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ATTORNEY GENERAL OPINION NO. 81- 213

John Dekker
Director of Law
City of Wichita
City Hall, 13th Floor
Wichita, Kansas 67202

Re: Cities and Municipalities -- Additions -- Effect of Annexation Upon Territory of Fire District

Synopsis: K.S.A. 12-503a provides alternative methods by which a township, improvement district or governmental unit may provide services to territory which has been annexed by a city. After such action by a city, the former units may continue to provide services for the current year or, if taxes have already been levied or collected, for the succeeding year. Alternatively, taxes so collected may be surrendered to the annexing city for use in providing such services. As a fire district established pursuant to K.S.A. 19-3601 et seq. is a governmental unit included within the scope of K.S.A. 12-503a, that portion of Attorney General Opinion No. 80-146 in conflict with this conclusion is hereby modified. Cited herein: K.S.A. 12-503a, 12-520b, 12-6a01, 19-3604, K.S.A. 1980 Supp. 19-3616.

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Dear Mr. Dekker:

As Director of Law for the City of Wichita, you have requested that this office re-examine an opinion issued to the State Fire Marshal, No. 80-146, in July of last year. Specifically, you wish to know whether K.S.A. 12-503a, which was not considered in the opinion, has a bearing upon the result which was reached. The matter is of interest to you in that the City of Wichita recently has annexed portions of the Sedgwick County Fire District.

Briefly, the situation presented in Opinion No. 80-146 involved the proposed annexation by the City of Winfield of territory in Cowley County which also was being considered for inclusion in fire districts established by the county pursuant to K.S.A. 19-3601, et seq. The issue presented dealt with the effect upon such territory if, once included in a fire district, it was annexed into the city. A review of the statutes contained in Article 36 of Chapter 19 indicated that no specific consideration had been given to such a situation, for while K.S.A. 1980 Supp. 19-3616 provides for automatic detachment of territory from a district upon annexation, its limited scope made it inapplicable to Winfield or Cowley County. Likewise, the statutes of general application provided only for detachment through petition (K.S.A. 19-3604), and were silent about the effect on that part of a district which is annexed into the limits of a city.

Accordingly, the opinion concluded that territory so included would be subject to both city and district levies until such time as the area was formally detached by means of the petition process set out at K.S.A. 19-3604(b). Although, as the opinion noted, double taxation should be avoided whenever possible, under the statutes which were examined there appeared to be no other alternative.

Such a conclusion must be modified in light of K.S.A. 12-503a, which states in pertinent part:

> "Whenever all or any part of any township, improvement district, or other governmental unit is annexed to any city, such township, improvement district or other governmental unit may, continue to furnish services for the year for which taxes have been levied or collected in those areas of the district annexed, or in the alternative, shall surrender the taxes collected to the annexing city to be used specifically for the purposes for which the tax was collected. . . ."

As it has recently been the opinion of this office that fire districts are "governmental units" (Opinion No. 80-89), the above statute would on its face appear to supply the provision missing from K.S.A. 19-3601 et seq.

However, we reach this conclusion reluctantly, in view of the vague wording of the statute which requires the making of a number of assumptions. For example, the statute nowhere explicitly states that territory of a governmental unit such as a fire district is detached by virtue of annexation. Rather,

the focus is on the providing of services by the existing unit. Additionally, while there is a prohibition on the continued imposition of a general fund levy by an improvement district following annexation, a fire district is clearly not such a district, as no improvements are made which result in special assessments. See, e.g. K.S.A. 12-6a01, et seq. Furthermore, no mention is made as to when the city's duty to provide fire protection begins. While as a general rule annexed territory is entitled to the same services as the rest of the city (36 Am.Jur.2d Municipal Corporations §56), the statute would appear to contemplate a period where the fire district would continue to do so.

From the foregoing comments, it should be apparent that K.S.A. 12-503a raises as many questions as it answers, and is ambiguous at best. However, notwithstanding the lack of precision in drafting this statute, we believe it is susceptible of interpretation so as to give force and effect to the underlying legislative intent. This, of course, is the overriding consideration in construing statutory provisions.

In our judgment, the primary objectives of the legislature prompting the enactment of K.S.A. 12-503a were to prevent the interruption of governmental services being provided in areas annexed by a city, and to provide for the transition of the obligation to finance such services. In this instance, we are concerned with the provision of fire protection services which are afforded by a fire district prior to annexation. The issue, then, is the point in time subsequent to annexation when the fire district's duties cease and the city assumes both the obligation of furnishing and the ability of financing such services.

With this in mind, it would be our opinion that the effect of K.S.A. 12-503a hinges upon the date on which district territory is annexed. Initially, it should be noted that K.S.A. 19-3606 establishes July 1 of each year as the date for the fixing of fire district boundaries. Thus, if annexation were completed prior to that date, K.S.A. 12-503a authorizes the district to continue to provide fire protection for the remainder of the year, at the end of which time the city would assume the responsibility. For tax purposes, the territory annexed would no longer be included in the tax base of the district, and so would be subject to the city's levy, which must be certified by August 25, as is the case for all local governments. (K.S.A. 79-1801, as amended by L. 1981, ch. 380). On the other hand, if annexation is concluded after August 25, (i.e. the date the tax would be "levied"), K.S.A. 12-503a would permit the fire district to continue to furnish services not only for the remainder of the current year, but also for the succeeding year.

While the effect of an annexation occurring between July 1 and August 25 is less clear, in our opinion there can be only one result which is consonant with the statutes. As no tax has been "levied or collected" by the district, K.S.A. 12-503a would leave the city free to include the territory within its tax base, as in the first example above. While it is true that the fire district would have set its boundaries as of July 1, pursuant to K.S.A. 19-3606, it is the date of the levy which controls, and that would not occur until August 25. Accordingly, the district would be required to readjust its budget to reflect the loss of the territory annexed, and would merely finish out that year, for which taxes had already been collected.

Alternatively, K.S.A. 12-503a provides that moneys collected for the district's use may be "surrendered" to the city, to be used by the latter in providing fire protection services. Although the statute is characteristically vague on this point, presumably the district's duty would end, and the city's begin, on such a date. The presence of this option would mitigate the effect of the August 25 cut-off date, which otherwise leaves the annexed territory dependent on the district for services for perhaps as long as sixteen months after annexation. This option would also appear reasonable given the need for a timetable setting forth the extension of city services to any area annexed (K.S.A. 12-520b). Such a timetable could be arrived at after consultations with the district, and would help avoid the potential for a long delay before district fire protection ended and that of the city began.

In conclusion, K.S.A. 12-503a provides alternative methods by which a township, improvement district or governmental unit may provide services to territory which has been annexed by a city. After such action by a city, the former units may continue to provide services for the current year or, if taxes have already been levied or collected, for the succeeding year. Alternatively, taxes so collected may be surrendered to the annexing city for use in providing such services. As a fire district established pursuant to K.S.A. 19-3601 et seq. is a governmental unit included within the scope of K.S.A. 12-503a, that portion of Attorney General Opinion No. 80-146 in conflict with this conclusion is hereby modified.

Very truly yours,

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RTS:BJS:JSS:hle