



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 114

Stephen Jones
Coffman, Jones & Gilliland
Tiffany Building
Lyndon, Kansas 66451

Re: Townships and Township Officers -- Fire Protection --
Power to Levy Taxes

Counties and County Officers -- Fire Protection --
County Fire Districts; Effective Date of Inclusion
of Township Territory

Synopsis: Apart from a specific statute, a township has no general power to impose a levy for fire protection. Unless a township can meet the criteria of one of the special acts contained in Chapter 80, Article 15 of Kansas Statutes Annotated, it may proceed only under K.S.A. 80-1501 et seq., or K.S.A. 80-1540 et seq. Under the latter act, a township may form a fire district which may contract for fire protection with other townships, cities or fire districts. Such a district constitutes a "fire protection benefit district" for the purposes of inclusion within a county fire district organized pursuant to K.S.A. 19-3601 et seq. However, even in the absence of such a township fire district, township territory may be included within a county fire district pursuant to K.S.A. 19-3601 et seq. No new territory may be included within such a county fire district after July 1. Cited herein: K.S.A. 19-3601, 19-3602, 19-3606, 19-3611, 19-3612, 80-1502, 80-1503, 80-1543, 80-1545, K.S.A. 1981 Supp. 79-1801.

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Dear Mr. Jones:

As attorney for Fire District No. 5 in Osage County, Kansas, you request our opinion on two questions which you feel were

left unanswered by Attorney General Opinion No. 82-103. That opinion dealt with the inclusion of a portion of Junction Township in a new county fire district (No. 5) and the procedure for releasing such territory from the current obligation imposed by the township. The proceeds of that levy, presently fund a contract for fire protection services with another county fire district (No. 4).

In our earlier opinion, we based our conclusion on the assumption that Junction Township was proceeding under K.S.A. 80-1540 et seq. That act provides for the formation of a fire district by the township, which district may establish its own fire fighting unit (K.S.A. 80-1543) or contract with another township, city or fire district for fire protection (K.S.A. 80-1545). In either case, a tax of up to three mills may be levied to pay for the cost of such a department or such a contract.

You inform us, however, that the township has apparently never created such a district, but instead has proceeded under K.S.A. 80-1501 et seq. Specifically, you inform us that the township has made a levy of two mills under K.S.A. 80-1503 to fund its contract with the county fire district. If this is in fact the case, it would be our opinion that the township's actions have been incorrect, in that the purposes to which the money has been put are unauthorized by statute.

Of pertinence to our conclusion is K.S.A. 80-1502, which authorizes a township to enter into a contract for fire protection with "the governing body of any municipality." While the term "municipality" has frequently been defined to include counties (see, e.g. the statutes cited in Attorney General Opinion No. 81-89, attached), a close reading of K.S.A. 80-1502 indicates that only cities are included within the term in this instance, to-wit:

"The governing body of any municipality may contract with any county, township or individual or group of individuals, firm or corporation whose property is situated outside the city limits, to furnish fire-fighting service to such county, township, individual, group of individuals, firm or corporation, upon such terms and for such compensation as may be agreed upon: . . . Provided, The fire chief or person in charge of the fire department shall have the right in every case to determine whether or not the city can spare all or any portion of its fire equipment and firemen at that particular time: Provided

further, That the compensation shall always be at least sufficient to pay the city for the reasonable use of equipment and for the cost of material used on the run and fighting the fire, to pay the firemen and to enable the city to carry a sufficient amount of insurance to indemnify it for loss or damage to any fire-fighting equipment, or injury or damage to person or property (if the city be actually liable therefor): . . ." (Emphasis added.)

In that a township possesses no inherent powers of its own apart from statute, it is our opinion that it cannot contract with a county fire district under the provisions of K.S.A. 80-1501 et seq. Our examination of the various acts concerning township fire protection indicates that K.S.A. 80-1540 et seq. (referred to hereinabove) is the only statutory vehicle available for a township desiring to make such an agreement. Once the procedures of this act are followed, however, and a township fire district created, agreements can be made with county fire districts for the furnishing of fire protection services. K.S.A. 80-1545.

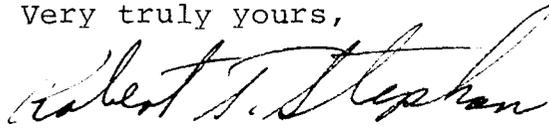
Given the factual situation presented by this request, and by that in Attorney General Opinion No. 82-103, of equal importance is the wording of K.S.A. 19-3611. That statute, which provides for the inclusion of all or part of any "fire protection benefit district or other special fire district" within a county fire district, was interpreted by our earlier opinion to include township fire districts. While we reaffirm that conclusion, it is also our opinion that, absent the creation of a fire district under K.S.A. 80-1540 et seq., all or part of a township may still be included within a county fire district pursuant to action of the county under K.S.A. 19-3601 et seq. That act establishes notice and hearing procedures (K.S.A. 19-3602), and may be used to organize any portion of the county not within an incorporated city or a fire district. K.S.A. 19-3601. Accordingly, the presence or absence of a township fire district does not affect whether territory of a township may be included in a county fire district. Any contract the township may have for fire protection is not immediately affected by the formation of such a county fire district, but instead continues until the end of the current budget year, when it may be terminated. K.S.A. 19-3612.

Concerns have also been raised regarding the timing of any transfer of territory for purposes of taxation. Given the deadline of August 25 for the certification of tax levies to the county clerk (K.S.A. 1981 Supp. 79-1801), an inclusion of territory after that date would raise legitimate questions as to the effect of the levies of the township (or township fire district) and the levy of the county fire district.

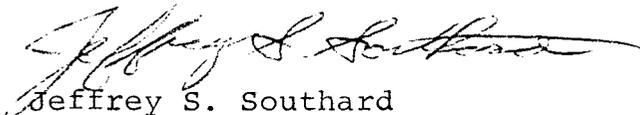
However, given the presence of K.S.A. 19-3606, such problems are more imagined than real, in that no territory may be added to a district after July 1. Additionally, even if territory is added in January, it would not be subject to any levy of the new district until the following year, in that the new district's levy would extend only to territory contained as of the preceeding July 1.

In conclusion, apart from a specific statute, a township has no general power to impose a levy for fire protection. Unless a township can meet the criteria of one of the special acts contained in Chapter 80, Article 15 of Kansas Statutes Annotated, it may proceed only under K.S.A. 80-1501 et seq., or K.S.A. 80-1540 et seq. Under the latter act, a township may form a fire district which may contract for fire protection with other townships, cities or fire districts. Such a district constitutes a "fire protection benefit district" for the purposes of inclusion within a county fire district organized pursuant to K.S.A. 19-3601 et seq. However, even in the absence of such a township fire district, township territory may be included within a county fire district pursuant to K.S.A. 19-3601 et seq. No new territory may be included within such a county fire district after July 1.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle