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ATTORNEY GENERAL OPINION NO. 2025-15

Jeffrey W. Deane
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4031 NE Lakewood Way
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Re: Cities and Municipalities—Local Residential Housing—Kansas Reinvestment Housing Incentive District Act—Exemption from Certain Requirements in a County under a Federal or State Disaster Declaration

Cities and Municipalities—Local Residential Housing—Kansas Reinvestment Housing Incentive District Act—Nullification of Plan, When

Synopsis: K.S.A. 12-5252(a) exempts cities in counties subject to the FEMA-1711-DR or FEMA-1699 disaster declarations and those counties from certain statutory requirements for the establishment of a Reinvestment Housing Incentive District, including the requirement of holding a public hearing on the proposal, but this exemption only applied prior to July 1, 2013.

The provisions of K.S.A. 12-5246(c), which authorize other taxing entities to nullify or void a city or county's establishment of a Reinvestment Housing Incentive District, apply even when the city or county is not required to hold a public hearing. This action must be taken with 30 days of the adoption of the ordinance or resolution establishing the district.

Cited herein: K.S.A. 12-5245; 12-5246; 12-5252.

* * *

Dear Mr. Deane:

As City Attorney for Osawatomie, you ask whether K.S.A. 12-5246(c) authorizes any entity to nullify or void a city's creation of a Reinvestment Housing Incentive District (RHID) when K.S.A. 12-5252 exempts the city from the requirement of holding a public hearing to establish the district.

The Kansas Reinvestment Housing Incentive District Act[1] is a program designed to aid developers in building housing in communities.[2] An RHID operates by capturing the incremental increase in real property taxes created by a housing development project and then allowing this revenue to be used for the reimbursement of costs incurred by the developer or to pay debt service on bonds issued to fund the project.[3]

Ordinarily, a city or county seeking to establish an RHID must hold a public hearing on the proposal.[4] If the city or county decides to establish the RHID, K.S.A. 12-5246(c) allows certain other taxing entities to nullify that decision:

> (c) The ordinance or resolution establishing the district shall be null and void if, within 30 days following the conclusion of the hearing:
>
> (1) The board of education levying taxes on such property determines by resolution that the proposed district will have an adverse effect on such school district;
>
> (2) the governing body of any city located within three miles of [the] district proposed to be established by a county determines by ordinance that the proposed district will have an adverse effect on such city; or
>
> (3) the board of county commissioners of the county in which a city governing body proposes to establish such a district determines by resolution that the proposed district will have an adverse effect on such county.

This action must be taken "within 30 days following the conclusion of the hearing." But K.S.A. 12-5252 exempts RHID projects in counties subject to certain disaster

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[1] K.S.A. 12-5241 *et seq.* The Act was known as the Kansas Rural Housing Incentive District Act until 2023, when statutory amendments expanded its scope. *See* L. 2023, ch. 68.
[2] *See* K.S.A. 12-5241 *et seq.*; https://www.kansascommerce.gov/program/community-programs/rhid/.
[3] *Id.*
[4] K.S.A. 12-5245(b)-(c); 12-5246(a).

declarations from the public hearing requirement, raising the question of whether and how the veto provision in K.S.A. 12-5246(c) applies in that situation.

Interpretation of K.S.A. 12-5252(a)

Before answering your question, we must first address whether the public hearing exemption in K.S.A. 12-5252 applies to Osawatomie. K.S.A. 12-5252, which was first enacted in 2008, provides:

> (a) Any city that prior to July 1, 2013, is located, in whole or in part, within the boundaries of a county designated by the United States federal emergency management agency under major disaster declaration FEMA-1711-DR or FEMA-1699, as eligible to receive individual or public assistance from the United States federal government that desires to designate a reinvestment housing incentive district pursuant to this act or such county shall be exempt from the provisions of K.S.A. 12-5244(c),[5] and amendments thereto, and may adopt a plan for a designated reinvestment housing incentive district without the approval of the secretary and without conducting a public hearing on such proposed plan.
>
> (b) For any city in a county declared by the governor to be a state of disaster after January 1, 2008, or such county if the governor finds that such disaster resulted in the destruction of a significant amount of residential housing in such city or county the governor may designate such city or county to exercise the exemption authorized by subsection (a) for a period of five years from the date of the declaration of a state of disaster.
>
> (c) Nothing in this section shall be construed so as to exempt a city or county from any other requirement set forth in this act, or to limit any of the rights, duties and privileges of a city or county under any other provisions of this act.

Osawatomie is located in Miami County, which you inform us was subject to the FEMA-1711-DR disaster declaration, and therefore the city purports to rely on subsection (a) of the statute. But that subsection contains a limitation—"prior to July 1, 2013." You read this to mean only that Osawatomie must have existed in Miami County prior to July 1, 2013. We disagree. While the statute is perhaps not the most clearly drafted, we believe this language creates a July 1, 2013, deadline for the exception. After all, the word "is" is in the present tense. Following July 1,

[5] K.S.A. 12-5244(c) requires the governing body to send a copy of a resolution making findings in support of establishing an RHID to the Secretary of Commerce for approval.

2013, it would be grammatically correct to say that "prior to July 1, 2013," the city "was" located in a county subject to the disaster declaration. The verb "is," in conjunction with "prior to July 1, 2013," means that the exemption based on FEMA-1711-DR or FEMA-1699 only applies until July 1, 2013.[6]

The statutory context supports this interpretation.[7] Subsection (b) of K.S.A. 12-5252 limits exceptions based on newer disaster declarations to "a period of five years from the date of the declaration of a state of disaster." Given that K.S.A. 12-5252 was first enacted in 2008, a July 1, 2013, deadline for exemptions under subsection (a) would similarly allow a roughly five-year period for exemptions. By contrast, a contrary reading would allow for a perpetual exemption—which seems unlikely to have been the legislative intent, particularly given the time limit in subsection (b).

Our interpretation is also consistent with K.S.A. 12-5257, which was enacted at the same time as K.S.A. 12-5252 (but has now expired under K.S.A. 12-5258(b)).[8] It provided:

> (a) For purposes of [K.S.A. 12-5253 through 12-5257], and amendments thereto, the term "city" means any city that prior to July 1, 2010, is located, in whole or in part, within the boundaries of a county designated by the United States federal emergency management agency under major disaster declaration FEMA-1711-DR or FEMA-1699, as eligible to receive individual or public assistance from the United States federal government, or designated exempt by the governor pursuant to [K.S.A. 12-5252], and amendments thereto. On or after July 1, 2010, "city" shall mean any city incorporated in accordance with Kansas law.
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> (b) For purposes of [K.S.A. 12-5253 through 12-5257], and amendments thereto, the term "county" means any county that prior to July 1, 2010, is designated by the United States federal emergency management

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[6] We recognize that the Legislature amended K.S.A. 12-5252(a) in 2023, which might suggest the exemption continues to apply. But subsection (b) provides that cities or counties subject to other disaster declarations may "exercise the exemption authorized by subsection (a)," so subsection (a) has continuing application apart from the FEMA-1711-DR and FEMA-1699 disaster declarations. In addition, the 2023 amendments to subsection (a) were technical in nature—reflecting the new title of the Act and a different style for citing statutory subsections, L. 2023, ch. 68, § 8—so we do not read them as an indication that the Legislature intended to continue an exemption based on the FEMA-1711-DR or FEMA-1699 disaster declarations past July 1, 2013.

[7] "When employing a plain language interpretation, courts consider not only the language itself, but also the specific context in which that language is used and the broader context of the statute as a whole." *Austin Props., LLC v. City of Shawnee*, __ Kan. __, 564 P.3d 1262, 1269 (2025).

[8] "[E]ven when the language of the statute is clear," courts "still consider various provisions of an act *in pari materia* to reconcile and bring those provisions into workable harmony, if possible." *See Bruce v. Kelly*, 316 Kan. 218, 224, 514 P.3d 1007 (2022).

> agency under major disaster declaration FEMA-1711-DR or FEMA-1699, as eligible to receive individual or public assistance from the United States federal government, or designated exempt by the governor pursuant to [K.S.A. 12-5252], and amendments thereto. On or after July 1, 2010, "county" shall mean any county with a population of less than 60,000, as certified to the secretary of state by the director of the division of the budget on the previous July 1 in accordance with K.S.A. 11-201, and amendments thereto.

K.S.A. 12-5257(a) used the same pairing of "prior to" and "is located" as K.S.A. 12-5252(a) and even referenced K.S.A. 12-5252. K.S.A. 12-5257 then went on to give different definitions of "city" and "county" to apply "[o]n or after July 1, 2010," indicating that the paring of "prior to" and "is located"—or "is designated" in subsection (b)—established a July 1, 2010, end date for the original definitions. Likewise, the phrase "prior to July 1, 2013, is located" in K.S.A. 12-5252(a) establishes a July 1, 2013, end date for the exemption under that subsection.

Because it is now past July 1, 2013, FEMA-1711-DR and FEMA-1699 no longer provide a basis for an exemption from the requirements to hold a public hearing or to obtain the Secretary of Commerce's approval to establish an RHID.

Applicability of K.S.A. 12-5246(c) when no public hearing is required

Our conclusion that FEMA-1711-DR no longer provides a basis for an exemption from the public hearing requirement arguably moots your inquiry. But because it is possible that either Osawatomie or another city or county might at some point qualify for an exemption under K.S.A. 12-5252(b), we believe it would nevertheless be useful to answer your initial question.

The fact that any action to render the creation of an RHID null and void must be taken "within 30 days following the conclusion of the hearing" might suggest that the process in K.S.A. 12-5246(c) for nullifying the creation of an RHID is inapplicable when no public hearing is held. But a closer reading of the statute and the legislative history ultimately lead us to the opposite conclusion.

While K.S.A. 12-5252 provides an exemption from the requirements to obtain approval by the Secretary of Commerce and to hold a public hearing, subsection (c) states that "[n]othing in this section shall be construed so as to exempt a city or county from any other requirement set forth in this act, or to limit any of the rights, duties and privileges of a city or county under any other provisions of this act." And K.S.A. 12-5252 says nothing about exempting proposed RHIDs from the nullification provisions in K.S.A. 12-5246(c). The plain language of K.S.A. 12-5252(c) therefore indicates those nullification provisions should continue to apply even in the absence of a public hearing. We do not read the law to exempt cities and

counties from those provisions by implication merely because the timeline is tied to the conclusion of the public hearing when K.S.A. 12-5252(c) states that no other exemption is intended.

The legislative history—which Kansas courts consider when the statutory language is unclear or ambiguous[9]—also indicates that the Legislature did not intend to exempt cities and counties from K.S.A. 12-5246(c) when they are not required to hold a public hearing. K.S.A. 12-5252 was first enacted as part of 2008 Senate Bill 417. As first introduced, New Section 3(a) of the bill provided:

> (a) Any city that prior to July 1, 2013, is located, in whole or in part, within the boundaries of a county designated by the United States federal emergency management agency under major disaster declaration FEMA-1711-DR or FEMA-1699, as eligible to receive individual or public assistance from the United States federal government that desires to designate a rural housing incentive district pursuant to this act *shall be exempt from the provisions of subsection (c) of K.S.A. 12-5244, subsections (b), (c) and (d) of K.S.A. 12-5245 and K.S.A. 12-5246, and amendments thereto*, and may adopt a plan for a designated rural housing incentive district without the approval of the secretary and without conducting a public hearing on such proposed plan.[10]

In other words, the original bill would have provided an exemption from the nullification provisions in K.S.A. 12-5246(c). But the House Committee of the Whole amended the bill to eliminate the K.S.A. 12-5246 exemption:

> (a) Any city that prior to July 1, 2013, is located, in whole or in part, within the boundaries of a county designated by the United States federal emergency management agency under major disaster declaration FEMA-1711-DR or FEMA-1699, as eligible to receive individual or public assistance from the United States federal government that desires to designate a rural housing incentive district pursuant to this act **[or such county]** shall be exempt from the provisions of subsection (c) of K.S.A. 12-5244, ~~subsections (b), (c) and (d) of K.S.A. 12-5245 and K.S.A. 12-5246,~~ and amendments thereto, and may adopt a plan for a designated rural housing incentive district without the approval of the secretary and without conducting a public hearing on such proposed plan.

[9] *See State v. Moler*, 316 Kan. 565, 573-74, 519 P.3d 794 (2022).
[10] (Emphasis added).

There is no record of the reason for this amendment. But given the textual command in K.S.A. 12-5252(c) that the section should not be construed to provide any other exemption, we are reluctant to imply an exemption from the nullification provisions in K.S.A. 12-5246(c) when the Legislature removed an express exemption from that statute from the initial bill.

Of course, that leaves the question of timing for any action to nullify or void the establishment of an RHID when no public hearing is held, given that K.S.A. 12-5246(c) states the action must be taken "within 30 days following the conclusion of the hearing." We believe the answer lies in K.S.A. 12-5246(b), which provides that "[u]pon the conclusion of the public hearing, the governing body may adopt the plan for the district and may establish the district by ordinance or, in the case of any county, by resolution." Thus, the reference in K.S.A. 12-5246(c) to the "conclusion of the hearing" is also referring to the point in time when the city or county adopts the plan for the district, establishing it by ordinance or resolution. The fact that these two events are the same makes sense given that what is being made "null and void" under subsection (c) is the "ordinance or resolution establishing the district"—if the city or county chose not to establish an RHID at the conclusion of the hearing, there would be nothing to nullify. And so, when no public hearing is held, we interpret K.S.A. 12-5246(c) as requiring any action to render an ordinance or resolution establishing an RHID null and void must be taken within 30 days following the adoption of the ordinance or resolution.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Dwight R. Carswell

Dwight R. Carswell
Deputy Solicitor General