



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 19, 1978

ATTORNEY GENERAL OPINION NO. 78- 168

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

Re: Cities--Fire Districts--Taxation

Synopsis: Annexation by a city of the third class of property lying within the territory of a fire district organized pursuant to K.S.A. 19-3613 remains within the fire district, and remains subject to all taxes levied by the fire district. The city may not, however, subject such property to any levy of city taxes for fire protection services, however. The fire district remains primarily responsible for fire protection services to all property within its boundaries, including that property annexed by and lying within a city of the third class.

* * *

Dear Mr. Hubbard:

You advise that Johnson County Fire District No. 1, was originally organized under K.S.A. 19-3601 *et seq.*, but was later reorganized under K.S.A. 19-3613 *et seq.*, on June 14, 1976. Subsequently, the City of Gardner, Kansas, has annexed several different tracts of ground. The question now arises whether property which lies within the boundaries of a fire district organized pursuant to K.S.A. 19-3613 *et seq.* remains within the boundaries of the fire district when it is annexed by a city of the third class. You advise that there is uncertainty whether persons living in the annexed area are subject to payment of all levies extended by the fire district or only those levies extended for the purpose of paying bonded indebtedness outstanding at the time of annexation.

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In addition, there is uncertainty between the city and the fire district concerning which of them is primarily responsible for providing fire protection in the annexed areas, although you indicate that both parties have and intend to continue to cooperate with each other in providing fire protection to the community.

As you point out, K.S.A. 19-3616 appears to assure that the territorial and corporate integrity of the fire district remains unaffected by municipal annexation of any portion of its territory:

"If any territory included in any fire district created under the provisions of this act is thereafter included within the corporate limits of any city, such territory shall continue to be within and a part of said fire district."

K.S.A. 19-3622 provides in part thus:

"The governing body of the fire district shall have the power to levy a tax not to exceed seven and one-half mills upon the dollar of the assessed valuation of all taxable, tangible property in the district, for the purpose of paying the expenses of operating and maintaining a fire department and other legal expenses of the fire district . . . provided that no other levies for fire department purposes shall be made on such property." [Emphasis supplied.]

It goes on to direct that if any incorporated city shall lie partly within and without the boundaries of a fire district, the city governing body

"shall cause a tax to be levied in that portion of the city outside of the boundaries of any fire district for fire protection, and shall contract with any fire district, city, township or other organized fire department, to furnish fire protection in that portion of the city not lying within the boundaries of a fire district, in the same manner as though said city lay wholly without the boundaries of a fire district." [Emphasis supplied.]

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Thus, the city is without authority to levy a tax for fire protection purposes upon the portion of the city which lies within the boundaries of the fire district. The further direction that the city "shall contract" for the furnishing of fire protection to the remainder of the city not lying within the boundaries of the fire district must surely be construed as permissive rather than mandatory, permitting but not requiring the city to enter into such a contract if it does not wish to maintain its own fire department. Primary responsibility for fire protection in that portion of the city lying within the fire district rests with the district, in my judgment, for that portion of the city which lies within the fire district remains subject to the entire levy of the fire district, and not merely that portion of the levy necessary to discharge bonded indebtedness outstanding at the time of annexation.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj