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ATTORNEY GENERAL OPINION NO. 82-97

James R. Hubbard  
130 North Cherry  
P. O. Box 550  
Olathe, Kansas 66061

Re: Counties and County Officers -- Fire Protection --  
Annexation of Fire District Territory by City

Synopsis: Where territory contained in a fire district established pursuant to K.S.A. 19-3613 et seq., is subsequently annexed by a city, such territory continues to be a part of the district. Accordingly, responsibility for fire protection lies entirely with the district, with the city acquiring liability only through the making of a contract for fire protection services or through exclusion of the territory from the district, which requires the consent of both the city and the district. Use of city water or facilities by the district may be provided for by such a services contract. Cited herein: K.S.A. 19-3604, 19-3616, 19-3617, 19-3621, 19-3622, 36-3623a.

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Dear Mr. Hubbard:

As attorney for the City of Gardner, Kansas, you request our opinion on several interrelated questions which concern the city's relationship with Johnson County Fire District No. 1. You inform us that the city wishes to know the extent of its responsibility for fire protection in certain portions of the district which have been annexed into the city. The city also desires to know the procedure for detaching such annexed territory from the district. In your request, you emphasize that the city and the district have and intend to continue to cooperate with each other in providing fire protection.

As it currently exists, Johnson County Fire District No. 1 is structured pursuant to K.S.A. 19-3613 et seq. This act is applicable to counties which have populations of over 90,000 and which contain cities of the first class of less than 50,000, and contains numerous provisions which are not found in the generally applicable fire district act, K.S.A. 19-3601 et seq. At present, only Johnson County meets these criteria.

The effect of annexation of territory contained in a district by a city is dealt with by several statutes contained in the more narrowly-focused act. K.S.A. 19-3616 provides in part that:

"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 unless approved for detachment and exclusion from the territory of such district by the governing body of such city and the governing body of such fire district. If the territory annexed to such city is detached and excluded from such district the governing body of the district shall redefine the new boundaries of the district to exclude the territory so annexed. All general obligation bonds issued for the acquisition or construction of fire fighting equipment by a fire district or any city detaching territory from such district which are issued prior to the detachment of such territory shall continue as an obligation of the property subject to taxation for the payment thereof at the time such bonds were issued." (Emphasis added.)

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

"The governing body of the fire district shall have the power to levy a tax not to exceed 8.5 mills upon the dollar of the assessed valuation of all taxable, tangible property in the district, for the purpose of paying any lawful cost or expense incurred by the fire district. No other levies for the operation and maintenance of a fire department shall be made on such property by any other taxing district. If any incorporated city is partly within the boundaries of one or more fire districts, and partly outside the bound-

aries of any fire district, the governing body of such city may cause a tax to be levied in that portion of the city outside of the boundaries of any fire district for fire protection, and may 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 the city lay wholly without the boundaries of a fire district." (Emphasis added.)

In view of the above statutes, in our opinion responsibility for fire protection continues to remain with the fire district as to those territories which are annexed into the city. The city is not empowered to impose any levy for fire protection on such an area, which instead remains subject to the levy of the district, both for operating expenses and bonded indebtedness of the district.

Further, it is clear from K.S.A. 19-3616 that any detachment of territory from the district can occur only upon the consent of both entities. While petition procedures are established by K.S.A. 19-3604(b) for the exclusion of territory from a fire district, such provisions do not apply to the act under which Johnson County Fire District No. 1 is organized. Likewise, while K.S.A. 19-3623a is a part of the applicable act, its petition procedures are limited to the detaching of territory that is located within cities of the second class. As Gardner is a third class city, this statute is also inapplicable.

You also inquire as to the potential liability of the city in a situation where the district uses city hydrants to fight fires located within the city, yet in territory which has remained in the district following annexation. If the use of such water by the district would lower supplies available to the city, you desire to know the extent of the city's responsibility.

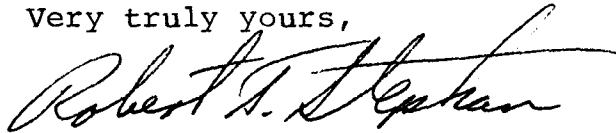
While the answer to any type of hypothetical question concerning the potential liability of a city in tort must necessarily be speculative, we do note that two statutes exist which could be employed to avoid any future problems. Specifically, K.S.A. 19-3617 and 19-3621 provide for the making of contracts between a city and a fire district concerning the furnishing of fire protection services. Use of city water by a district would appear to be such a service, for which the city could be compensated through reciprocal services or monetary compensation. Further, K.S.A. 19-3621 permits a district to provide a bond to a city "in such amount

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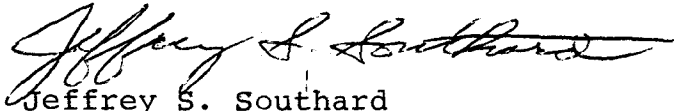
as may be agreed upon to idemnify" the city "against any loss which it may sustain as [a] result of damage" as a result of the furnishing of such services. Should the district feel it necessary to use city water, such a bond would clearly be an option to consider.

In conclusion, where territory contained in a fire district established pursuant to K.S.A. 19-3613 et seq. is subsequently annexed by a city, such territory continues to be a part of the district. Accordingly, responsibility for fire protection lies entirely with the district, with the city acquiring liability only through the making of a contract for fire protection services or through exclusion of the territory from the district, which requires the consent of both the city and the district. Use of city water or facilities by the district may be provided for by such a services contract.

Very truly yours,



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