



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 82

Deanne Watts Hay
Sloan, Listrom, Eisenbarth,
Sloan & Glassman
714 Capitol Federal Building
700 Kansas Avenue
Topeka, Kansas 66603-3881

Re: Cities and Municipalities -- Additions, Vacation,
and Lot Frontage -- Annexation of Townships

Townships and Township Officers -- Township
Officers -- Qualifications of Township Officers;
Residency

Synopsis: K.S.A. 80-202 provides that a member of a township
board must vacate such position in the event that
he becomes a nonresident of such township. A
member of the Topeka Township Board who becomes a
nonresident due to annexation may not continue to
serve on the board during the interim between the
present date and January 1, 1987. Cited herein:
K.S.A. 12-503a; 25-1602; 25-1606; 79-1807; 80-202.

* * *

Dear Ms. Hay:

As Counsel for the Topeka Township, Shawnee County, Kansas,
you request our opinion on a question concerning the term of
office of a township board member upon annexation.
Specifically, you ask whether a member of the township board

who resides in a portion of the township which was recently annexed by the City of Topeka may continue to serve as a member of the board during the interim between the present date and January 1, 1987.

Pursuant to the provisions of K.S.A. 80-202, the qualifications of township officials are as follows:

"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 he shall be 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.)

K.S.A. 25-1602 establishes the term of township officers:

"Township officers shall serve until their successors are elected, or appointed, and qualified."

It is your position that an interpretation permitting the annexed board member to serve in the interim would be entirely consistent with the intent of the statutes referred to above. You state:

"[I]t would be incongruous to interpret K.S.A. 79-1807 as controlling the determination of when a board member ceases to be a member of the township by reason of annexation. In the first place that statute makes no mention whatsoever of residency but simply creates an artificial time period when the annexation is deemed effective for taxation purposes. Second, if the relation back

provision of this statute (providing that an area annexed in March 1986 would be treated by law as having been annexed by January 1, 1986) then actions taken by the township board during January, February and March of 1986 (before the annexation actually occurred) could arguable be deemed void for lack of the proper makeup of the board. Yet at the same time, they would not necessarily have known that the annexation was actually going to occur and therefore could not have taken steps to avoid this problem."

Further, you state:

"[A]nother example of a practical problem that supports the interpretation that a board member who is annexed may continue to serve as an elected official of the township during the interim, is the problem of representation of the taxpayers. Pursuant to K.S.A. 12-503a, tax monies from taxpayers residing in the annexed area will continue to be used by the township (and not by the annexing city) during the remainder of 1986. Likewise, the township will continue to provide services to the annexed property during the remainder of 1986 even though the effective date of the annexation is past."

You opine that those taxpayers within the annexed area are entitled to have representation on the township board during the time the township continues to provide services to and utilize the tax monies of the annexed area. For this reason you conclude that it would be logical to interpret the residency statute as having been met during the interim period by a board member whose residence is within the area providing tax monies and receiving services from the township during this interim period.

You are correct in your analysis that K.S.A. 79-1807 is not controlling on this issue. That statute specifically states that its provisions apply for tax purposes only.

K.S.A. 12-503a allows a township to continue furnishing services for the year for which taxes have been levied or collected in those areas of the township annexed. Though the above-stated analysis is correct with regard to the tax implication of the annexation, K.S.A. 80-202 clearly states that a township official who becomes a nonresident of their respective township shall vacate his or her office immediately. Attorney General Opinion No. 82-237 interpreted this statute in a situation where a city of the third class, legitimately within the servicing area of a township (K.S.A. 15-104), became a city of the second class making it no longer a part of the township. Two of the township officers in that situation lived within the city limits. We stated in that opinion:

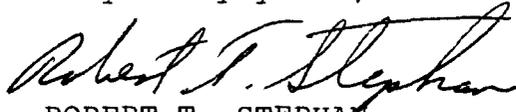
"In our opinion, K.S.A. 80-202 is directly applicable While the statute may have been enacted for the primary purpose of dealing with persons who physically move from a township, the language used is applicable here, where the township in effect moved away from the officers. However, the end result is 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 (the day the city became a city of the second class), 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."

Though the facts differ somewhat in the present situation, the fact remains that the township has in effect been moved away from the officer in question and thus the result is the same. Therefore, it is our opinion that a member of the Topeka Township who has become a nonresident of that township due to annexation must relinquish his position immediately and is not eligible to serve between the present date and January 1, 1987.

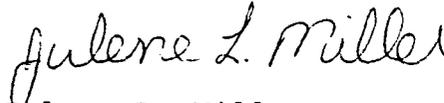
In conclusion, K.S.A. 80-202 clearly provides that a nonresident member of a township board must vacate his

position. Such board member is not eligible to serve on the township board during the interim between the present date and January 1, 1987.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Julene L. Miller
Assistant Attorney General

RTS:JLM:crw