



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 78

Richard A. Boeckman  
Barton County Counselor  
2200 Lakin  
P.O. Drawer 459  
Great Bend, Kansas 67530

Re: Townships and Township Officers -- Fire Protection  
-- Townships or Certain Counties May Join with  
Municipality to Maintain Fire Department; Purchase  
of Equipment; Fire Hydrants

Synopsis: Fire hydrants are more reasonably categorized as  
equipment for the utilization of water than as fire  
fighting equipment per se. A township is not  
authorized to purchase fire hydrants with funds  
levied pursuant to K.S.A. 80-1503, and accordingly  
may not use such funds to purchase fire hydrants to  
loan or give to a rural water district. Cited  
herein: K.S.A. 80-101; 80-1501; 82a-619.

\* \* \*

Dear Mr. Boeckman:

As county counselor for Barton county, you ask our opinion  
regarding the authority of Great Bend township to purchase  
fire hydrants which would subsequently be installed and  
maintained by Barton county rural water district no. 3. You  
ask whether funds levied pursuant to the provision of K.S.A.  
80-1501 et seq. may be used for such a purchase.

We understand from a telephone conversation with you that this  
proposed arrangement would be essentially a gift of fire

hydrants by the township to the rural water district. It is with this understanding that we address your question regarding the township's authority.

K.S.A. 80-1501 authorizes townships and certain counties to contract with a municipality "in the maintenance of a fire department for the prevention and fighting of fires within their boundaries." You inform us that Great Bend township has entered such an agreement with the city of Great Bend.

K.S.A. 80-1503 authorizes a township to levy a special tax on all tangible property in the township to pay for purposes as provided in K.S.A. 80-1501 which include "the cost of equipment." The first issue, therefore, is whether fire hydrants may be considered fire fighting equipment. The term "equipment" is not defined within K.S.A. 80-1501 et seq.

K.S.A. 82a-619 defines the powers of rural water districts. Those powers include the power to hold personal property and:

"(5) to construct, install, maintain and operate such ponds, reservoirs, pipelines, wells, check dams, pumping installations or other facilities for the storage, transportation or utilization of water and such appurtenant structures and equipment necessary to carry out the purposes of its organization."

In our opinion a fire hydrant is a facility by which water is transported and utilized when needed to fight fires and is therefore more reasonably categorized under K.S.A. 82a-619 as a water utilization facility rather than as fire fighting equipment per se.

Townships are bodies politic and corporate (K.S.A. 80-101) which are created by statute. It is a well settled principle that creatures of statute have powers only as conferred by statute. Any "reasonable doubt as to the existence of such power should be resolved against its existence." Hobart v. U.S.D. No. 309, 230 Kan. 375, Syl. 2 (1980).

"Since the powers of towns are special and restricted to those expressly granted or implied, and to such incidental powers as pertain to the purposes for which towns were created, . . . their authority to raise or appropriate money is derived from

the statutes, and the expenditure of public funds or the incurring of indebtedness is limited to public purposes sanctioned by law. . . ." 87 C.J.S. Towns Sec. 114 (1954).

Since fire hydrants are not considered fire fighting equipment, funds may not be levied pursuant to K.S.A. 80-1503 for the purchase of fire hydrants. Collected taxes must be applied as directed by statute or ordinance; funds collected for specific purposes may not be diverted to other uses. 87 C.J.S. Towns, Sec. 167 (1954).

In conclusion, fire hydrants are more reasonably categorized as equipment for the utilization of water in fighting fires than as fire fighting equipment per se. A township is not authorized to purchase fire hydrants with funds levied pursuant to K.S.A. 80-1503, and accordingly may not use such funds to purchase fire hydrants to loan or give to a rural water district.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Camille Nohe  
Assistant Attorney General

RTS:JLM:CN:bas