



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 4, 1982

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 82- 235

Jim Pringle
Sumner County Attorney
Sumner County Courthouse
Wellington, Kansas 67152-0497

Re: Counties -- Fire Protection -- Fire District;
Disassociation of Lands From District

Synopsis: K.S.A. 9-3604(b) allows the exclusion of land that is contained within a fire district, provided that the owners of at least 10% of the land sought to be removed sign a petition which is submitted to the board of county commissioners. If the commission finds the petition to be sufficient, it may approve the detachment by resolution, which must be published once each week for two consecutive weeks. A petition protesting the resolution may be filed within 30 days of the second publication, and, should such petition be signed by the owners of more than 19% of the affected land, the resolution of detachment is rendered a nullity. Signers of the original petition may, by signing the counter petition, act to withdraw their support from the exclusion. In determining the sufficiency of the counter petition, the commission shall use the same standards as it uses in examining the initial petition. Cited herein: K.S.A. 19-3604(b).

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Dear Mr. Pringle:

As County Attorney for Sumner County, Kansas, you request our opinion on a question involving the procedure to disassociate territory from a fire district. Specifically, your concern regards K.S.A. 19-3604(b), which sets forth the procedures for both a petition to exclude certain lands from the district and, in the event that a resolution approving the

exclusion is passed by the board of county commissioners, a counter petition opposing such action. Your inquiry stems from the action of certain landowners in the district (Sumner County District No. 10), who signed both petitions. You wish to determine whether such a reversal is permissible. If it is impermissible for the landowner who signed the petition for exclusion of territory also to sign the counter petition opposing such exclusion, thereby eliminating these landowners as signatories from the latter, the counter petition would not have signatories representing the required area of land, leaving the exclusion resolution valid.

We are informed that during this summer a number of landowners in Walton Township, which is contained in Fire District No. 10, petitioned to be disassociated from the district. Signatures were obtained which represented the owners of approximately 83% of the land which was sought to be removed. The petitions were approved by the board of county commissioners, and the two required publications were made. In all of these respects, the provisions of K.S.A. 19-3604(b) were met.

Within 30 days of the second publication, a counter petition was filed in opposition to the resolution. Again, this action was in accordance with K.S.A. 19-3604(b), which in pertinent part states:

"If within thirty (30) days after the last publication of said resolution and map, a petition protesting the inclusion or detachment of such lands, signed by the owners (whether residents of the county or not) of more than nineteen percent (19%) of the area of the lands sought to be included in or excluded from said fire district is filed with the county clerk, said resolution shall have no force or effect, but if such a protest petition shall not be filed within said time, said resolution shall become final, and said lands shall thereupon be deemed attached to or detached from said fire district."

In that the total acreage in the involved area is 30,880 acres, 19% would be approximately 5,867 acres. As the counter petition contained the signatures of persons purporting to own 7,986 acres, if such were found to be sufficient the resolution would be of no force and effect.

Numerous questions have been raised concerning the validity of the counter petition. In particular, owners of well over 3,000 acres signed both the initial disassociation petition and the subsequent counter petition opposing the action. If

these persons are precluded from signing the second, opposing petition because of their prior action, the 19% requirement would clearly not be met. Although the particular question presented by this request has apparently never before been addressed, either by this office or by Kansas appellate courts, decisions interpreting analogous statutes provide some guidance.

In the past, Kansas courts have consistently taken the position that the legislature is free to set deadlines for the filing of petitions protesting an action of a governmental unit. State ex rel. v. City of Independence, 114 Kan. 837 (1924), Bentley v. Gunn, 125 Kan. 784 (1928) and cases cited at 790. Within the limits of these deadlines, a signer of a petition is free to withdraw his or her name from it. Bentley v. Gunn, supra at 790, State ex rel. v. City of Walnut, 166 Kan. 296 (1949). Only if such period has elapsed is a signer precluded from seeking to have his or her name removed. State ex rel. v. City of Independence, supra at 839.

Here, the statute provides that a landowner in the affected area may enter his protest to the commission's resolution within 30 days of the second publication. Until this time has elapsed, the matter is still not final, and may be challenged. We find nothing in this statute or in case law authorities which would preclude some or even all of the signers of the initial petition from reconsidering their action and, in effect, withdrawing their consent by signing the counter petition within the allotted time. While the statute could have been drawn to allow only landowners who had not signed initially to now sign in protest, it was not so worded. In view of the liberal power to withdraw which the legislature may grant the signers of a petition, we are not prepared to limit the effect of K.S.A. 19-3604(b) by inferring that only landowners who have not signed the original petition may sign the petition in opposition.

Of course, the commission must determine that the counter petition actually meets the requisite percentage. This would be done in the same way that the initial petition was validated, and would involve checking the legitimacy of the signatures, i.e., does the signer actually own land within the affected area (and, if so, is the figure given correct), does he or she have the authority to sign, and is there more than one signature for the same parcel of land? For example, if a husband and wife own land in joint tenancy, and both sign, their acreage may be counted only once. Each individual determination under these guidelines is left by law to the commission. State ex rel. v. City of Walnut, supra at 297.

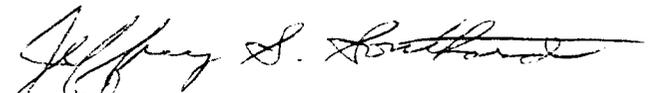
In conclusion, K.S.A. 19-3604(b) allows the exclusion of land that is contained within a fire district, provided that the

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owners of at least 10% of the land sought to be removed sign a petition which is submitted to the board of county commissioners. If the commission finds the petition to be sufficient, it may approve the detachment by resolution, which must be published once each week for two consecutive weeks. A petition protesting the resolution may be filed within 30 days of the second publication, and, should such petition be signed by the owners of more than 19% of the affected land, the resolution of detachment is rendered a nullity. Signers of the original petition may, by signing the counter petition, act to withdraw their support from the exclusion. In determining the sufficiency of the counter petition, the commission shall use the same standards as it uses in examining the initial petition.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Assistant Attorney General

RTS:BJJ:JSS:hle