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February 15, 1980

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ATTORNEY GENERAL OPINION NO. 80- 47

Mr. John Anderson III
Anderson, Granger, Nagels & Lastelic
Capitol Federal Building
95th & Nall, Suite 306
Overland Park, Kansas 66207

Re: Counties and County Officers--Fire
Protection--Establishment of Fund for
Capital Expenditures

Synopsis: Urban area fire districts created
pursuant to K.S.A. 19-3613 have no
statutory authority to establish a
capital expenditures fund. Such fire
districts may make capital expenditures
for the acquisition of additional and
replacement fire fighting equipment
with proceeds from the issuance of
bonds or with no-fund warrants.
(Affirming Attorney General Opinion
No. 73-291.)

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Dear Mr. Anderson:

As attorney for Mission Fire District No. 1, Johnson County,
Kansas, you have asked for our review and reconsideration of
Attorney General Opinion No. 73-291 in light of recent legis-
lation pertaining to the authority of urban area fire districts
created pursuant to K.S.A. 19-3613.

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In Attorney General Opinion No. 73-291 (Opinions of the Attorney General, Vol. VIII, pp. 356-357), former Attorney General Vern Miller concluded that monies derived from the tax levied pursuant to K.S.A. 19-3622 may not be used for deposit in a sinking or capital expenditures fund for the purchase of additional or replacement equipment. General Miller emphasized that the statute authorizes an annual levy only for "operating and maintaining" the fire district, but noted that K.S.A. 19-3617 (now K.S.A. 1979 Supp. 19-3617) authorized the issuance of bonds for the purchase of fire fighting equipment when necessary to best serve the interests of the fire district.

As you have correctly noted, the 1979 Legislature enacted new legislation pertaining to fire districts, including an amendment to K.S.A. 19-3616 (now K.S.A. 1979 Supp. 19-3616), pursuant to L. 1979, ch. 75, §4. The statute, as amended, provides, in relevant part:

"Upon the creation of a fire district by the county board, the governing body of the fire district so created shall have authority to levy taxes and assessments, to enter into contracts, to acquire by lease or purchase, operate, maintain fire fighting equipment and to acquire, construct buildings to house same and to do all things necessary to effectuate the purposes of this act In addition to the powers provided for in this section, the governing body shall have any powers granted to a fire district under K.S.A. 1979 Supp. 19-3601a. The governing body shall also have authority to issue general obligation bonds and no-fund warrants under the provisions of K.S.A. 1979 Supp. 19-3601b." K.S.A. 1979 Supp. 19-3616. (Emphasis added.)

You contend that, with the addition of the above-emphasized language, urban area fire districts created pursuant to K.S.A. 19-3613 are now empowered to establish a capital expenditures fund by which the purchase of additional and replacement fire fighting equipment may be financed. As you have correctly noted, K.S.A. 19-3612c authorizes rural fire districts organized pursuant to K.S.A. 1979 Supp. 19-3601 to create such a fund by an annual transfer from the general fund of the district of monies "which . . . will not be needed for general operating expenses" in a particular budget year. You further note that K.S.A. 19-3610 authorizes a tax levy, the proceeds of which "shall be used for the purchase and maintenance of fire fighting materials, equipment and apparatus and the maintenance and equipping of buildings." You argue that the new language in K.S.A. 1979 Supp. 19-3616 empowers urban area fire districts to exercise the authority granted to rural districts under K.S.A. 19-3610 and 19-3612c, including the establishment of a special fund for capital expenditures.

We disagree. K.S.A. 1979 Supp. 19-3616 does not authorize urban area districts to exercise all of the powers granted to rural districts created and governed pursuant to K.S.A. 1979 Supp. 19-3601 et seq. Rather, the former statute only authorizes urban area districts to exercise those powers "granted to a fire district under K.S.A. 1979 Supp. 19-3601a" and to issue general obligation bonds and no-fund warrants pursuant to K.S.A. 1979 Supp. 19-3601b. (Emphasis added.) K.S.A. 1979 Supp. 19-3601a empowers fire districts to

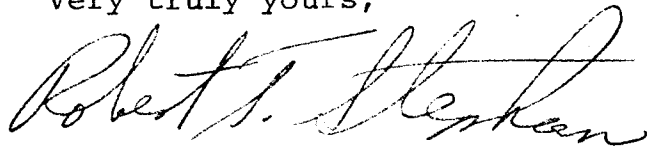
"enter into contracts, to acquire, operate and maintain fire fighting equipment, to acquire and construct buildings to house the same, to buy, sell and dispose of real property, and to do all things necessary to effectuate the purposes of this act. Any such district, when organized, shall have the right of eminent domain."

Importantly, K.S.A. 1979 Supp. 19-3616 contains no provisions authorizing urban area fire districts to exercise the powers granted to rural districts under 19-3610 or 19-3612c. The only significant additional authority granted to urban districts under 19-3616 is the power to issue no-fund warrants for fire

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district purposes. In our judgment, no-fund warrants may be used for the purchase of the fire fighting equipment and apparatus and other such capital expenditures. In addition, as General Miller concluded in Attorney General Opinion No. 73-291, bonds may be issued for such purposes. But, as General Miller also determined, the constraints of the Kansas budget law preclude the diversion of any proceeds from the levy authorized by K.S.A. 19-3622 for creation of a capital expenditures fund, and urban area districts have no other statutory authority authorizing the creation of such fund. We affirm Attorney General Opinion No. 73-291.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:WRA:SC:gk