



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 242

Michael F. Willcott
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419 Shawnee Street
Leavenworth, Kansas 66048

Re: Townships and Township Officers--Miscellaneous
Provisions--First and Second Class Cities
Excluded From Townships

Synopsis: Pursuant to K.S.A. 80-1404, no city of the second class shall be included within the corporate limits of any township. Said statutory provision, which serves as a limitation on township boundaries, may not be made inapplicable to any township or city through the exercise of city home rule powers.

Although statutory provisions prescribe procedures for the sale of real or personal property used in the operation of a township water system, any such property may not be disposed of absent adequate consideration. Cited herein: K.S.A. 12-2901, 80-109, 80-1404, 80-1545; Kan. Const., Art. 12, §5.

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Dear Mr. Willcott:

You inquire regarding "possible options" which would allow the city of Lansing to remain a city of the second class, and which would not "interfere" in the present operation of fire protection and water service which is being supplied by Delaware Township. Additionally, you ask whether it would be possible for the city of Lansing to either purchase or accept as a gift the water system presently owned and controlled by the township.

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In response to your first question, we noted in Kansas Attorney General Opinion No. 82-237 (copy enclosed) that statutes exist which would authorize the city and township to work together in providing fire protection and water services. See K.S.A. 12-2901 et seq., K.S.A. 80-1545, and K.S.A. 80-1605. It was also noted in said opinion that, by virtue of K.S.A. 80-1404, Delaware Township no longer contains the city of Lansing within its corporate limits for any purpose, including that of taxation. Thus, it would appear that the execution of contractual agreements under the above-referenced statutes is the only option available to the city of Lansing whereby it could remain a city of the second class and also receive the aforesaid services from the township. This conclusion is inescapable, due to the fact that the controlling portion of K.S.A. 80-1404 (i.e., the first sentence of the statute) applies to townships, serving as a limitation on township boundaries, and may not, in our opinion, be made inapplicable to the city of Lansing (or Delaware Township) through the exercise of city home rule powers. See Kan. Const., Art. 12, §5(c)(1).

In regard to your second question, the Delaware township board has authority to sell real or personal property used in the operation of the water system. See Kansas Attorney General Opinion Nos. 79-168 and 81-141 (copies enclosed). However, with respect to any real property, the board must comply with the conditions precedent to sale set forth in K.S.A. 80-109, and it is our opinion that the board may not make a gift of any part of the water system, or dispose of the same in the absence of adequate consideration. See Kansas Attorney General Opinion No. 80-19 (copy enclosed) and authorities cited therein.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm
Enclosures