



STATE OF KANSAS

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ATTORNEY GENERAL

July 10, 1980

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ATTORNEY GENERAL OPINION NO. 80-147

Dorothy K. White  
Sedgwick County Clerk  
Rm. 211, Sedgwick County Courthouse  
Wichita, Kansas 67203

Re: Drainage and Levees--Watershed Districts--Effect  
of Annexation By City on Territory within District

Synopsis: The annexation by a city of territory lying within a watershed district established pursuant to K.S.A. 24-1201 et seq. does not have the effect of automatically detaching such territory from the district. That may be done only by the chief engineer of the division of water resources upon receipt of a properly-framed petition (K.S.A. 24-1229). Additionally, even if this procedure is carried out, such territory remains liable for its share of any bonds issued by the district prior to the date of the detachment. Cited herein: K.S.A. 10-101, 10-119, 24-1201, K.S.A. 1979 Supp. 24-1209, K.S.A. 24-1219, K.S.A. 1979 Supp. 24-1220, K.S.A. 24-1228, 24-1229.

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Dear Ms. White:

As Sedgwick County Clerk, you seek the opinion of this office concerning the effect which annexation by a city has on territory contained in a watershed district. Specifically, you inquire whether the area so included continues to be a part of the district for tax purposes.

The entities involved in your inquiry are those districts which are established pursuant to K.S.A. 24-1201 to deal with erosion or floodwater problems in Kansas. Such entities, referred to as watershed districts, are bodies politic and corporate (K.S.A. 1979 Supp. 24-1209), and have among their enumerated powers the

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ability to issue improvement bonds (K.S.A. 1979 Supp. 24-1220) and no-fund warrants (K.S.A. 24-1219). While statutes do exist which deal with the transfer of territory from one district to another (K.S.A. 24-1222 et seq.), the dissolution of inactive districts (K.S.A. 24-1228) and the dissolution of a portion of a district upon the fulfilling of certain conditions (K.S.A. 12-2429), the law is silent as to the effect which annexation by a city would have upon the territory of such a district. Accordingly, our answer must be derived from general principles of law regarding municipalities which speak to this problem.

It seems well-established that a city, during the course of an annexation, may include part or all of a watershed district, which, unlike a co-equal municipality, is not immune from such annexation. 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 (1 McQuillin Municipal Corporations (3rd Ed.), §§2.23, 2.29), formed for a limited end which does not cover the same purposes fulfilled by a city. 2 McQuillin, supra, §7.08. 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).

We see nothing in the statutes which would lead us to conclude that the general rule should not apply here. At the same time, we do not see any basis for concluding that the mere act of annexation somehow severs the affected area from the watershed district. Rather, it is clear that procedures set forth by statute at K.S.A. 24-1229 would have to be initiated, either by a majority of the district board or a majority of the landowners in the affected area, before the area could be officially detached. Until that time, such territory would continue to be subject to all financial obligations of the district, including levies to pay for annual expenses, and, if such had been issued, for no-fund warrants and improvement bonds.

Additionally, even when such procedures have been initiated and brought to a successful conclusion, the territory involved would still be subject to any obligations incurred prior to the date of the transfer. This subject has been covered by a specifically-worded statute, K.S.A. 10-119, which states in pertinent part:

"Whenever a part of the territory of any municipality has been detached and attached to some other municipality, or whenever any municipality has been disorganized according to law and the territory attached to or included in some other municipality

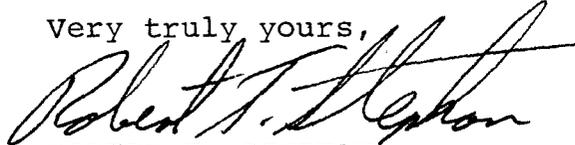
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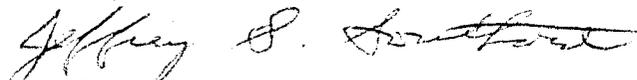
or municipalities, such territory shall be liable for the payment of all bonds issued or other indebtedness incurred by such municipality before such detachment or disorganization, and the proper taxing officers of the municipality to which such territory is attached shall levy such taxes upon such attached territory as are necessary to pay its proper proportion of the interest and principal of such bonds or other indebtedness as aforesaid . . . ."

It should be noted that a watershed district, although not usually considered a "municipality," is such for the purposes of the above statute, as the term is defined at K.S.A. 10-101 to include "quasi-corporations empowered to issue bonds." The liability of such territory for obligations incurred prior to detachment is also recognized by Kansas case law [Pessemier v. Plummer, 135 Kan. 429 (1932)] and general authority (64 C.J.S. Municipal Corporations §1956).

In conclusion, the annexation by a city of territory lying within a watershed district established pursuant to K.S.A. 24-1201 et seq. does not have the effect of automatically detaching such territory from the district. That may be done only by the chief engineer of the division of water resources upon receipt of a properly-framed petition (K.S.A. 24-1229). Additionally, even if this procedure is carried out, such territory remains liable for its share of any bonds issued by the district prior to the date of the detachment.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Jeffrey S. Southard  
Assistant Attorney General

RTS:BJs:JSS:phf