FILE

Subject Cities Annexation

Copy to

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

April 29, 1974

Opinion No. 74-131

Mr. Morris Moon
Augusta City Attorney
Augusta, Kansas 67010

Dear Mr. Moon:

You inquire concerning the validity and effect of certain annexation ordinances recently adopted by the City of Augusta.

In Opinion No. 74-62, we considered the effective date of an ordinance published February 11, 1974. We concluded that under K.S.A. 12-523, this ordinance did not take effect until April 3, the day following the city general election. On March 18, you advise, the city passed an ordinance annexing additional land, this ordinance being published March 21.

These ordinances were adopted under the authority of K.S.A. 12-519 et seq., including K.S.A. 12-520, which prescribes seven conditions, one or more of which a city may annex property thereunder. This section, as well as K.S.A. 12-521, was repealed by section 7 of 1974 House Bill 1623, which became effective upon publication in the official state paper on March 28, 1974, this being after the publication on March 21 of the ordinances adopted March 18.

The initial question presented is whether the validity of these ordinances is impaired by the repeal of K.S.A. 12-520 prior to April 3, 1974, the date on which the ordinances became effective pursuant to K.S.A. 12-523.

We are advised that all land annexed by each of the ordinances in question was deemed subject to annexation under K.S.A. 12-520(a), which authorizes annexation of land which "is platted, and some part of such land adjoins the city." This particular basis for annexation was carried forth in § 4 of the 1974 bill.

Thus, the statutory condition under which the land was deemed subject to annexation was unaffected by the new law.

Sections 2 and 3 of that bill set forth additional procedures to be followed in making any annexation. Under section 2, the governing body must adopt a resolution stating that annexation is being considered, describe the land proposed to be annexed, give notice of a public hearing to be held, and state that the plan for the extension of services to the area is available for inspection. Under section 3, this plan must be adopted prior to the adoption of the resolution required by section 2.

The ordinances adopted on February 11 and March 21 were adopted and published prior to the effective date of House Bill 1623, which was published in the official state paper on March 28, 1974. These ordinances did not, of course, become effective until April 3, due to K.S.A. 12-523. However, all of the steps within the power of the governing body to effect the annexations in question were completed prior to the change in the law. Nothing in the 1974 act indicates that any provision thereof should be given retroactive effect, i.e., should operate to govern any procedural step of any annexation which was completed prior to the effective date of the bill. Once the ordinances were published, no further step remained to be performed by the governing body. Their effectiveness awaited only the passage of time until the April city general election, being stayed by operation of K.S.A. 12-523. The ordinances were duly enacted under the authority of statutes existing at the time the ordinances were adopted and published, and their validity is not affected, in our view, by the enactment and publication of 1974 House Bill 1623 on March 28, 1974.

A further question remains. Although we believe the validity of the ordinances to be unaffected by the enactment of House Bill 1623, per se, the fact remains that neither ordinance became effective until April 3. You state that by the later ordinance, the city undertook to annex two separate parcels of land. As to one of these, you indicate, "the area so annexed would not be contiguous to the City limits of Augusta [on March 21] unless the previous annexation (February 11) was valid."

In State ex rel. Kreamer v. City of Overland Park, 192 Kan. 654, 391 P.2d 128 (1964), the court considered an instance in which the city on February 19, 1962, enacted four separate ordinances, each annexing a separate tract. The court stated the facts succinctly:

> "The particular tract in question consisted of ten acres and did not touch the boundary line of the

city of Overland Park. There were three other tracts between the tract in question and the city's boundary line. These three tracts were annexed by separate ordinances numbered A-137, A-138 and A-139. The three ordinances were enacted on February 19, 1962, but were not to become effective until official publication which took place the next day. At the time ordinance A-142 was enacted February 19, 1962, the tract covered by the ordinance did not touch the boundary line of the city of Overland Park. We must agree with the statement of the district court . . . ."

> "'In this case the land described in ordinance numbered A-142 met none of the requirements of the enabling act at the time of its passage, and, accordingly, the Court is obliged to hold and does hold that ordinance numbered A-142 of the City of Overland Park, Kansas, is void and of no force and effect whatever.'

"Appellant, the city of Overland Park, appears to contend that ordinances numbered A-142, A-137, A-138 and A-139 could have been combined in one ordinance and that the tract covered by ordinance A-142 would have then been legally annexed. We must not be concerned with what the city might have done in the annexation of territory. As we have previously stated, the courts must be concerned only with the statutory authority for the action taken by the municipality." 192 Kan. at 657.

A similar conclusion was reached by the Wyandotte County District Court in State ex rel. Miller v. City of Kansas City, Kansas, No. 43688-B, on June 26, 1972:

"Subsections (1), (2), (3) and (7) [of K.S.A. 14-447] each contain, in and of themselves, no requirement that land or lands annexed thereunder adjoin the city. That requirement is superimposed upon each of the subsections by the initial paragraph of the statute, which requires that annexed land be 'adjoining or touching the corporate limits of the city.' This is a prerequisite which must be met by any land or lands annexed under any separate subsection. This requirement cannot be satisfied merely by the fact that certain land is adjacent only to other land being annexed at the same time." [Journal Entry, Part II, para. 5]

On March 21, when the second ordinance in question was published, the corporate limits of the city had not yet been altered by the ordinance published on February 11, 1974, for it had not yet become effective. Thus, if the area in question purported to have been annexed by the ordinance published March 21 was contiguous or adjacent only to other land being annexed by that ordinance, it was not contiguous or adjacent to the city itself as defined by the corporate limits in effect on March 21. Thus, we cannot but conclude, on the basis of the statements in your letter, that there is no authority for the annexation of this portion of the land described in the ordinance published March 21, 1974.

If you should have further questions concerning this matter, please do not hesitate to contact us.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:jsm