



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 23, 1976

ATTORNEY GENERAL OPINION NO. 76-68

Mr. James W. Clark
Deputy County Attorney
Franklin County Courthouse
Ottawa, Kansas 66067

Re: Townships--Fire Districts--Service Contracts

Synopsis: A township fire district organized under K.S.A. 80-1540 *et seq.* is obliged to furnish fire protection service to all inhabitants of the district, and not only to those persons able and willing to execute service contracts for such service.

Service by publication is permitted by K.S.A. 38-810 as a permissible method of serving summons under K.S.A. 38-820.

* * *

Dear Mr. Clark:

You inquire, first, whether a fire district, organized under K.S.A. 80-1540 *et seq.*, can raise funds from service contracts in lieu of levying taxes. You advise that several of the township boards believe that owners of several large tracts of unimproved land would oppose organization of a fire district which resorted to a general property tax, but that organization of a fire district based upon funding from receipts from service contracts would not be opposed.

K.S.A. 1975 Supp. 80-1544 prescribes the general powers of the governing body of the fire district. It provides that it

"shall have full direction and control over the operation of such fire department . . .

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and may do all other things necessary or desirable to maintain and operate such department so as to furnish fire protection for the inhabitants of such district"

The act contemplates a tax-supported district, organized as a governmental entity to provide fire protection to all inhabitants and property within its boundaries, fire protection being extended to all persons therein regardless of their ability to pay for this service. It does not contemplate the organization of a proprietary fire protection service, as it were, serving only those persons who were financially able to afford its services. The declared statutory purpose of the district is to "furnish fire protection of the inhabitants" of the district. In my opinion, it is beyond the power or statutory charge of a district organized under this act to extend its services only to those persons who subscribed therefor by payment of a service fee, and to deny those same services to all other inhabitants of the district.

Secondly, you inquire concerning notice required to be afforded a parent before a juvenile court may enter an order permanently depriving a parent or parents of parental rights. K.S.A. 38-820 states thus:

"No order or decree permanently depriving a parent of his parental rights in a dependent and neglected child under subsection (c) of section 24 of this act shall be made unless such parent is present in juvenile court or has been served with summons as provided in section 10 [38-810] of this act."

K.S.A. 38-810(b) states in pertinent part thus:

"Except as otherwise provided in subsection (c) of this section, all summonses to appear in the juvenile court, under any section of this act requiring same to be served as provided in this section, shall be served: (1) by delivering a copy of the summons to the person named therein personally, or (2) if such personal service cannot be made, by leaving one at his usual place of residence at least forty-eight hours before the time set in the summons for his appearance at the juvenile court hearing." [Emphasis supplied.]

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Service by personal delivery or by leaving a copy of the summons at the parent's usual place of residence are methods of service which must be used "[e]xcept as otherwise provided in subsection (c)" of that section. That section specifically authorizes service by publication

"[w]hen a parent of a dependent and neglected child may be deprived of his or her parental rights and when, upon proper affidavit of the officer or person making the return, the judge of the juvenile court is satisfied that it is impossible to serve the summons upon such parent pursuant to subsections (a) and (b) of this section. . . ."

K.S.A. 38-820 requires service of summons "as provided in section 10 [K.S.A. 38-810] of this act." This reference incorporates all of the latter section, subsection (c) as well as subsection (b), and authorizes service by publication in those circumstances provided in subsection (c) of K.S.A. 38-810.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj