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ATTORNEY GENERAL OPINION NO. 83- 46

The Honorable Darrel M. Webb
State Representative, Ninety-Seventh District
Room 284-W, Statehouse
Topeka, Kansas 66612

Re: Apportionment -- Representative Districts --
Boundaries of District

Counties and County Officers -- Election Commis-
sioners -- Authority to Establish Precinct Boun-
daries

Synopsis: In those counties in which the office of election commissioner is created by K.S.A. 19-3419 et seq., said officials are empowered to establish the boundaries of wards and precincts within cities located in the county. By implication, an election commissioner is also empowered to divide newly-annexed territory into precincts or to add such territory to existing precincts. However, once the legislature sets the boundaries of the state representative districts, acting pursuant to Article 10, Section 1 of the Kansas Constitution, a precinct cannot subsequently be shifted into another district by the election commissioner or any other elected official. While districts should be reasonably contiguous and compact, the legislature's use of precincts as "building blocks" may make this unattainable in every case. Such deviations are permissible if sustained by a rational state policy and if not created to cancel out the voting strength of racial or political elements of the population. Cited herein: K.S.A. 4-3,283, 12-520, 12-520c, 12-521, 19-3419, 19-3424, Kansas Const., Art. 10, §1.

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Dear Representative Webb:

As State Representative for the ninety-seventh district, you have requested our opinion on a question concerning the boundaries of another representative district in the Wichita area. Specifically, you wish to know whether the 83rd district is a proper one, due to its configuration, and, if such is not the case, what may be done about the situation. You also inquire concerning the authority of the election commissioner to create non-contiguous precincts.

Initially, we note that the 83rd district, which is currently represented by Mike Meacham, lies in the north-eastern portion of the City of Wichita, and is totally contained within that city's limits. As presently constituted, the district's area consists of precincts 3, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 28, 29, 30 and 31 of ward 4. (K.S.A. 4-3,283). These limits were drawn by the 1979 Legislature, and were subsequently approved by the Kansas Supreme Court. In re House Bill No. 2620, 225 Kan. 827 (1979).

Your question concerns precinct 14 of the 4th ward, which is one of these contained in the district. As it existed on January 2, 1979 (and continues to exist today), the precinct is in two parts, with the smaller (known as the Greens) separated from the bulk of the area by one-half mile. At the time the Greens was added to precinct 14, it had been annexed by the city even though non-contiguous. While such annexations are not permitted to be made in the ordinary manner prescribed by K.S.A. 12-520, they can be made, as was apparently the case here, under the more restrictive provisions of K.S.A. 12-520c or 12-521. Subsequent annexations in the northeastern part of Wichita have joined the former "island" to the rest of the city.

As is the case with counties over 130,000 in population, Sedgwick County has an election commissioner. (K.S.A. 19-3419.) The commissioner's duties are set forth by K.S.A. 19-3424, and include the establishment of boundaries for wards and precincts contained within the city limits of Wichita. By implication, this power extends to newly-annexed territory, which can be either included in an existing precinct or created as a separate unit. The former was done with the Greens, with the area added to the nearest precinct, which was the 14th of ward 4. Due to the non-contiguous nature of the tract, separation was guaranteed, and it became a matter of the commissioner's discretion where to add it. While non-contiguous precincts should certainly not be the rule, the facts here explain the commissioner's actions. Additionally, we are aware of no statute concerning the City of Wichita which requires precincts to be contiguous units.

As altered, the 14th precinct of ward 4 was finalized on December 29, 1978. Thus, it was contained on the maps which were considered by the legislature during the 1979 reapportionment mandated by the Kansas Constitution (Article 10, §1). In referring to the final product, the House Committee on Legislative, Judicial and Congressional Reapportionment stated the following with regard to the districts in Wichita:

"The formation of districts which are contained wholly within the city limits of the city of Wichita was most difficult since the Committee had to work under guidelines of the Committee to hold the population deviation within plus or minus 5%. In the House of Representatives 5% deviation is only 944 people and most precincts have population with wide variances and using these 'building blocks' causes boundaries to appear odd in design. The 'building blocks' require major efforts in revision in order to recognize the constraints of major thoroughfares and freeway barriers and natural barriers such as rivers, drainage ditches, etc. Working with these constraints the districts contained wholly within the city limits are as compact as possible." (Journal of the House of Representatives, February 26, 1979, p. 330.)

In reviewing the reapportionment measure, the supreme court also recognized that the use of precincts as "building blocks" could lead to results which were not always as compact and contiguous as should ideally be so. In re House Bill No. 2620, supra at 831-32, 835. However, although noting that no federal requirement of contiguity and compactness exists, the court made it clear that deviations from these standards must be explained by some rational state policy or justification, in order to demonstrate that the district had not been engineered to cancel out the voting strength of any group. In approving a district which consisted of two parts joined only by a narrow, uninhabited strip, the court reasoned that as the area was all contained in one precinct, it "had to be placed in one representative district for voting purposes." Id. at 834. We note that the court also found no basis to conclude that the district had been drawn for purposes of gerrymandering or discrimination.

While the court did not discuss the situation presented by District 83, it did review a number of others in which allegations of impropriety had been raised. Upon finding that none of the districts created "invidious discrimination" against any group which would impair their right to vote, the court approved the plan in full. Given the facts concerning the

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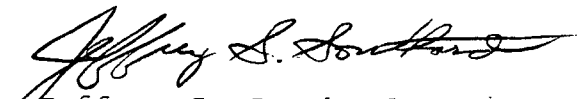
creation of the 14th precinct, 4th ward, it is our opinion that the 83rd District is likewise permissible as it currently exists. However, in that the city has now grown to meet the Greens, separation of the area in future reapportionments may be more questionable.

In conclusion, in those counties in which the office of election commissioner is created by K.S.A. 19-3419 et seq., said officials are empowered to establish the boundaries of wards and precincts within cities located in the county. By implication, an election commissioner is also empowered to divide newly-annexed territory into precincts or to add such territory to existing precincts. However, once the legislature sets the boundaries of the state representative districts acting pursuant to Article 10, Section 1 of the Kansas Constitution, a precinct cannot subsequently be shifted into another district by the election commissioner or any other elected official. While districts should be reasonably contiguous and compact, the legislature's use of precincts as "building blocks" may make this unattainable in every case. Such deviations are permissible if sustained by a rational state policy and if not created to cancel out the voting strength of racial or political elements of the population.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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RTS:BJS:JSS:hle