



STATE OF KANSAS

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May 12, 1982

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ATTORNEY GENERAL OPINION NO. 82-103

Calvin K. Williams
Osage County Attorney
Third Floor, County Courthouse
Lyndon, Kansas 66451

Re: Counties and County Officers -- Fire Protection --
County Fire Districts; Inclusion of Township Fire
District Territory

Synopsis: Territory which is presently included in a town-
ship fire district may be detached from said dis-
trict and included in a fire district organized by
the county. Such action must be taken using the
procedures of K.S.A. 19-3611, which procedures
include the submission of a petition, the suffi-
ciency of which is determined by the township
board. Such a change is effective on the follow-
ing first day of January. Cited herein: K.S.A.
19-3611, 80-1540, 80-1545, 80-1546.

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Dear Mr. Williams:

As County Attorney for Osage County, you request our opinion on a question concerning the formation of a fire protection district by the county. In that a portion of the territory which is proposed for inclusion in the district is presently contained in a township fire district, you specifically inquire whether that land may be detached from the existing district and thereafter included in the new. Collateral issues concerning the imposition of tax levies by the two districts are also presented.

As we understand the situation, the area in question lies in Junction Township on the south side of Pomona Reservoir and includes the town of Vassar. The township has, pursuant

to K.S.A. 80-1540, created a fire district which includes all of the township, including the above area. Rather than establishing its own fire fighting unit, the township contracts with a fire district (organized by the county) which lies immediately to the north and which includes Elk Township and the City of Overbrook. This is done pursuant to K.S.A. 80-1545, and is paid for by means of a two mill levy imposed by virtue of K.S.A. 80-1546 upon all of the property in Junction Township.

You inform us, however, that as a practical matter, the area of Junction Township which lies to the south of the reservoir is without fire protection, due to the layout of the reservoir. In response to this need, residents of the area expressed support for inclusion in a new fire district to be created by the county pursuant to K.S.A. 19-3601 et seq. Hearings held in February and March were attended by area residents, as well as by residents of two other townships and the City of Lyndon, which are also interested in the proposed district. It was at this time that questions were raised concerning the possible double taxation of that territory in Junction Township which would be included in the new fire district while still a part of that established by the township.

In our opinion, the situation presented by your request is addressed by two statutes, K.S.A. 80-1546 and 19-3611. The former provides in pertinent part:

"The governing body of the fire district shall have the power to levy a tax not to exceed three (3) mills upon the dollar of the assessed valuation of all property, real and personal, having a tax situs in the district, for the purpose of paying the expenses of operating and maintaining a fire department and other legal expenses of the fire district which tax levy shall be in addition to all other tax levies authorized or limited by law, but no other levies for fire department purposes shall be made on such property." (Emphasis added.)

The latter states, again in pertinent part:

"Any fire protection benefit district or other special fire district heretofore or hereafter existing by virtue of law, may, in whole or in part, be included in or be made a part of any fire district organized or altered by provisions of this act: Provided, No such district or part of such district shall be included in any district so organ-

ized or altered unless and until a petition is filed with the board of county commissioners signed by not less than fifty-one percent (51%) of the residents within the limits of the district to be included, and [the] governing body of the fire district to be included shall determine the sufficiency of such petition. Upon the final order of the board of county commissioners organizing or reorganizing any fire district pursuant to this act, all such benefit or special fire districts, or the portion thereof, within the successor fire district or districts shall be disorganized (or detached) as of the following first day of January. . . . Provided, That all bonded indebtedness and interest thereon shall continue as an obligation of the property subject to taxation for the payment thereof at the time the bonds were issued."

In view of the above, we would conclude that, at present, only the township fire district may levy a tax for fire protection upon territory contained in the township, pursuant to K.S.A. 80-1546. This would include the area which is proposed for inclusion in the county fire district, although K.S.A. 19-3611 clearly contemplates the detachment of such territory. Before such a separation can be achieved, however, the requisite number of residents in the area to be detached (51%) must formally petition the county commission, with the township board determining the sufficiency of the petitions. Final detachment would occur on January 1 following the commission's final order. While the detached territory would thereupon be subject to ad valorem levies of the new district, the territory would still be responsible for its share of any bonded indebtedness incurred by the township fire district.

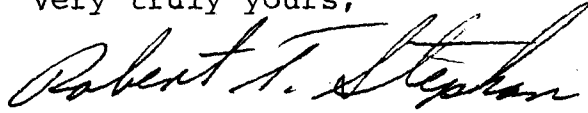
In the present situation, it would appear advisable for the residents of the area in question to immediately take the required steps to begin detachment proceedings, even though the effective date of the change could not be until January 1, 1983. By doing so, both the township and county fire districts would benefit, in that the budgetary process must be completed by August 25, and is based in part upon the territory within the districts which is subject to their levies.

In conclusion, territory which is presently included in a township fire district may be detached from said district and included in a fire district organized by the county. Such

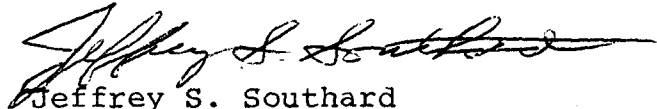
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action must be taken using the procedures of K.S.A. 19-3611, which procedures include the submission of a petition, the sufficiency of which is determined by the township board. Such a change is effective on the following first day of January, with the detached area remaining the responsibility of the township district until that time.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle