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September 15, 2017

ATTORNEY GENERAL OPINION NO. 2017- 13

Eric R. Yost
Sedgwick County Counselor
525 North Main, Suite 359
Wichita, KS 67203-3731

Re: Cities and Municipalities—Governmental Organization—Consolidation of Fire Districts and Fire Departments; Initiation of Procedure

Cities and Municipalities—Governmental Organization—Consolidation of Fire Districts and Fire Departments; Procedure; Resolution; Publication; Election, When; Effective Date

Cities and Municipalities—Governmental Organization—Consolidation of Fire Districts and Fire Departments; Transfer of Property; Payment of Outstanding Indebtedness; Transfer of Debt Service Fund

Cities and Municipalities—Governmental Organization—Consolidation of Fire Districts and Fire Departments; Outstanding Indebtedness; Tax Levy for Payment Of

Synopsis: Fire districts organized under K.S.A. 19-3601 *et seq.* may be consolidated under the statutory scheme provided by K.S.A. 12-3910 *et seq.* An election pursuant to K.S.A. 2016 Supp. 12-3913(a) shall be held within 90 days. K.S.A. 2016 Supp. 12-3913 provides a specific grant of authority for the board of county commissioners to dissolve the fire districts being consolidated. The board of county commissioners is not mandated to apply the same tax twice on citizens to provide for the payment of outstanding indebtedness of a fire district being consolidated. Fire “districts” and “departments” are interchangeable terms in at least two places within K.S.A. 19-3601 *et seq.* Cited herein: K.S.A. 10-120; 12-3910; 12-3911; K.S.A. 2016 Supp. 12-3913; 12-3916; K.S.A. 12-3917.

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Dear Mr. Yost:

As County Counselor for Sedgwick County (County), you ask our opinion on several matters related to the consolidation of fire districts and fire departments under K.S.A. 12-3910, *et seq.* Specifically, you ask: (1) whether the bond election statute found at K.S.A. 10-120 supersedes the election requirements found at K.S.A. 2016 Supp. 12-3913; (2) if a board of county commissioners may dissolve or disorganize a fire district by resolution if the district is being consolidated pursuant to K.S.A. 12-3910 *et seq.*; (3) whether a fire district must levy additional taxes before transferring its outstanding obligations to a newly created consolidated district; and (4) if specific duties for a city fire department prior to consolidation may be implied.

In your request for an opinion, you explained that Sedgwick County Fire District No. 1 is considering consolidating with the City of Wichita Fire Department and the City of Derby Fire Department. You note that K.S.A. 12-3910 *et seq.* provides for the consolidation of fire districts and fire departments but that various other statutes potentially conflict with the procedures set out therein.¹ We will answer each question in turn.

Elections

K.S.A. 12-3910 *et seq.* governs the consolidation of various county fire districts and city fire departments.² The governing bodies of two or more fire districts or fire departments may request the board of county commissioners pass a resolution to consolidate those districts or departments into a consolidated fire district.³ The resolution creating a consolidated fire district must be published at least once each week for two consecutive weeks in a newspaper of general circulation in the area subject to the proposed consolidation.⁴

If at least five percent (5%) of the registered voters residing within each of the areas proposed to be consolidated sign and file with the county election officer a petition opposing the consolidation, the board of county commissioners must call and hold an election within the areas proposed to be consolidated within 90 days after the filing of the petition.⁵ The election must be “called and held . . . in the manner provided for the calling and holding of elections under the general bond law.”⁶

¹ Correspondence, Eric R. Yost, April 14, 2017.

² K.S.A. 12-3910.

³ K.S.A. 12-3911.

⁴ K.S.A. 2016 Supp. 12-3913(a).

⁵ *Id.*

⁶ *Id.*

We agree that K.S.A. 10-120 provides the manner for calling and holding elections under the general bond law. In your request for an opinion, you correctly note that K.S.A. 10-120 mandates an election required for the issuance of bonds to “be held within 45 days after compliance with the necessary [legal] requirements,” unless a general election is scheduled within an additional 45 days of that deadline, in which case the bond election may be held at the same time.⁷

It is, however, a common rule of statutory construction that “a specific statute controls over a general statute.”⁸ Where, as here, the Legislature provided a specific deadline for calling and holding an election following the filing of a sufficient petition in opposition to the proposed consolidation of fire districts and fire departments, it is clear that deadline controls over the deadline provided in the general bond statute the Legislature invoked for other requirements related to the calling and holding of the election. In other words, the 90 day deadline provided in K.S.A. 2016 Supp. 12-3913(a) applies to elections held under that statute.

Dissolution

K.S.A. 2016 Supp. 12-3913(b) provides a specific grant of authority for the board of county commissioners to dissolve the fire districts being consolidated: “[a]ny resolution creating a consolidated fire district shall provide for the dissolution or disorganization of the fire districts as they existed prior to the effective date of the creation of a consolidated fire district.”⁹ Although you are correct that K.S.A. 19-3601 *et seq.* requires the board of county commissioners to consider the advisability of disorganizing a fire district upon a sufficient petition of affected landowners,¹⁰ we can find no authority and deduce no reason to view K.S.A. 19-3604 as a limitation on the specific grant of authority provided by the Legislature in K.S.A. 2016 Supp. 12-3913(b).

Debt Obligations of Fire Districts

K.S.A. 12-3917 requires the board of county commissioners to “provide for the payment of [a fire district’s outstanding indebtedness] by providing for the levying of taxes upon all the property in that district prior to the consolidation with another district.” In your request for an opinion, you note it would be inequitable to tax citizens twice for the same obligation and unwieldy to get rid of an existing tax only to re-levy the tax for the purpose of consolidation if the fire district has already levied a tax to provide for the payment of indebtedness.

We do not believe the Legislature intended for the board of county commissioners to tax citizens twice for the same obligation. We do, however, see in the plain text of the

⁷ K.S.A. 10-120.

⁸ *E.g.*, *Sierra Club v. Moser*, 298 Kan. 22, 54 (2013).

⁹ K.S.A. 2016 Supp. 12-3913(b).

¹⁰ K.S.A. 19-3604.

statute the Legislature's intent that the debt obligations of one fire district not be assumed by the citizens of other districts being consolidated. To that end, the board of county commissioners would not need to "provide for the payment of . . . outstanding indebtedness" if it has already been provided for by the district that is being consolidated. For example, you correctly note K.S.A. 2016 Supp. 12-3916 anticipates a fire district may have a debt service fund in place that may be transferred to the consolidated district. The question of whether any particular indebtedness has been "provide[d] for," however, is a question of fact we cannot answer.

Debt Obligations of Fire Departments

Lastly, you note that K.S.A. 2016 Supp. 12-3916(a) refers to "departments" (as in city fire departments) while K.S.A. 2016 Supp. 12-3916(b) refers to "districts" (as in Chapter 19 fire districts). In its entirety, the statute reads:

(a) Subject to the provisions of subsection (b), the books, papers, equipment and other real and personal property belonging to the departments consolidated pursuant to this act shall be transferred to and shall become the property of the consolidated district, subject to any debts, leases or other obligations that encumber such property.

(b) All funds in the treasury of any such fire district on the effective date of consolidation may be applied to the payment of any outstanding indebtedness, including bonded indebtedness, of such fire district, and may be transferred to the treasury of the newly created consolidated fire district as determined by the board of county commissioners. Any debt service fund of such fire district at the time of consolidation may be transferred to the newly created consolidated fire district. Any money transferred from the debt service fund of the fire district shall be credited to a debt service fund in the newly created consolidated fire district. The debt service fund of the newly created consolidated fire district shall be kept separate from any other debt service fund.

Because subsection (b) is described in subsection (a) as a qualification on the grant of authority provided in subsection (a), we believe the use of the word "departments" may reasonably be read to include both fire districts and fire departments. We note at least one other occurrence of the converse, where "districts" clearly refers to both fire districts and fire departments, in K.S.A. 12-3911.

Consequently, we believe the provision for transferring property to the consolidated fire district in K.S.A. 2016 Supp. 12-3916(a) applies to both fire districts and fire departments being consolidated.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Craig Paschang

Craig Paschang
Assistant Attorney General

DS:AA:CP:sb