



STATE OF KANSAS

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November 4, 1982

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CONSUMER PROTECTION 246-375

ATTORNEY GENERAL OPINION NO. 82- 237

John F. Thompson
400 Shawnee
P. O. Box 69
Leavenworth, Kansas 66048

Re: Townships -- Cities Contained Therein -- Change
From Third-Class to Second-Class; Effect on Town-
ship's Authority

Synopsis: Pursuant to K.S.A. 15-104, third-class cities are included within the corporate limits of the townships in which they are situated. However, once a city becomes a second-class city, it no longer is so included. As a result, the township is without the authority to levy taxes on personal property located in the city. Further, any township officer who resides in the city vacates his or her office by virtue of K.S.A. 80-202, which requires such officers to reside within the township. Cited herein: K.S.A. 15-104, 25-1606, 80-202, 80-1404, 80-1545, 80-1605, Kansas Constitution, Article 5, §1.

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Dear Mr. Thompson:

As attorney for Delaware Township in Leavenworth County, Kansas, you request our opinion on two questions concerning the status of the City of Lansing with regards to the township. Specifically, you inform us that, prior to July 1, 1982, Lansing was a city of the third class. The township levied taxes on property within the corporate limits of the city for township services such as fire protection and water supply. As the city is now of the second-class, however, questions have been raised concerning the continuing ability of the township to so act. Additionally, you inquire concerning the status of two of the township officers whose residences are located in the city.

As to the effect of the change from a third class to a second class city on the authority of the township, there exist both statutory and case law authority which are directly on point. Initially, it should be noted that K.S.A. 15-104 states:

"Cities regulated and governed by this act [concerning third-class cities] shall be and remain a part of the corporate limits of the townships in which the same are situated."

That this statute authorizes the taxation by a township of property within a third-class city was decided by Jackson Township v. Wood, 55 Kan. 628 (1895).

Such is not the case, however, for first and second-class cities. K.S.A. 80-1404 provides:

"No city of the first or second class shall be included within the corporate limits of any township. In the event any city of the first or second class has designated no ward or wards, the entire territory of such city shall be one ward until such city is divided into additional wards as provided by law."
(Emphasis added.)

This statute, originally enacted in 1868, was upheld as constitutional in the early case of Borton v. Buck, 8 Kan. 302 (1871). There, the court held that when the city of Emporia achieved second class city status, it no longer was a part of Emporia Township. The same result was reached in State ex rel. v. Parry, 52 Kan. 1 (1894) and in Jackson Township v. Wood, supra. In the latter, the exclusion of such cities for taxation purposes was also declared.

Accordingly, in view of the above statute and the numerous cases which apply it, it is our opinion that Delaware Township no longer contains the City of Lansing within its corporate limits for any purpose, including that of taxation. Should the city and township wish to continue working together on fire protection services, statutes exist which would authorize such joint ventures. See, e.g., K.S.A. 80-1545 (contracts between township fire districts and cities) and K.S.A. 12-2901 et seq. (intergovernmental agreements). The same is true for the sale of water. K.S.A. 80-1605.

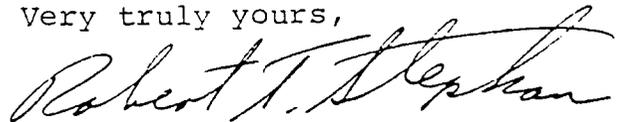
Your second inquiry concerns the effect of the change in Lansing's status upon two of the township officers, who live within the city limits. In that the city is no longer a part of the township, you wish to know what effect, if any, this change has on their continued ability to hold office. In our opinion, K.S.A. 80-202 is directly applicable, to-wit:

"Every person elected to the office of trustee, clerk or treasurer of any township, or road overseer of any road district, shall be an elector of said township or road district at the time of his or her election, and shall within twenty (20) days after being notified of his or her election take and subscribe the oath of office prescribed by law, and shall forthwith cause such oath to be filed in the office of the county clerk of his or her county; and in case any of such officers shall become nonresidents of their respective townships or road districts, their offices shall at once become vacant." (Emphasis added.)

While the statute may have been enacted for the primary purpose of dealing with persons who physically move from a township, the language used is applicable here, where the township in effect moved away from the officers. However, the end result is the same, leaving the two officers no longer residents of the township and so no longer qualified electors. Kan. Const. Art. 5, Sec. 1. Therefore, the effect of K.S.A. 80-202 is to remove the two affected individuals from their offices as of July 1, 1982, although their actions since that time have been valid as de facto officers, their successors having not been appointed by the county commission pursuant to K.S.A. 25-1606.

In conclusion, pursuant to K.S.A. 15-104, third-class cities are included within the corporate limits of the townships in which they are situated. However, once a city becomes a second-class city, it no longer is so included. As a result, the township is without the authority to levy taxes on personal property located in the city. Further, any township officer who resides in the city vacates his or her office by virtue of K.S.A. 80-202, which requires such officers to reside within the township.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General