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February 12, 1986

ATTORNEY GENERAL OPINION NO. 86- 17

The Honorable Fletcher Bell
Commissioner of Insurance
Insurance Department
420 SW 9th Street
Topeka, Kansas 66612

Re: Insurance -- Firefighters Relief Act -- Payment
to State and Local Associations; Non-Receiving
Associations

Synopsis: Absent legislative authority, "nonreceiving"
associations may not be reclassified as "receiving"
association after their initial year of
participation in the distribution of funds under
the Firefighters Relief Act. Cited herein:
K.S.A. 1985 Supp. 40-1706(c).

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Dear Commissioner Bell:

You have requested our opinion regarding the proper interpretation to be given to K.S.A. 1985 Supp. 40-1706(c)(4). Specifically, you inquire whether a "nonreceiving association" retains that status permanently or should be classified as nonreceiving only for its initial year of participation in the Firefighters Relief Tax Fund. It is our opinion that the meaning of the statute is clear, and that while the effect of the statutory language may impose an administrative burden on the insurance department,

relief must come from the legislature in the form of an amendment to the statute.

While the legislature has not provided a separate definition of "nonreceiving association," the meaning of the term may be implied from the statute, which states in relevant part [at subsection (c), paragraph (4), subparagraph (A)]:

"(A) Whenever a firefighters relief association is to receive a payment under this paragraph (4) but did not receive a payment from the taxes collected for calendar year 1983, the commissioner of insurance shall determine for the nonreceiving association, from such information as is made available to the commissioner by the nonreceiving association, the amount the nonreceiving association would most probably have received if it had actually received such a payment from the taxes collected for calendar year 1983, with appropriate adjustments based on payments to firefighters relief associations of fire departments providing fire protection services within geographic areas having similar populations and assessed tangible property valuation as the geographic area provided fire protection services by the fire department of each such nonreceiving association, and, upon making such determination, the commissioner of insurance shall include the amount so determined within the computations prescribed by this paragraph (4) for payments hereunder" (Emphasis added.)

In plain terms, a nonreceiving association is one which is to now receive a payment, but which did not receive such funding for calendar year 1983, which is established as the base year for purposes of calculating such payments.

You indicate that such an interpretation may not be conducive to the efficient administration of the relief fund. Your concerns involve the burden placed on the insurance department

in the yearly reassessment of nonreceiving associations, and the advantage such associations will have over "receiving" associations in being able to prosper from increases in population and property values. While these concerns are valid, in our opinion no inherent absurdity results from our interpretation of the statute.

It appears that a reassessment will be necessary only when there are in fact changes in a nonreceiving association's population or property values. It follows that if there are no substantial changes, the previous year's formulation would remain valid. However, it is apparent that the legislature did intend for changes to result in adjustments in funding, as evidenced by K.S.A. 1985 Supp. 40-1706(c)(B), which states in relevant part:

"(B) one or more firefighters relief associations may apply to the commissioner of insurance for a redetermination of the proportionate amounts payable to all firefighters relief associations under this paragraph" (Emphasis added.)

This section, which also addresses your concern regarding disparities between receiving and nonreceiving associations, indicates that the legislature contemplated changing populations and property values. Accordingly, a mechanism is available for redetermining the amounts to be given to all association, both "receiving" and "nonreceiving."

The failure of the legislature to define a nonreceiving association as retaining such status for only its initial year cannot be said to be an obvious oversight or omission. Further, in construing statutes there is a presumption against finding inadvertent omissions or oversights. See 82 C.J.S. Statutes, §316, at 547-48. While it cannot be said with certainty that these concerns were in fact considered by the legislature, it is well settled that omissions resulting from inadvertence or failure to contemplate an occurrence are not grounds for a court to supply the words or phrases which may have been omitted. State v. Wood, 231 Kan. 699, 701 (1982).

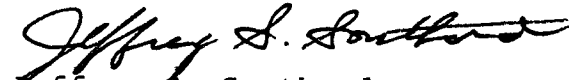
Since no inherent ambiguity appears in the statute, a definition limiting the classification of associations as nonreceiving to one year lies entirely within the province

of the legislature. It is well settled that "an administrative body may interpret an uncertain statute, but it cannot make new law." Lowden v. Garvie, 152 Kan. 388, 392 (1940). Accordingly, it remains up to the legislature to clarify the status of a "nonreceiving" association.

Very truly yours,



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RTS:JSS:crw