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January 25, 1980

ATTORNEY GENERAL OPINION NO. 80-23

The Honorable Phil Martin
State Representative, 114th District
Room 281-W, State Capitol
Topeka, Kansas 66612

re: Counties and County Officers -- Fire Protection --
Multi-County Fire Districts

Synopsis: Fire districts may be enlarged by attachment of adjacent territory located in adjoining counties, pursuant to K.S.A. 19-3630, upon a petition therefor presented by residents of the territory proposed to be attached. If said territory is already part of an existing fire district, residents must first petition for detachment of the territory from said district, pursuant to K.S.A. 19-3604(b), before it may be attached to the district in the adjoining county.

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Dear Representative Martin:

On behalf of other interested state legislators and constituents in Stafford and Pawnee Counties, you inquire whether a fire district organized pursuant to K.S.A. 1979 Supp. 19-3601 et seq. may be expanded by inclusion of territory situated in an adjoining county. Specifically, you inquire whether K.S.A. 19-3604(b) establishes the authority for such an expansion.

In our judgment, K.S.A. 19-3604(b) does not establish authority for the enlargement of a fire district by inclusion of territory situated in an adjoining county. Although the statute broadly provides for the "inclusion of new lands," we conclude that that phrase only pertains to lands within the territorial boundaries of a particular county. Absent specific enabling legislation, a county has no power to affect territory lying beyond its territorial borders, since the exercise of such authority would be, in our opinion, beyond the scope of a county's home rule powers of "local legislation and administration." (Emphasis added.) K.S.A. 1979 Supp. 19-101a.

Notably, however, the provisions of K.S.A. 19-3624 et seq. establish such specific authority in counties, enabling the creation of multi-county benefit districts for the purpose of providing fire fighting services, and for the enlargement of an existing fire district by attachment of territory situated in an adjoining county, pursuant to K.S.A. 19-3630. (See also, K.S.A. 31-301 to 31-304, inclusive, providing for the establishment of multi-county benefit districts, the boundaries of which coincide with the boundaries of school districts, upon a petition of fifty-one percent of the resident property owners therefor.) The existence of these provisions reinforces our conclusion that counties are not otherwise empowered to make extra-territorial attachments. In recognition of that lack of authority, the legislature made special provision for multi-county fire districts, and for the enlargement of a fire district beyond county borders, when the residents of the territory to be affected deem such districts, or enlargements of districts, to be beneficial.

K.S.A. 19-3630 provides, in pertinent part:

"Whenever a fire district has been organized within any county as authorized by law and thereafter, territory adjacent thereto, but located in another county and not a part of any organized fire district, may be attached to such fire district in the same manner as provided

in section 6 [19-3629] of this act, for attachment of territory to a district organized and established in more than one county." (Emphasis added.)

K.S.A. 19-3629 establishes the procedure for attachment of new territory, as follows:

"Upon presentation to the board of county commissioners acting as governing body of the district a petition setting forth the boundaries of the area which desires to be attached to said fire district and signed by not less than fifty-one percent (51%) of the qualified electors of said area, as determined by an enumeration taken and verified for this purpose by a qualified elector of said area, it shall be the duty of the board of county commissioners, at its next regular meeting, to examine such petition, and if it finds said petition to be in due form and further finds it to be in the best interest of the district to attach such territory, shall issue an order attaching such territory to the district and shall give notice of such attachment to the county clerk of the county wherein the territory to be attached is situated."

The statute further provides that the attached territory shall be subject to the tax levied by the district for fire protection purposes and shall be governed by the existing district board.

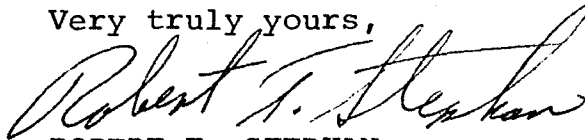
We are informed that the area of Pawnee County which local residents desire to have attached to the existing Stafford County fire district is presently a part of the existing Pawnee County fire district. Thus, before that area may be incorporated into the Stafford County district under the above-cited sections, local residents should petition the Pawnee County Board of County Commissioners for exclusion of the area in question from the Pawnee County fire district pursuant to K.S.A. 19-3604(b). Such petition must be

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"signed by the owners of at least ten percent (10%) of the area of lands sought to be . . . excluded" from the district, subject to a protest petition, as further provided by the statute. If an exclusion or detachment of territory is thus effected, Pawnee County residents may thereafter proceed to petition the Stafford County Board of County Commissioners for attachment of the desired portion of Pawnee County territory to the existing Stafford County district under the provisions of K.S.A. 19-3629 and 19-3630, as discussed in the foregoing.

In summary, fire districts may be enlarged by attachment of adjacent territory located in adjoining counties, pursuant to K.S.A. 19-3630, upon a petition therefor presented by residents of the territory proposed to be attached. If said territory is already part of an existing fire district, residents must first petition for detachment of the territory from said district, pursuant to K.S.A. 19-3604(b), before it may be attached to the district in the adjoining county.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:may