscal Court, and were not intended to be rigid in their application. Nevertheless, the Fiscal Court has responded in their findings by simply answering the questions suggested by the Court.

The essence of the findings required pursuant to KRS 65.182 lies in Question No. 9 in the findings.

Reduced to its simplest form, is a taxing district for the Fairdealing-Olive community a good idea or a bad idea? Why or why not?

In reviewing the Findings of Fact, the Court notes that the County Judge Executive and two of the three commissioners believe and so find that a taxing district for the Fairdealing-Olive community was a good idea. One of those three who voted against it has qualified his finding, however, in stating that he believes the majority of people were not for an additional tax on their property and therefore it was a bad idea at this time. (emphasis added)

A summary of the Fiscal Court's findings reflects the following. The Fiscal Court believes there is a need for a fire

district in the Fairdealing-Olive community; and while the funding is sufficient to operate the fire department at its current level, it is not sufficient to modernize, upgrade or purchase new equipment. Other options are available to fulfill the need of these citizens, but only if a majority of the people participate.

What is, for the purpose of review by this Court, "arbitrary and capricious"? Trimble Fiscal Court v. Snyder, 866 S.W.2d 124 (1993) defines an action as being arbitrary "...if there is no rational connection between that action and the purpose for which the body's power to act exists." If the existence of such rational connection is "fairly debatable," the action will not be disturbed by this Court.

In further guidance from the Trimble case, a decision by a governmental body is arbitrary if there is not substantial evidence to support the decision made. Here the Plaintiffs on appeal to Circuit Court must show from the record that the evidence in their favor was so compelling as to mandate a finding in their favor. In other words, no reasonable person would not find in their favor. If the evidence or record is not so compelling, then the decision is not considered arbitrary. Landgrave v. Watson, 593 S.W.2d 875 (1979).

This Court must then go back and review the public hearing to determine whether the findings are supported by evidence presented at that hearing and also to determine if there was substantial evidence to support the decision to deny the request for a taxing district. As mentioned in the Court's previous Order and as required

by law, the Court's review is limited to a record of the public hearing held on June 5, 1995.

At the June 5, 1995, hearing which was attended by numerous people, only three persons spoke out against the establishment of a taxing district. The essence of the opposition was that they were against additional taxes, and they contended that a majority of the people were against a taxing district.

Evidence presented at the public hearing in favor of the establishment of a taxing district was overwhelming. A video tape was shown to depict the comparison of the poor quality of equipment now existing at the Fairdealing-Olive Fire Department with those of neighboring taxing districts. A mini-thesis put together by Pat D. Trevathan was read by a citizen. (Trevathan holds an Associate Degree in Fire Science Technology from Paducah Community College; and a Bachelor of Science Degree in Technical Education, a Master of Science in Industrial Education, and a Certificate of Administration and Coordination of Technical Programs-Fire Technology and Technical Education, all from Murray State University; as well as twenty years of service as a firefighter and officer with the Paducah Fire Department; nineteen years of membership as a volunteer fire officer; and is a President Emeritus of the Associated Professional Firefighters of Kentucky and currently sitting as Parliamentarian of the Kentucky Firefighters Association.) This thesis basically concluded that equipment in taxing districts was far superior to that of non-taxing districts. Or, put another way, persons residing and having property located

in fire taxing districts in the county were better protected than those having property located in a non-taxing district.

Significantly, Trevathan's report addresses the Fiscal Court's finding as to other options available for funding fire protection in the district. Contrary to the finding that other options, such as private subscriptions, are available, Trevathan states in his thesis:

District residents who provide revenue by subscription are not likely to swell the department coffers to the point that a new pumper can be backed into the station. Hand-me-downs from municipal departments and taxing districts is the best non-taxing districts can hope for.

In other words, there may be other options available, but they are inferior to that which can be provided by the establishment of a fire taxing district.

Dr. Abram Allen, Chairman of the Administrative Board of the Lakeland Wesley Village--a retirement center located within this district--corroborated Trevathan's report by giving his observations as to how the Reidland-Farley Fire Department vastly improved once it went from a non-taxing to a taxing district.

Findings presented by the Fiscal Court stated that the Court was not presented with any evidence concerning how the insurance rates would change under a taxing district. However, a review of the transcript of the hearing reflects that Roy Riley of Peel & Holland Insurance spoke on behalf of the formation of the taxing district by stating that insurance rates were likely to be reduced substantially.

Of course, there were also several people at the public

hearing representing subdivision and groups speaking on behalf of the taxing district. For whatever it is worth, it would appear that there were substantially more people at the hearing speaking on behalf of the district than were there to speak against it.

Once again, the evidence presented at the public hearing calls into serious question the Fiscal Court's findings that other options are available. In its findings, the Fiscal Court stated that there were other options available such as private subscriptions, albeit it was with a caveat that a majority of the citizens would have to participate. The Court notes with interest that Harry Gilbert, Treasurer of the Fairdealing-Olive Fire Department, stated that only an average of one in four residents in the district have paid their dues. He also informed the Fiscal Court that he had sent sixty-seven delinquent notices and only eight had paid and then only their current dues and not the arrearage. This testimony refutes the opinion of one of the Commissioners that the current fire department could be sufficiently funded if they worked harder at getting additional subscriptions. These facts call into serious question whether the current subscription method is even sufficient to operate the fire department at its current level as was concluded by the Fiscal Court in one of its findings.

The Plaintiffs' Plan of Service and Charter for the proposed Fairdealing Fire Protection District provides further evidence of the need for a taxing district. This evidence of record and presented to the Court stated that a fire protection taxing district would allow the property owner within its service area to

have at least a Class 7-9 split rating on their insurance (Class 7 rating if within 1,000 feet of a fire hydrant; Class 9 rating if more) as opposed to the current Class 10 rating--a rating under which many companies will not write policies. There was evidence that the class rating could go as low as a Class 6, inuring substantially to the monetary benefit of the residents. The evidence further revealed that the average homeowner in Marshall County is a senior citizen, and less able to financially recover from fire loss.

It appears to this Court that the evidence was overwhelming and substantial to support the establishment of a fire taxing district. As stated earlier, the evidence convinced three members of the Fiscal Court that it was a good idea, but it apparently failed because of a purely political consideration.

Lastly, the Court has reviewed the transcript of the Fiscal Court meeting of June 27, 1995, where the vote was taken on whether to establish a taxing district. The vote resulted in a tie vote, and therefore the petition failed. The only reason given by the two members voting against the taxing district was their belief that a majority of people in their district was against it. That, of course, is not the criteria to be used when the Fiscal Court sits in a quasi judicial capacity. In fact, in his dissenting vote, one of the Commissioners stated that:

I've have had numerous telephone calls, pros and cons which personally, I think the fire taxing district is the way to go. I think that's the only way they're going to have anything . . . This thing has come up for the last three or four years, and I think looking at their budget, at what they've got, I mean they can't operate a fire

department based on the \$17,000.00 or \$18,000.00 coming in. But , in turn, I don't think we as a court or myself need to push something down the majority of the people. (emphasis added)

It is clear to this Court that the decision of the Fiscal Court was not based on the substantial and overwhelming evidence of the public hearing which was in support of the creation of the taxing district.

"Quasi judicial" is the term applied to "action, discretion etc. of public administrative officers or bodies who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature." (*Black's Law Dictionary*, 6th Ed. (emphasis added)). As stated in the Court's previous Order, the Marshall County Fiscal Court in regard to this matter sits in a quasi judicial tribunal. This means they are not simply representative of the constituency, but also fact finders and adjudicators.

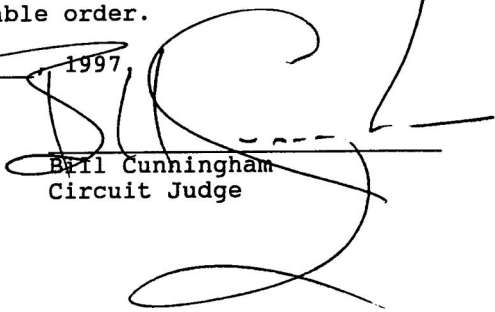
One only has to read the transcript of the Fiscal Court Meeting of June 27, 1995, to know that the Fiscal Court did not act in a quasi judicial manner, but in fact was arbitrary and capricious in voting down the formation of the Fairdealing-Olive Special Taxing District.

For all the above stated reasons, IT IS HEREBY ORDERED AND DIRECTED that the action of the Marshall County Fiscal Court at its June 5, 1995, meeting in which they denied the Plaintiffs' petition for the establishment of a taxing district for the Fairdealing-Olive Fire Department pursuant to KRS 65.182 is REVERSED as

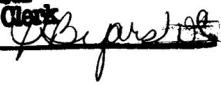
arbitrary and capricious; and the Marshall County Fiscal Court is ordered to approve the petition for the establishment of the Fairdealing Fire Protection District.

This is a final and appealable order.

This 28th day of March, 1997



Bill Cunningham
Circuit Judge

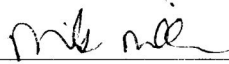
This is to certify that the foregoing
is a true and correct copy as appears
of record in my office.
INDA CAROL FISK
Marshall Circuit Clerk
By 

Mike Miller
COUNTY JUDGE / EXECUTIVE
MARSHALL COUNTY COURTHOUSE
BENTON, KENTUCKY 42025
Phone: (502) 527-4750

Summary of Ordinance 97-02

An Ordinance pursuant to KRS 65.182, the creation of the special taxing district known as the Fairdealing/Olive Fire Protection District, and the fixing of the boundaries and ad valorem property tax at \$0.10 per \$100.00 assessed value.

Copies of the complete ordinance may be picked up Monday through Friday, between the hours of 8:00 a.m. and noon, and 1:00 p.m. and 4:30 p.m. in the County Judge/Executive's Office.


Mike Miller, County Judge/Executive