



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 82

Loren H. Houk  
Attorney at Law  
216 West Main  
Valley Center, Kansas 67147

Re: Counties and County Officers -- Fire Protection --  
Creation of County Fire District; Effect on Existing  
Contracts of Townships and Cities

Synopsis: Pursuant to authority granted by K.S.A. 80-1501 et seq., a township may enter into a contract for fire protection with a city, and may levy a tax for the purpose of paying compensation to a city thereunder. Such a contract is not automatically terminated by the inclusion of the township in a fire district organized by the county under K.S.A. 19-3601 et seq., but may be ended by the mutual agreement of the parties. In the absence of a desire to end the contract, nothing in either act precludes a township and city from continuing to so contract, although the territory in the township will be subject to both the township levy and a levy for the county fire district allowed by K.S.A. 19-3610. Cited herein: K.S.A. 19-3601, 19-3610, 19-3611, 19-3612, 80-1501, 1982 Supp. 80-1502, 80-1503, 80-1543, K.S.A. 80-1545.

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Dear Mr. Houk:

As City Attorney for Valley Center, Kansas, you request our opinion on two questions concerning the ability of three townships to contract with the city for fire protection services. Specifically, you inquire whether the inclusion of the three within a fire district organized by Sedgwick County precludes them from contracting with the city, which, in return for payment, provides fire protection to the townships. You inform

us that the city has entered into annual contracts with Park, Grant and Valley Center Townships since at least 1954, the year Sedgwick County Fire District No. 1 was created.

In providing fire protection, a township is provided with a variety of statutory alternatives. It may create its own fire district under K.S.A. 80-1540 et seq., and either establish an independent fire fighting unit (K.S.A. 1982 Supp. 80-1543), or contract with another township, city or fire district for fire protection (K.S.A. 80-1545). Alternatively, a township may proceed under K.S.A. 80-1501 et seq., and act with a city to create a joint department (K.S.A. 80-1501) or contract with the city for protection (K.S.A. 1982 Supp. 80-1502).

The latter course of action having been taken by the three townships named above, each contracted with the City of Valley Center on an annual basis. These contracts, of which you enclose a representative copy, are paid for by the townships through a tax levy, imposed under K.S.A. 1982 Supp. 80-1503, of up to one mill. While you note a number of ways in which the existing contracts do not comply with the statutory requirements of K.S.A. 1982 Supp. 80-1502, we agree with your conclusion that these defects can be eliminated through redrafting. However, prior to doing so, you wish to know whether the existence of Sedgwick County Fire District No. 1 preempts the townships from so contracting.

District No. 1 was created by the county pursuant to K.S.A. 19-3601 et seq., and includes all of the unincorporated territory of the county which was not already included in a fire district (K.S.A. 19-3601, 19-3611). This would include the three townships which contract with Valley Center, for they acted under K.S.A. 80-1501 et seq., and not 80-1540 et seq., by which a separate township fire district is created. Accordingly, property in the townships is taxed by the district for fire protection (K.S.A. 19-3610).

Of relevance here is K.S.A. 19-3612, which states in part:

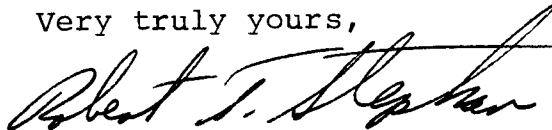
"Nothing in this act shall be construed to alter or abrogate any existing fire protection contract between any city and county or any city and any township, but all such contracts may be, by mutual agreement, terminated at the end of the budget year in which such termination is made effective."

From this language, it is our opinion that no express preemption of a township's power to contract for fire protection services with a city occurs when a county fire district is

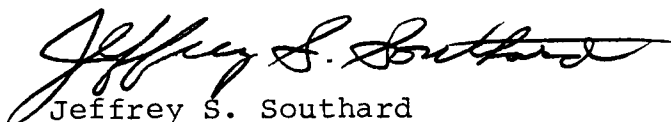
created. Rather, the statute is couched in permissive terms, and allows, rather than mandates, such contracts to be abrogated. Neither the city nor the townships apparently wish to do so, and we find no statutory language which requires termination of the contractual arrangements. Although residents of the three townships are in effect paying taxes to two different entities for fire protection, the increased protection they thereby receive could justify the additional cost. In any event, had the legislature wished to remove the continued power to contract by a township, it could expressly have done so, and we are not prepared to infer that which was not clearly set out.

In conclusion, pursuant to authority granted by K.S.A. 80-1501 et seq., a township may enter into a contract for fire protection with a city, and may levy a tax for the purpose of paying compensation to a city thereunder. Such a contract is not automatically terminated by the inclusion of the township in a fire district organized by the county under K.S.A. 19-3601 et seq., but may be ended by the mutual agreement of the parties. In the absence of a desire to end the contract, nothing in either act precludes a township and city from continuing to so contract, although the territory in the township will be subject to both the township levy and a levy for the county fire district allowed by K.S.A. 19-3610.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:hle