



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 166

Mr. David R. Heger
Miami County Attorney
P.O. Box 245
Paola, Kansas 66071

Re: Counties and County Officers--Fire Protection--
Fire District Organization; Disorganization or
Alteration

Synopsis: K.S.A. 1986 Supp. 19-3602 permits the creation of a fire district pursuant to the motion of the board of county commissioners or as provided in K.S.A. 19-3603. K.S.A. 19-3603 requires that a petition be signed by residents who want a new fire district. Unless proceeding solely under K.S.A. 1986 Supp. 19-3602, this procedure is mandatory not permissive. It is not dependent upon nor extinguished by any previous petition requesting disorganization or alteration of an existing fire district under K.S.A. 1986 Supp. 19-3604. K.S.A. 19-3611 provides the means by which a fire protection benefit district or other special fire district may be included in or made a part of an existing fire district. It should not be used to disorganize or exclude property from an already existing fire district.

The required signatures on a petition requesting creation of a fire district are those of the residents of the county cumulatively owning more than sixty percent of the area of the lands situated within the boundaries of the proposed district, and not total landowners in the affected area. Cited herein: K.S.A 1986 Supp. 19-3602;

K.S.A. 19-3603; K.S.A. 1986 Supp. 19-3604; K.S.A.
19-3611.

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Dear Mr. Heger:

As Miami County Attorney you ask our opinion on the disorganization or alteration of one fire district in order to create a new fire district. You inform us that a majority of the adult residents in the area located in the north central part of your county signed a petition asking to be excluded from Rural Fire District No. 1. You inform us that these residents wish to establish their own fire district and that neither Rural First District No. 1 nor the board of county commissioners object to this proposal. You further inform us that the county clerk checked the petition requesting withdrawal from the present fire district and found that it conforms to the requirements found in K.S.A. 19-3611.

You inquire if, since K.S.A. 19-3611 has been satisfied, as is required in order to include special fire district property in an existing fire district, it is necessary to proceed to K.S.A. 1986 Supp. 19-3602 and K.S.A. 19-3603 and require another petition by the residents of the area in order to organize Rural Fire District No. 2. You also ask an opinion on the language contained in K.S.A. 19-3603 as it pertains to the required signatures of landowners in the area.

K.S.A. 1986 Supp. 19-3604 dictates the procedures whereby any existing fire district may be subsequently altered by the inclusion of new lands or by the exclusion of lands therein:

"(b) Subject to the provisions of K.S.A. 1986 Supp. 19-270, the territory of any organized fire district may be subsequently altered by the inclusion of new lands or by the exclusion of land therein upon a petition to the board of county commissioners signed by the owners of a least 10% of the area of the lands sought to be included or exclude, which petition shall conform, as near as may be possible, to the petition required for the organization of a fire district. If the board of county commissioners finds the petition is sufficient, the board may

adopt and publish a resolution attaching or detaching the lands described in the petition to or from the fire district. . . ."

The petition must be signed by 10% of the owners of lands sought to be included or excluded. The contents of the petition must meet the descriptions set forth in K.S.A. 19-3603. If the statutory requirements are met, and if there is no protesting petition filed pursuant to K.S.A. 1986 Supp. 19-3604, the board of county commissioners may then exclude property from the existing fire district. The existing fire district will then have new boundaries.

You inform us that Miami County used K.S.A. 19-3611 to allow an area within Rural Fire District No. 1 to be withdrawn. This statute applies to benefit districts or other special districts. We have no information on whether your fire district fits within those descriptions.

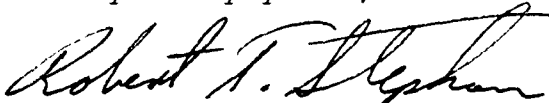
K.S.A. 19-3611 allows a benefit district or special fire district to be included or made a part of any fire district already existing if the statutory requirements are met. These requirements include a petition signed by not less than 51% of the residents within the limits of the benefit district or other special fire district to be included. After any remaining funds of the benefit district or other special fire district are taken care of as required by the statute, that district may then be included in an already existing fire district. It is our opinion that K.S.A. 19-3611 specifically authorizes the inclusion of certain property into a fire district.

Miami County proposes to create an entirely new and distinct fire district, not to include lands into an already existing fire district. K.S.A. 19-3603 and K.S.A. 1986 Supp. 19-3604 address the procedures required to withdraw from an already existing fire district. Once land has been properly excluded or detached from an already existing fire district it does not automatically become a new, distinct and separate fire district. The detached property has no legal status until it is properly included in a new or already existing fire district. Accordingly, the proposed district must comply with the organizational procedures set forth in K.S.A. 1986 Supp. 19-3602 and K.S.A. 19-3603 in order to form a new fire district.

K.S.A. 1986 Supp. 19-3602 mandates the use of procedural methodology contained in K.S.A. 19-3611 when including land within a fire district. Any prior petition under K.S.A. 1986 Supp. 19-3604 which resulted in the disorganization of or exclusion of lands from an already existing fire district does not automatically petition for the creation of a new fire district. Thus, unless the new fire district is being formed solely by motion of the board of county commissioners pursuant to K.S.A. 1986 Supp. 19-3602, a petition to organize a new fire district is required. Attorney General Opinion No. 82-235 evidences the rationale for such a rule.

The required signatures on a petition requesting the creation of a new fire district are those of the residents of the county cumulatively owning more than sixty percent of the area of lands situated within the boundaries of a proposed district and not those of the total landowners in the affected area.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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