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ATTORNEY GENERAL OPINION NO. 92- 54

The Honorable Dave Webb
State Senator, Eleventh District
State Capitol, Room 128-S
Topeka, Kansas 66612

Re: Counties and County Officers--Fire Protection;
Districts in Certain Counties Over 90,000--Fire
Districts in Johnson County; Annexation of District
Property by Cities; Procedure; Retroactive Effect

Synopsis: The provisions of 1991 Senate Bill No. 24 apply
retroactively to pending annexation and detachment
proceedings. The bill has no application, however,
to annexation and detachment proceedings concluded
prior to its enactment. Cited herein: K.S.A. 1991
Supp. 19-3616; 19-3623f; L. 1991, ch. 82, §§ 1, 2.

* * *

Dear Senator Webb:

You request our opinion regarding 1991 Senate Bill No. 24 (L. 1991, ch. 82, §§ 1 and 2). Specifically you inquire whether the bill's provisions apply retroactively.

1991 Senate Bill No. 24 altered the method for determining whether territory, or land, in a fire district in Johnson county would remain a part of the fire district or be detached and transferred to the city annexing the territory. Section 1 of the bill in question amends K.S.A. 19-3616 (Ensley 1988) by deleting the following language:

"If any territory included in any fire district created under the provisions of this act [K.S.A. 19-3613] is thereafter included within the corporate limits of any city, such territory shall continue to be within and a part of said fire district unless approved for detachment and exclusion from the territory of such district by the governing body of such city and the governing body of such fire district. . . ." (Emphasis added).

Section 2 is new language (codified at K.S.A. 1991 Supp. 19-3623f) providing in part as follows:

"(a) If any land included in a fire district created under the provisions of K.S.A. 19-3613, and amendments thereto, is thereafter annexed by any city, other than the city of Overland Park, such land shall continue to be within and a part of the fire district unless approved for detachment and exclusion from the boundaries of such district by the board of county commissioners. . . ." (Emphasis added).

This section further provides for negotiation of an agreement between the city and the fire district to facilitate the transfer of land and property to the city. If the city and the fire district cannot reach an agreement, the section sets out a procedure for the county commission to determine whether to detach and transfer land and property from the fire district to the city.

Generally, a statute is presumed to operate only prospectively unless it clearly indicates a legislative intent for it to operate retroactively. Anderson v. National Carriers, Inc., 240 Kan. 101, 103 (1986). This general rule is modified, however, where the statutory change is merely procedural or remedial in nature and does not affect substantive rights of parties (including contract rights). State v. Nunn, 244 Kan. 207, 218 (1989). Purely procedural statutes which do not affect substantive rights are ordinarily given retrospective application. Tew v. Topeka Police and Fire Civil Service Comm., 237 Kan. 96, 103 (1985). All rights of action will be enforced under the new procedure without regard to whether

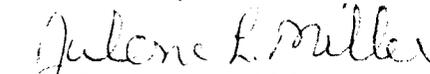
they accrued before or after such change of law. Nitchals v. Williams, 225 Kan. 285, 291 (1979).

The changes occasioned by 1991 Senate Bill No. 24 are procedural in nature. Prior to amendment the statutes required agreement between the city governing body and the fire district governing body before land annexed by the city would be detached and excluded from the fire district. Subsequent to amendment the statutes continue to require such agreement (except in the city of Overland Park, which is not at issue here), but set forth a procedure by which the governing body of the county may mediate an impasse in the negotiations. Since the changes are procedural only, the provisions are retroactive to the extent that annexation and detachment proceedings are still pending. The bill does not, however, have application to annexation and detachment proceedings concluded prior to its enactment. See 73 Am.Jur.2d Statutes § 354 (1974); 82 C.J.S. Statutes § 421 (1953).

Very truly yours,



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RTS:JLM:jm