STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 162

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Re: Townships and Township Officers -- Fire Protection -- Ownership and Disposition of Fire Fighting Equipment Subsequent to Annexation

Cities and Municipalities -- Additions, Vacation and Lot Frontage; Annexation by Cities -- Ownership and Disposition of Property Owned by Township Prior to Annexation by City

Synopsis: When a city annexes all land formerly within township boundaries, the city becomes the owner of fire fighting equipment formerly owned by the township. In this situation, the city also becomes liable for any indebtedness on such equipment. Cited herein: K.S.A. 1990 Supp. 12-520; 12-521; 12-527; K.S.A. 80-1501.

* * *

Dear Mr. Kugler:

As attorney for Prairie township board of trustees, you ask our opinion regarding the ownership and disposition of township fire fighting equipment subsequent to a city's annexation of all land formerly comprising the township. In

addition, you ask our opinion regarding ownership and disposition of this property pending appeal of the annexation.

You inform us that Prairie township operated a volunteer fire department pursuant to K.S.A. 80-1501 et seq. Recently the Wyandotte county commissioners approved the petition of Kansas City, Kansas to annex the unincorporated area of Wyandotte county which included all of Prairie township. An appeal is currently pending in the district court challenging the validity of the annexation.

The issue presented is that of ownership of the township fire fighting equipment during the interim period and ultimately, if annexation survives the legal challenge. This issue has become focused because the township desires to dispose of the fire fighting equipment and thereafter distribute the proceeds to the residents of the annexed area who provided for its acquisition; the city, on the other hand, desires to take over the equipment to use or dispose of the equipment as it sees fit.

One hundred and fifteen years ago Justice Clifford, delivering the opinion of the court in Laramie County vs. Albany County, 92 U.S. 307, 23 L.Ed. 552 (1876), stated:

> "Counties, cities and towns are municipal corporations, created by the authority of the Legislature; and they derive all their powers from the source of their creation, except where the Constitution of the State otherwise provides. Beyond doubt, they are, in general, made bodies politic and corporate; and are usually invested with certain subordinate legislative powers, to facilitate the due administration of their own internal affairs, and to promote the general welfare of the municipality. They have no inherent jurisdiction to make law, or to adopt governmental regulation, nor can they exercise any other powers in that regard than such as are expressly or impliedly derived from their charters, or other statutes of the State." 92 U.S. at 308.

One such incident of municipal jurisdiction in Kansas is the statutory power of cities to annex land (K.S.A. 1990 Supp. 12-1520; K.S.A. 1990 Supp. 12-1521) even without the consent

of the inhabitants of the territory annexed or against their express protest. 56 Am.Jur.2d, Municipal Corporations § 55 (1971).

The effect of annexation is this:

> "When territory has been lawfully and finally annexed, the new area becomes, ipso facto, a part of the municipality, subject to municipal jurisdiction, and it may be governed as the original municipal territory was governed prior to change, subject, of course to terms and provision of the annexation, requiring variation in government. Newly-annexed territory is entitled, moreover, to share in the municipal services and benefits accorded to the other portions of the municipal territory upon a footing of substantial equality. This principle, of course, is tempered by the economic, political and other practical contingencies, too numerous to mention, over which a municipality has no absolute and complete control." McQuillin Mun. Corp., § 7.46 (3rd Ed.).

The Kansas Supreme Court adopted that statement of law in Clarke v. City of Wichita, 218 Kan. 334, 346-347 (1975).

K.S.A. 1990 Supp. 12-520 provides cities with the statutory authority to annex land by ordinance. K.S.A. 1990 Supp. 12-521 provides alternate authority to annex land by petition to the county commissioners in a quasi-judicial proceeding. With the exception of lands located in a rural water district, K.S.A. 1990 Supp. 12-527, neither statutory procedure makes provision respecting apportionment of property or debts upon annexation.

Unquestionably, the legislature has power to provide by statute, upon municipal annexation of territory, for a fair and equitable disposition or division of public property. McQuillin Mun. Corp., § 7.47 (3rd Ed.). The question here regards what happens when the legislature has not so provided. Fortunately, this question was answered by the United States Supreme Court in Mt. Pleasant v. Beckwith, 100 U.S. 514, 25 L.Ed. 699 (1880), cited with approval in an

early Kansas case, City of Wellington v. Wellington Township, 46 Kan. 213 (1891):

> "[W]hen a city of the second class is created out of the territory of a municipal township, and the public property of the township is situated within the boundaries of such city, which municipality owns the property? In the absence of legislative regulation, the presumption is that the legislature did not consider that any regulation was necessary. (Mt. Pleasant v. Beckwith, 100 U.S. 514). It is said in this case:
>
> > "Where there is no legislation on the subject, the old corporation owns all the public property within its limits, and is responsible for all debts of the corporation contracted before the separation, nor has the new municipality any claim to any portion of the public property except what falls within its boundaries, and to that the old corporation has no claim whatever. . . ." 46 Kan. at 221.

More specifically, Mt. Pleasant stated:

> "[W]hen the corporation first named ceases to exist there is then no power left to control in its behalf any of its funds, or to pay off any of its indebtedness. Its property passes into the hands of its successor, and when the benefits are taken the burdens are assumed. . . ." 100 U.S. at 528.

Flanign v. Leavenworth Recreation Commission, 219 Kan. 710 (1976), cited that passage with approval and noted the Kansas Supreme Court had employed similar language in Vandris v. Hill, 58 Kan. 611, 613 (1897).

> "Where one [municipal] corporation goes entirely out of existence by being annexed to or merged in another, if no arrangements are made respecting the property and liabilities of the

> corporation which ceases to exist, the subsisting corporation will be entitled to all the property and answerable for all the liabilities."

See also McQuillin Mun. Corp., § 8.24 (3rd Ed.) and 56 Am.Jur.2d Municipal Corporations § 92 (1971).

Here Prairie township has ceased to exist by virtue of its annexation by the city of Kansas City, Kansas. Accordingly, property owned by Prairie township, such as fire fighting equipment, became the property of the city upon annexation. Any indebtedness due on such property likewise became the obligation of the city.

Based on the foregoing common law it is our opinion that ownership of the fire fighting equipment is vested in the city, contingent upon the outcome of the appeal. In the event that the annexation is ultimately held invalid, the township as a body politic and corporate would emerge from the ashes, again charged with the responsibility of protecting township residents from the hazards of fire. The city is accordingly advised not to dispose of the equipment until final disposition of the case.

In conclusion, when a city annexes all land formerly within township boundaries, the city becomes the owner of fire fighting equipment formerly owned by the township. In this situation, the city also becomes liable for any indebtedness on such equipment.

Very truly yours,

Robert T. Stephan

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Camille Nohe

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Assistant Attorney General

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