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ATTORNEY GENERAL OPINION 2012 - 6

The Honorable Tom Moxley  
State Representative, 68<sup>th</sup> District  
State Capitol, Rm. 174-W  
Topeka, Kansas 66612

Re: Cities of the Second Class—Hospitals—Hospital Site and Building; Board of Trustees; Membership; Extension of Territorial Limits for Hospital Purposes in Certain Cities; Designation of Boundaries; Election Upon Petition; Attachment of Territory

Synopsis: When a city that has provided for a hospital under K.S.A. 14-602 to 14-614 and 14-694 to 14-699 proposes incorporating into the city for hospital purposes territory that consists of multiple townships in the county in which the hospital is located, the election results in the townships in total determine whether the townships are incorporated into the city for hospital purposes. Cited herein: K.S.A. 14-602; 14-614; 14-693; 14-694; 14-699.

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Dear Representative Moxley:

As State Representative for the 68<sup>th</sup> District, you request our opinion regarding the manner in which territory is added to a hospital district. You ask specifically, when a city that has provided for a hospital under K.S.A. 14-602 to 14-614 and 14-694 to 14-699 proposes incorporating into the city for hospital purposes territory that consists of multiple townships in the county in which the hospital is located, whether the election results in each township determine if a particular township is added to the hospital district or if the election results of the territory as a whole are determinative.

The governing body of any city of the second class is authorized upon voter approval to levy a tax on all the property in the city for the purpose of acquiring a site and building a

hospital in the city.<sup>1</sup> Where such a city meeting the population and assessed tangible valuation parameters set forth in K.S.A. 14-693 has provided for a hospital under K.S.A. 14-602 to 14-614, the territorial limits of the city may for hospital purposes be extended "to include territory outside the regular city limits and which territory is not in any hospital district" by following the procedure set forth in the act.<sup>2</sup> The city is required to adopt and publish an ordinance that "designate[s] the boundaries of the area outside the city limits" which it proposes to incorporate in the city.<sup>3</sup>

If within 15 days after the last publication of the ordinance, 10% of the qualified electors residing in the area petition the county commissioners of the county wherein the greater portion of the land is located to call a special election upon the question of including such area, the county commissioners shall call a special election in such area outside the city limits proposed to be incorporated.<sup>4</sup>

A similar procedure is established in K.S.A. 14-694 for a city meeting the population and assessed valuation parameters set forth in that statute, with the exception that the ordinance is subject to election without the necessity of petitioning the county commissioners.

Notice of the election is to be given "by the county clerk of the county in which the greater portion of the territory to be incorporated in the city is located."<sup>5</sup>

The proposition submitted shall be:

"Shall the city of  (here insert name of city)  be permitted to incorporate the following described area: \_\_\_\_\_ into its hospital district?"

If a majority of the qualified electors of the district vote in favor thereof, such territory shall be attached to the city for hospital purposes in accordance with the provisions of this act. No township or part of a township located in a county other than the county in which the hospital is located shall be incorporated in the city for hospital purposes unless a majority of all those voting in such township or part of a township at such election shall have voted in favor of the incorporation. If a majority of those voting in such township or part of a township in such other county vote against the proposition, such results shall not prevent the incorporation of the remaining territory if a majority of the votes cast therein favor the incorporation of such territory.<sup>6</sup>

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<sup>1</sup> K.S.A. 14-602.

<sup>2</sup> K.S.A. 14-693.

<sup>3</sup> K.S.A. 14-694.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

In determining whether the election results in each township or in the territory as a whole are determinative, the rules of statutory construction are followed.

When courts are called upon to interpret statutes, the fundamental rule governing our interpretation is that the intent of the legislature governs if that intent can be ascertained. The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted. For this reason, when the language of a statute is plain and unambiguous, an appellate court is bound to implement the expressed intent. Where a statute's language is subject to multiple interpretations, however, a reviewing court may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested. Generally, courts should construe statutes to avoid unreasonable results and should presume that the legislature does not intend to enact useless or meaningless legislation. We ascertain the legislature's intent behind a particular statutory provision from a general consideration of the entire act. Effect must be given, if possible, to the entire act and every part thereof. To this end, it is the duty of the court, as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible. Thus, in cases that require statutory construction, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof *in pari materia*.<sup>7</sup>

The Legislature has in the incorporation of territory procedure distinguished between a township located in the county in which the hospital is located and a township located in a different county. An affirmative vote of a majority of the qualified electors of the area results in the area being attached to the city for hospital purposes, unless a township is in a county other than the one in which the hospital is located. K.S.A. 14-694 expressly provides that the vote in a township in a county other than the one in which the hospital is located determines whether that particular township is incorporated into the city for hospital purposes. There is no similar provision regarding a township in a county in which the hospital is located. If it is deemed that the vote in each township regardless of locale determines whether that township is incorporated into the city for hospital purposes, the distinction made by the Legislature is ignored. Such an interpretation ignores the principle noted above that the Legislature does not intend to enact useless or meaningless legislation.

The Legislature has used various terms in K.S.A. 14-693 and 14-694 when referring to the townships that a city proposes incorporating into the city for hospital purposes. A city is authorized under K.S.A. 14-693 to incorporate "territory" outside the regular city limits. Pursuant to K.S.A. 14-694, the procedure is initiated by the city adopting an ordinance that designates "the area" which the city proposes to incorporate, a petition

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<sup>7</sup> *Herrell v. Nat'l Beef Packing Co., LLC*, 292 Kan. 730, 745 (2011) (internal citations and quotation marks omitted).

seeking to bring to an election the question whether the townships should be incorporated into the city is signed by qualified electors residing in "the area," the special election is called in "such area," and the ballot is to include a description of the "area" the city seeks to incorporate into the city. K.S.A. 14-694 further provides that responsibility for conducting the election falls upon the county clerk and board of county commissioners of the county in which the greater portion of "the territory" proposed to be incorporated is located and a vote against incorporation in a township located in a county other than the one in which the hospital is located does not prevent incorporation of the remaining "territory." "If a majority of the qualified electors of *the district* vote in favor [of incorporation], *such territory* shall be attached to the city for hospital purposes."<sup>8</sup>  
...

When giving consideration to the act as a whole, it is clear that the terms "area," "territory" and "district" in K.S.A. 14-693 and 14-694 are used interchangeably. The terms refer to the townships proposed to be incorporated in total. None of the terms authorizes considering the vote outcome in an individual township located in the county in which the hospital is located as determinative whether that township is attached to the city for hospital purposes. When a city that has provided for a hospital under K.S.A. 14-602 to 14-614 and 14-693 to 14-699 proposes incorporating into the city for hospital purposes territory that consists of multiple townships in the county in which the hospital is located, the election results in the townships in total determine whether the townships are incorporated into the city for hospital purposes.

Sincerely,

Derek Schmidt  
Attorney General

Richard D. Smith  
Assistant Attorney General

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<sup>8</sup> K.S.A. 14-694 (emphasis added).