



STATE OF KANSAS

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September 16, 1988

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ATTORNEY GENERAL OPINION NO. 88- 138

Mr. Donald Wayne Estes
Shawnee Township Trustee
4804 Quivira Drive
Shawnee Mission, Kansas 66216

Re: Cities and Municipalities -- Additions, Vacation,
and Lot Frontage; Annexation by Cities --
Conditions Which Permit Annexation; Ordinances;
Actions Challenging Validity

Townships and Township Officers -- General
Provisions -- Corporate Status; Powers

Synopsis: It is our opinion that a township may expend moneys from the proper township fund in order to hire an attorney for township purposes. Such purposes may include appearing on behalf of the township at a public hearing concerning proposed annexation pursuant to K.S.A. 1987 Supp. 12-520. However, a township may not expend public moneys to hire an attorney merely for lobbying against an annexation on behalf of the township or representing the legal interests of private landowners. Cited herein: K.S.A. 10-1101; K.S.A. 1987 Supp. 12-519; 12-520; 12-520a; 12-520a(e); 12-521; 77-201 Thirteenth; 79-1962; K.S.A. 79-2934; 80-101.

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Dear Mr. Estes:

As Shawnee Township Trustee you request our opinion on using township funds to hire an attorney to represent the township in proceedings connected with the proposed annexation of township property by the city of Shawnee. You inform us that the proposed annexation is proceeding pursuant to K.S.A. 12-520 et seq. and that if it is successful your township will be left with very little unincorporated area and no residents. You also inform us that the landowners of the township oppose the annexation and prefer to remain part of the township.

In general, a township is a territorial district, subordinate to a county, the inhabitants of which are vested with political and administrative powers for regulating their own local affairs. 1 McQuillan, Municipal Corporation, § 1.30 (1987). K.S.A. 80-101 et seq. sets forth the basic powers and duties of Kansas townships. The authority to appoint attorneys and make necessary contracts is discussed in K.S.A. 80-101 which states:

"Each organized township in this state shall be a body politic and corporate, and in its proper name sue and be sued, and may appoint all necessary agents and attorneys in that behalf, and may make all contracts that may be necessary and convenient for the exercise of its corporate powers."

Thus, a township has authority to hire an attorney in order to bring or defend a suit or when "necessary and convenient for the exercise of its corporate powers." The only restrictions upon expenditures made to hire an attorney are (1) any applicable budgetary laws and (2) whether it properly exercises a corporate power of the township.

K.S.A. 1987 Supp. 79-1962 establishes limitations upon the levy of taxes by a township. While this authority does not establish a specific fund for attorneys fees, it does discuss a tax levy for the township general fund. K.S.A. 80-1422, which allows certain township officials to receive additional compensation from the general fund, evidences the propriety of paying employment compensation from the general fund. Moreover, use of general funds to pay the costs of certain township business appears to be a township corporate purpose.

K.S.A. 79-2934 limits expenditures from funds appropriated for another fund or purpose and K.S.A. 10-1101 et seq. limits the ability of municipalities to incur debt. The established budget of Shawnee township will determine the availability of funds for the proposed purpose of hiring an attorney. Assuming that the proper funds are available, it is our opinion that a township may hire an attorney in order to represent the township in matters within the scope of township purposes. See also 87 C.J.S., Towns, § 54 (1954), and Emporia Township v. Williams, 149 Kan. 860, 865 (1939).

The second issue becomes to what degree and in what capacity a township is authorized to protest a proposed annexation and if that involvement by the township can be characterized as a township corporate purpose sufficient to permit the employment of an attorney.

K.S.A. 1987 Supp. 12-519 et seq. discusses annexation of territory by cities. K.S.A. 1987 Supp. 12-520a(d)(2) requires that a notice of the resolution considering annexation be sent to the governing body of the township where the land to be annexed is located. K.S.A. 1987 Supp. 12-520a(e) allows all interested persons to be heard at the public hearing concerning annexation. K.S.A. 1987 Supp. 77-201 Thirteenth states that in construction of the statutes of this state, "person" may be extended to mean bodies politic and corporate. A township is such a body, pursuant to K.S.A. 80-101, and may therefore be considered a person. Therefore, K.S.A. 1987 Supp. 12-520a(c) allows and authorizes a township to speak at the public hearing. Thus, it is our opinion that hiring an attorney to appear at such a public hearing on behalf of the township is a permissible use of public moneys for an authorized corporate purpose.

We have been informed that the city of Shawnee is proceeding under K.S.A. 1987 Supp. 12-520. Subsection (g) of that provision allows a protesting landowner "to maintain an action . . . challenging the authority of the city to annex the land and the regularity of the proceedings. . . ."

Previous Kansas case law discussed standing to challenge annexation. In Fairfax Drainage District v. City of Kansas City, 190 Kan. 308 (1968), the court did not permit a collateral challenge to the annexation proceedings to be brought in the name of the drainage district. Enacted after this case, K.S.A. 1987 Supp. 12-520, statutorily authorized court challenges by any owner of land annexed by a city under

authority of that section. It did not, however, extend legal standing to include other persons or entities.

After enactment of K.S.A. 12-520, the Kansas court again discussed standing to challenge annexation proceedings in City of Lenexa v. City of Olathe, 229 Kan. 391 (1981). The court differentiated between annexations proceeding pursuant to K.S.A. 12-520 and 12-521:

"Syl. ¶ 2: 'Under the statutes pertaining to the annexation of land by cities (K.S.A. 12-519 et seq.), where a dispute arises as to the annexation of land which adjoins a city the only interested parties to the controversy are the city and the owner of the land which has been proposed for annexation. Other incorporated cities in the county do not have standing to challenge a proposed annexation where the land adjoins the city and the owner of the land consents to the annexation.'

"Syl. ¶ 3: 'In cases of a proposed annexation of land not adjoining the city, the rights of another incorporated city in the county must be considered and it has an interest which entitled it to challenge such an annexation in the district court.'"

Subsequent amendments to K.S.A. 12-520(g) have not extended legal standing to challenge annexation procedures to entities other than the landowners. If the annexation in question is proceeding pursuant to K.S.A. 1987 Supp. 12-520 and the land adjoins the city, the only interested parties to the controversy are the city of Shawnee and the individual landowners in the affected area. Thus, these are the only parties granted legal standing to challenge annexation proceedings.

There is a trend towards permitting municipal or quasi-municipal corporate parties to challenge governmental actions rather than only permitting individuals to challenge the validity of territorial annexation. McQuillin, Municipal Corporations, § 7.43 (1988). K.S.A. 1987 Supp. 12-521 evidences such a trend in Kansas; where the proposed annexation of land affects land not adjoining the city, other

cities may challenge the annexation. However, a township is not a city. Moreover, the proposed annexation purportedly affects land adjoining the city and the annexation is therefore proceeding pursuant to K.S.A. 12-520 not 12-521. Thus, Shawnee township apparently does not have standing to bring an action challenging the annexation proceedings.

If the township does not have legal standing to challenge annexation proceedings, the other purposes for hiring an attorney include lobbying for a particular annexation decision or representing the legal interests of the affected landowners. As previously recognized, K.S.A. 80-101 allows the township to exercise corporate powers. It therefore becomes necessary to determine whether such corporate powers include the power to lobby against annexation or to fund the legal representation of private landowners who are protesting annexation.

Previous Attorney General opinions discuss the authority to approve expenditures of public funds for lobbying. As discussed in Opinions No. 81-216 and 83-52, such authority must exist either as expressly conferred or necessarily implied powers. Pursuant to K.S.A. 1987 Supp. 12-520a(e) a township is statutorily authorized to appear at the public hearing held on annexation. Beyond that, we find no authority allowing the township to lobby or intervene. It is therefore our opinion that a township may not hire an attorney merely to lobby against a proposed annexation.

Attorney General Opinion No. 86-177 discussed the authority of a watershed district to retain counsel in order to assist a private landowner with legal costs incurred as a result of litigation that peripherally affected the district. While the opinion noted that the district could possibly benefit from the employment of such an attorney, we opined that such employment was impermissible.

"It is a fundamental rule of law that a lawyer cannot permit a person who pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services. K.S.A. 7-125, DR 5-107(B). Thus, even if the district pays an attorney to represent a landowner before the IRS, that attorney owes no duty to the district. Since the interests of the individual landowner and those of the

district may not always be the same, and since any appropriation of public money must be for a public purpose, such an expenditure would be impermissible. See In re Page, 60 Kan. 842 (1899)."
(Emphasis added.)

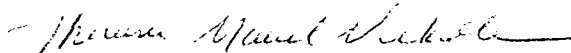
It is our opinion that the legal principles enunciated in Opinion No. 86-177 also prohibit the retainment of counsel by a township in order to represent individual landowners who are protesting annexation.

In summary, it is our opinion that a township may expend moneys from the proper township fund in order to hire an attorney for township purposes. Such purposes include costs connected with appearing on behalf of the township at proceedings where a township has legal authority or standing such as a public hearing concerning proposed annexation pursuant to K.S.A. 1987 Supp. 12-520. However, a township may not expend public moneys to hire an attorney in order to lobby against an annexation on behalf of the township or represent the legal interests of private landowners.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
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