



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 84- 52

Wayne M. Stallard
307 Leonard Street
Onaga, Kansas 66521

Re: Townships and Township Officers -- Hospitals --
Attachment of Territory; Effective Date

Synopsis: Territory may be added to a hospital district created under K.S.A. 80-21,101 et seq., by means of the procedures set forth in K.S.A. 80-21,120. The statute, which was enacted in 1955, makes the attachment effective on March 1 following the entry of the county commission's order, with this date intended to reflect the day property was assessed for tax purposes. However, such date was changed in all taxation statutes in 1959 to January 1, with the general statute governing attachment of territory (K.S.A. 79-1807) amended at the same time to make attachments of territory effective as of December 31. In view of these subsequent amendments, that portion of K.S.A. 80-21,120 which refers to March 1 as the effective date of any attachment of territory has been repealed by implication, and the effective date is now that provided in K.S.A. 79-1807. Cited herein: K.S.A. 79-309, 79-1807, 80-21,120, 1984 House Bill No. 2003.

* * *

Dear Mr. Stallard:

As attorney for Hospital District No. 1 in Pottawatomie County, Kansas, you request our opinion on a question concerning the annexation of territory by the district. You inform us that on October 10, 1983, the Board of County Commissioners of Potta-

watomie County approved the attachment of certain territory located in Nemaha County to the district. The process followed was prescribed by K.S.A. 80-21,120, which is contained in the act which governs districts of this type. No questions have been raised in your letter concerning the validity of the attachment, which involved territory which was not previously contained in any other hospital district. Rather, you inquire concerning the effective date of the attachment of territory for purposes of taxation.

Specifically, you point to language in K.S.A. 80-21,120 which states that, following the entry by the commissioners of their order, the annexation will "take effect on the first day of March next following the entry of said order." In that other statutes contained in Chapter 79 require property to be assessed as of January 1 in order to be included in the tax base for that year (K.S.A. 79-301, 79-309), the use of a March 1 date would have the effect of precluding taxation of the territory for district purposes until the following January 1. In this case, the result would be a fifteen month period (October, 1983 to January, 1985), during which the area involved would be receiving services without being subject to taxation therefor.

At the time the statute was enacted (1955), the use of a March 1 date was compatible with the general statutes concerning the assessment of property for taxation purposes. K.S.A. 79-309, for example, stated that "[a]ll property shall be listed and valued on the first day of March in the year in which the same is assessed." However, by means of Chapter 365 of the 1959 Session Laws, K.S.A. 79-309 and thirty other statutes were amended to change March 1 to January 1, a date which remains in effect today. K.S.A. 80-21,120 was not included in this act, and remained unamended until the 1984 session, when it was repealed, effective July 1, 1984. 1984 House Bill No. 2003. However, in that the action taken by the county commission occurred in October of last year, the act of the 1984 legislature does not dispose of your inquiry.

Also of interest to this problem is K.S.A. 79-1807, which provides in pertinent part:

"(a) Except as provided in subsection (b) of this section, whenever any of the territory of a municipality or other taxing district is annexed, attached, or transferred to another municipality or other taxing district on or before April 1 of any year, or whenever an entire municipality or other taxing district is merged or consolidated with another municipality or taxing district on or before April 1 of any year,

such annexation, attachment, transfer, merger, or consolidation shall take effect for tax purposes as of the last day of December preceding such annexation, attachment, transfer, merger or consolidation: Provided, That the taxes due on November 1 next preceding the date said organization, incorporation, or change takes effect for taxation purposes shall be collected and distributed as before assessed and levied. [sic]"

Like K.S.A. 79-309, 79-1807 was amended in 1959 to reflect the change from March 1 to January 1. Whereas before the amendment the effective date for tax purposes of any annexation was the last day in February, in 1959 it was changed to read in its present form, i.e. the last day of December. The effect of the statute is clear, namely to provide that any territory added to a municipality or taxing district would be in place by January 1, and so be included for the purposes of that year's assessments.

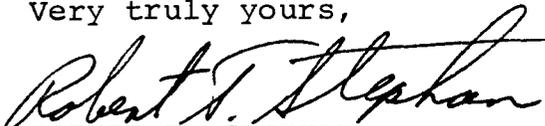
It is not possible to harmonize the requirements of K.S.A. 80-21,120 with those of K.S.A. 79-1807 and the other statutes amended in 1959 to reflect a January 1 assessment date. In our opinion, therefore, resort must be had to the concept of repeal by implication. While the law does not favor the repeal of part or all of a statute in this manner, a former statute can be so treated when a latter enactment is so repugnant to it that both cannot be given force and effect. Matter of Suesz' Estate, 228 Kan. 275 (1980). Furthermore, it is also a well-recognized rule of statutory construction that older statutes must be read in light of later legislative enactments. Thomas v. Board of Trustees of Salem Township, 224 Kan. 539 (1978). While an earlier, more specific statute is not automatically repealed by implication upon the enactment of a later, more general statute dealing with the same subject [Howard v. Hulbert, 63 Kan. 793 (1901)], when it appears that the general act was intended to be of universal application or where the two acts are irreconcilable with each other, the more general will prevail.

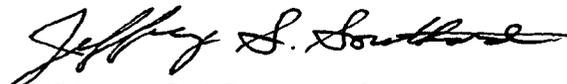
In this particular situation, there appears to be no public policy which is served by treating the annexation of territory by a hospital district organized pursuant to K.S.A. 80-21,101 in a different fashion than such action by any other unit of government. Indeed, it would be contrary to public policy to apply the March 1 date in such cases as here, where the annexed territory would obtain a free year of services (1984) without having to bear any share of the taxation responsibility. To continue to use the March 1 date now, in light of all the changes which have occurred in other statutes regarding the date of

assessment of property, would foster inequity, without achieving any benefits. We are not prepared to conclude that March 1 remains the effective date, and are of the opinion that the annexation of territory to Hospital District No. 1 was effective on December 31, 1983, for purposes of taxation. In that the statute in question (K.S.A. 80-21,120) will be repealed as of July 1, 1984, this problem should not arise again, especially since the statute which will now govern attachment of territory (1984 House Bill No. 2003, Section 22) states that for tax purposes the attachment shall be effective as provided by K.S.A. 79-1807.

In conclusion, territory may be added to a hospital district created under K.S.A. 80-21,101 et seq., by means of the procedures set forth in K.S.A. 80-21,120. The statute, which was enacted in 1955, makes the attachment effective on March 1 following the entry of the county commission's order, with this date intended to reflect the day property was assessed for tax purposes. However, such date was changed in all taxation statutes in 1959 to January 1, with the general statute governing attachment of territory (K.S.A. 79-1807) amended at the same time to make attachments of territory effective as of December 31. In view of these subsequent amendments, that portion of K.S.A. 80-21,120 which refers to March 1 as the effective date of any attachment of territory has been repealed by implication, and the effective date is now that provided in K.S.A. 79-1807.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Deputy Attorney General