



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 4, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 80-6

Mr. J. D. Euler
Attorney for Rural Fire District No. 4
Doniphan County
Euler & Euler
137 South Main
Troy, Kansas 66087

Re: Counties and County Officers--Fire Protection--
Issuance of No-Fund Warrants

Synopsis: A fire district created pursuant to K.S.A. 1979 Supp. 19-3601 et seq. may issue no-fund warrants pursuant to K.S.A. 1979 Supp. 19-3601b, without the approval or authorization of the state board of tax appeals. Such warrants must be issued in the form and according to the procedures prescribed by K.S.A. 79-2940, with one exception. The notation of authorization prescribed by the latter statute is not applicable to fire district no-fund warrants.

* * *

Dear Mr. Euler:

You have inquired whether a rural fire district organized pursuant to K.S.A. 1979 Supp. 19-3601 et seq. must obtain an order of the state board of tax appeals before it may issue no-fund warrants for fire district purposes pursuant to L. 1979, ch. 75, §2 (which section is now codified and is hereinafter referred to as K.S.A. 1979 Supp. 19-3601b).

Mr. J. D. Euler
Page Two
January 4, 1980

In addition to granting authority to issue general obligation bonds, K.S.A. 1979 Supp. 19-3601b further provides, in relevant part, that "[t]he governing body of any such fire district [created pursuant to K.S.A. 1979 Supp. 19-3601 et seq.] shall also have the authority to issue no-fund warrants in the manner prescribed in K.S.A. 79-2940." As you have correctly noted, under K.S.A. 19-3607, which section was repealed in 1979 (L. 1979, ch. 75, §17), fire districts could not issue no-fund warrants without the approval and order of the state board of tax appeals. The new section (K.S.A. 1979 Supp. 19-3601b) imposes no such condition precedent in express terms.

However, as you have further noted, the statute in question authorizes the issuance of no-fund warrants "in the manner prescribed in K.S.A. 79-2940." The latter provision states that warrants issued thereunder shall bear a notation indicating their issuance pursuant to authority granted by an order of the state board of tax appeals. You inquire whether this provision imposes a requirement for a board order before a rural fire district may issue no-fund warrants under K.S.A. 1979 Supp. 19-3601b. In our opinion, K.S.A. 79-2940 imposes no such requirement, and a fire district may issue no-fund warrants without the approval and order of the board of tax appeals.

We reach this conclusion for several reasons. First, we think it important to compare the language of the former section which authorized the issuance of no-fund warrants with the language of the new section. K.S.A. 19-3607 authorized boards of county commissioners, acting as the governing bodies of fire districts,

"to issue no-fund warrants of the district
as provided in K.S.A. 79-2940. Said no-fund
warrants shall not be issued until an order
authorizing such issuance shall have been
made by the state board of tax appeals."
(Emphasis added.)

Significantly, much of the language of the repealed section (19-3607) was incorporated into the second paragraph of the new section (19-3601b), but the language which formerly required the state board's approval and order was not included in the new section. In our judgment, the absence of such language is a conspicuous omission, and reflects legislative intent to eliminate the former condition precedent fixed by K.S.A. 19-3607. As the Kansas Court of Appeals declared:

Mr. J. D. Euler
Page Three
January 4, 1980

"When a statute is revised and some parts are omitted, the omitted parts are not readily to be supplied by construction but are generally to be considered as annulled. . . . A change in phraseology or the deletion of a phrase in amending or revising a statute raises a presumption that a change in meaning was intended by the legislature." Linson v. Johnson, Executrix, 1 Kan.App.2d 155, 160 (1977), aff'd, 223 Kan. 442 (1978). (Emphasis added.)

Both the former section and the new section explicitly reference K.S.A. 79-2940, but only the former section contained language requiring state board authorization of no-fund warrants issued by fire districts. Under the foregoing rule of statutory construction, that the legislature deleted the limiting language is not without significance, but rather indicates that the legislature intended to eliminate the requirement of state board authorization.

We are aware that the legislature has expressed itself more clearly in this regard in at least one other instance. See K.S.A. 1979 Supp. 19-15,116(e), which section provides that counties may issue no-fund warrants for construction, acquisition, or alteration of county public buildings "as prescribed by K.S.A. 79-2940, except that they may be issued without the approval of the state board of tax appeals, and without the notation required by said section." We concede that the legislature could have expressed itself in similar fashion in the statute in question and thus have eliminated any doubt as to its intention, but we nonetheless conclude that the legislature intended to eliminate the requirement for a state board order authorizing fire district no-fund warrants.

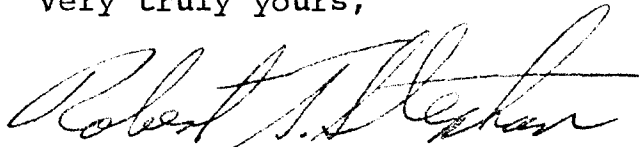
It is our judgment that the legislature's reference to K.S.A. 79-2940 in the statute in question only imposes requirements as to the form of the warrants, and other procedural requirements relating to rate of interest, sale, registration and surpluses, but does not impose a substantive requirement of state board authorization of such warrants. It is important to note that K.S.A. 79-2940 is generally used in conjunction with applications before the board of tax appeals made by municipalities pursuant to K.S.A. 79-2938 and 79-2939. In such instances, it is sensible that no-fund warrants authorized by the board and issued under those statutes should bear a notation that such warrants are issued "pursuant to authority granted by . . . the state board of tax appeals." K.S.A. 79-2940. (Emphasis added.)

Mr. J. D. Euler
Page Four
January 4, 1980

In contrast, fire districts have independent authority to issue no-fund warrants, under K.S.A. 1979 Supp. 19-3601b. Thus, it is not sensible that warrants issued pursuant thereto should bear the notation prescribed by K.S.A. 79-2940, since the board of tax appeals has no authority to approve or disapprove such warrants. Thus, the "notation" language in K.S.A. 79-2940 has no application to fire district no-fund warrants. As a general rule, "[t]he intent and purpose of the legislature should govern the construction of a statute even though words or statutory references at some place in the statute must be inserted or omitted." Parker v. Continental Casualty Co., 191 Kan. 674, 682 (1963).

Accordingly, we conclude that a fire district created pursuant to K.S.A. 1979 Supp. 19-3601 et seq. may issue no-fund warrants, pursuant to K.S.A. 1979 Supp. 19-3601b, without the approval or authorization of the state board of tax appeals. Such warrants must be issued in the form and according to the procedures prescribed by K.S.A. 79-2940, with one exception. The notation of authorization prescribed by the latter statute is not applicable to fire district no-fund warrants.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:WRA:SC:gk