



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 7, 1977

ATTORNEY GENERAL OPINION NO. 77- 47

Mr. James R. Hubbard
Breyfogle, Gardner, Davis & Kreamer
Court Square Building
110 South Cherry
Olathe, Kansas 66061

Re: Counties--Fire Districts--New Territory

Synopsis: A fire district organized under K.S.A. 19-3613 et seq., may include new territory therein only by K.S.A. 19-3604, and territory comprising a city of the third class which is completely encircled by said district may not be included therein by action of the governing body under K.S.A. 19-3605. If a city is included in such fire district, control and supervision over fire district services rendered within said city rests with the governing body of the fire district, and not the governing body of the city.

* * *

Dear Mr. Hubbard:

As counsel for Fire District No. 1, Johnson County, Kansas, you inquire concerning the proper procedure to be followed for the inclusion of the territory of a city of the third class within the boundaries of a fire district organized under K.S.A. 19-3613 et seq.

You advise that the fire district was originally organized under K.S.A. 19-3601 et seq., but was later reorganized under K.S.A. 19-3613 et seq. The territory of the fire district completely encircles the city, which was excluded from the fire district at the time the latter was organized and reorganized. However, the city now wishes to join the fire district, and the question is presented which statutory procedures must be followed in doing so.

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K.S.A. 19-3623 provides thus:

"New lands may be included in any fire district created under the provisions of sections 19-3613 to 19-3622, both sections inclusive, of the General Statutes Supplement of 1955, or acts amendatory thereof, in like manner as provided by section 19-3604 of the General Statutes Supplement of 1955, as amended, for the inclusion of new lands in a fire district organized under the provisions of sections 19-3601 to 19-3612, both sections inclusive, of the General Statutes Supplement of 1955, or acts amendatory thereof."

K.S.A. 19-3604 provides for inclusion of new lands within a district upon the filing of a sufficient petition signed by the owners of at least ten percent of the owners of the area of the land to be included, approval by the board of county commissioners and an opportunity for a protest petition against such inclusion. K.S.A. 19-3605 provides a procedure whereby the governing body of any city lying within the boundaries of a fire district may adopt a resolution requesting such inclusion, and the board of county commissioners may make an appropriate order including such additional territory in the fire district. The latter procedure is obviously less cumbersome and is designed specifically for action by the municipal governing body.

The latter section, however, was enacted in 1953, as a part of the enactment now found at K.S.A. 19-3601 through -3612. In my judgment, that procedure for inclusion of municipal territory within the boundaries of fire districts applies only to fire districts organized under K.S.A. 19-3601 et seq. K.S.A. 19-3605 could not, at the time of its enactment, have included fire districts organized under K.S.A. 19-3613 et seq., for the latter enactment was not passed until two years later, in 1955. In adopting the later act, the legislature chose to provide for the inclusion of new lands by reference to the 1953 act, but by reference only to section 4 thereof, now K.S.A. 19-3604. This procedure is not available to a fire district organized under the 1955 enactment unless and until that act is amended to include an appropriate reference to K.S.A. 19-3605, as well as -3604.

You advise that the City of Edgerton has also inquired whether, if the city joins Fire District No. 1, Johnson County, Kansas, whether the city must retain any control, supervision or responsibility for fire protection within the boundaries of the city.

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I agree with you that K.S.A. 19-3608 applies only to cities which have contracted with fire districts organized under K.S.A. 19-3601 et seq., and not to Fire District No. 1, Johnson County, Kansas. I do not find any statutory provision which directly addressed your question. As a general matter, the governing body of the city is charged with the responsibility of providing adequate fire protection for its residents. If the district is included in a fire district, which maintains an adequate fire department, the obligation of the governing body is satisfied, surely. I do not believe, as a technical legal matter, that the city is legally obliged to maintain supervision and control over fire department services provided in or to the city through the fire district, should the city be included therein. Indeed, under K.S.A. 19-3621, if the city and fire district were to enter into a contract for reciprocal services, supervision and control of the fire district fire department "shall always be with the governing body of the fire district" If the city were to be included in the fire district, of course, its fire protection would be provided by the district personnel and equipment, and the governing body of the city would have no legal supervision and control thereof, and no obligation to assume such supervision or control.

I might suggest that consideration be given to seeking an amendment to K.S.A. 19-3623 to include a reference to K.S.A. 19-3605 during the current legislative session, to expedite the procedure for including the city within the fire district.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj