STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 10, 1980

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

ATTORNEY GENERAL OPINION NO. 80-146

Edward C. Redmon
State Fire Marshal
Suite 203, Mills Bldg.
109 W. Ninth
Topeka, Kansas 66612

Re: Counties and County Officers--Fire Protection--
Effect of Annexation on Territory within Fire
District

Synopsis: The annexation by a city of territory lying within a fire district established pursuant to K.S.A. 19-3601 et seq. does not have the effect of automatically detaching the territory from the district. That may only be done by petition of the district residents or motion of the county commissioners (K.S.A. 19-3604). However, the city is primarily responsible for the providing of fire protection to the newly-included area, and must impose the same levy on the area for that purpose as on all other areas of the city. Cited herein: K.S.A. 19-3604, 19-3605, K.S.A. 1979 Supp. 19-3613, 19-3616.

* * *

Dear Mr. Redmon:

On behalf of Fire Chief Joe Sanders of the Winfield Fire Department, you have requested that this office give an opinion as to the effect of K.S.A. 1979 Supp. 19-3616 on a situation involving the City of Winfield.

Specifically, we are informed that the City at present provides fire protection for six townships, with payment therefor made on a "per run" basis. As this has proven to be uneconomical, the county commissioners are considering the establishment of one

or more fire districts to deal with the problem. However, some of the same territory may be annexed by the City. Chief Sanders is concerned that if the districts are established first, parts of the City (i.e. the newly-annexed areas) would be assessed a lesser mill levy for fire protection than would the remainder, which would continue to support the City fire department.

Initially, it should be observed that K.S.A. 1979 Supp. 19-3616 is part of that chapter of Article 19 which deals with the establishment of fire protection districts. However, K.S.A. 19-3613 et seq., of which this statute is a part, deal with a more specialized situation, i.e., the creation of such districts in counties which have: (a) a population of more than 90,000, and (b) a city of the first class within its borders that itself has a population of less than 50,000. K.S.A. 19-3613. As Cowley County, in which Winfield lies, does not satisfy either of these conditions, the statutes contained in this act, including K.S.A. 1979 Supp. 19-3616, cannot apply. However, even though the specific question raised by Chief Sanders is therefore moot, the situation he posits could clearly arise under the general statutes governing fire districts at K.S.A. 19-3601 et seq. Accordingly, we will proceed to examine the problem which may in fact face the City of Winfield, namely, if territory already included within a fire protection district is annexed, would that area continue to pay only the mill levy assessed by the district for fire protection?

An examination of K.S.A. 19-3601 et seq. indicates that the situation presented here is not one which was anticipated by the legislature in enacting the general statutes concerning fire protection districts. As was noted above, while the problem was addressed by specialized statutes, which as a practical matter deal only with Johnson County, those generally applicable to counties like Cowley are silent on this point, speaking only to the way in which a city may be admitted to such a district once it is created. K.S.A. 19-3605. Additionally, the only statute dealing with the detaching of territory from a district, K.S.A. 19-3604, provides for such only by a petition of the property owners, and says nothing about the effect on that part of a district which is annexed into the limits of a city. Applicable case law is likewise non-existent. Accordingly, our analysis must be guided by general principles of law and the decisions of other jurisdictions.

First, it is clear that a city may annex part or all of a fire protection district which, unlike a co-equal municipality, is not immune from such action. 62 C.J.S. Municipal Corporations §85. This is due to the character of such a district, which is that of a quasi-municipal corporation (16 McQuillin Municipal Corporations (3rd Ed.), §45.02), formed for a limited purpose. City of Bellevue v. Eastern Sarpy County Suburban Fire Protection District, 180 Neb. 340, 143 N.W.2nd 62 (1966). As such, part or all of it may be annexed, just as any other special purpose district may be. State

v. City of Lenoir, 249 N.C. 96, 105 S.E.2d 411 (1958) (sanitary district); Airport Authority of City of Millard v. City of Omaha, 185 Neb. 623, 177 N.W.2d 603 (1970); Fuller v. San Bernardino Valley Municipal Water District, 242 Cal.App.2d 52, 51 Cal. Rptr. 120 (1966). Additionally, it is the general rule that, in the absence of special provision to the contrary, annexed territory becomes subject to the jurisdiction of the annexing municipality, with the same burdens of taxation, as well as the same entitlement to municipal services, as property previously within the city limits. Rhyne, Municipal Law, §2.40, p. 41; 36 Am.Jur.2d Municipal Corporations §56. It is therefore our opinion that property in the annexed area would be responsible for paying the same amount for fire protection to the city as do other portions of the city. And, as they would still be a part of the district, they would be subject to any levies imposed by that entity.

While double taxation is to be avoided whenever possible, it would appear from the existing statutes that it is left up to the residents of the affected area themselves to institute proceedings to have the area formally detached. K.S.A. 19-3604(b). Alternatively, the county commissioners may choose to disorganize the entire district, leaving the annexed area out and combining the remainder with another existing district. K.S.A. 19-3604(a). In either case, the statutes in no way indicate that the annexed region is automatically detached by virtue of its inclusion within the city. Accordingly, given the power and duty of the city to impose its burdens of taxation equally, the area may in fact be subject to double taxation until such time as either of the above steps are taken. However, it should be noted that the taxation referred to here is that of the annual mill levy imposed for operating expenses. Beyond that we do not think it appropriate to speculate at this time as to any continuing obligation which the prior issuance of bonds or no-fund warrants would impose on the area.

In conclusion, the annexation by a city of territory lying within a fire district established pursuant to K.S.A. 19-3601 et seq. does not have the effect of automatically detaching the territory from the district. That may only be done by petition of the district residents or motion of the county commissioners (K.S.A. 19-3604). However, the city is primarily responsible for the providing of fire protection to the newly-included area, and must impose the same levy on the area for that purpose as on all other areas of the city.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Jeffrey S. Southard

Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:phf