



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 117

Rodney K. Lyons  
Stafford County Attorney  
Stafford County Courthouse  
St. John, Kansas 67576

Re: Corporations -- Cemetery Corporations --  
Detachment of Portion of Cemetery District;  
Procedure

Synopsis: A cemetery district which desires to transfer a portion of its territory to a township cemetery district may, at its option, follow the procedures of either K.S.A. 17-1356 et seq. or K.S.A. 17-1359 et seq. Under both acts, the final decision rests with the board of county commissioners, who must determine that the correct procedures have been followed before approving the transfer. Cited herein: K.S.A. 12-1405, 17-1330, 17-1356, 17-1359, 17-1360, 17-1362, K.S.A. 1981 Supp. 79-1801, K.S.A. 79-1962.

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Dear Mr. Lyons:

As County Attorney for Stafford County, Kansas, you request our opinion on a question concerning the procedure for detaching territory from a cemetery district established pursuant to K.S.A. 17-1330 et seq. Specifically, you inform

us that a township wishes to expand its tax base in order to better support a township cemetery. An adjoining cemetery district, which includes 20 sections of the township, is willing to transfer this territory to the township for cemetery purposes. You inquire as to the proper statutory procedure to effect such a transfer.

In our opinion, a cemetery district organized pursuant to K.S.A. 17-1330 et seq. may proceed to detach a portion of its territory under one of either two different acts. The first, K.S.A. 17-1356 et seq., provides for the disorganization and subsequent annexation of district territory, following the submission of a petition signed by at least 51% of the electors of the district. K.S.A. 17-1356. If the board of county commissioners finds that the petition contains the requisite number of signatures and that the district to which the territory is transferred is adjacent to the transferor district and further approves the transfer, it shall enter an order approving the transfer.

A second act which may also be employed to transfer territory from a cemetery district is K.S.A. 17-1359 et seq. Under the terms of this act, no petition is required. Rather, K.S.A. 17-1360 requires that a majority of the electors present at the district's annual meeting approve the change. If the transferee district assents to the addition of the detached territory (which need not be contiguous, K.S.A. 17-1359), the board of county commissioners shall, as in the first act, enter an order approving the transfer. K.S.A. 17-1362. Under either act, once the detached territory is a part of the township cemetery district, it could be included within the property subject to the assessment for cemetery purposes under K.S.A. 12-1405 and 79-1962.

However, we would add one caveat to the above. By statute, all taxing districts, including townships, must have their budgets completed by August 25, as it is upon that date which ad valorem levies must be certified to the county clerk. K.S.A. 1981 Supp. 79-1801. As the amount of revenue raised by such levies is determined in part by the amount of property

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subject to the levy, the area included in the township for cemetery purposes should be established prior to that date. A delay until after the levy has been established could, depending on the extent of the delay, leave the township unable to include the new territory within its tax base until the following year.

In conclusion, a cemetery district which desires to transfer a portion of its territory to a township cemetery district may, at its option, follow the procedures of either K.S.A. 17-1356 et seq. or K.S.A. 17-1359 et seq. Under both acts, the final decision rests with the board of county commissioners, who must determine that the correct procedures have been followed before approving the transfer.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Assistant Attorney General

RTS:JSS:may