

Approved January 31, 1991  
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at  
Chairperson

9:00 a.m. ~~pm~~ on January 30, 1991 in room 531-N of the Capitol.

All members were present except:

Sen Gaines

Committee staff present:

Theresa Kiernan, Revisor of Statutes  
Mike Heim, Legislative Research  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Don Seifert, City of Olathe  
Gerry Ray, Johnson County Commission  
Mayor Carol Lehman, City of Gardner  
Robert J. Watson, City Attorney, Overland Park, Kansas

SB 24 - An act concerning the detachment of land from certain fire districts.

Mike Heim distributed copies of the interim committee report with regard to this bill. (Attachment 1).

The Chairman called on Don Seifert, City of Olathe, for his testimony in support of SB 24. (Attachment 2).

Gerry Ray, Johnson County Commission, followed with further testimony in support of the bill. (Attachment 3).

Mayor Carol Lehman, City of Gardner, gave final testimony in support of the bill. (Attachment 4). The City Administrator of Gardner answered brief questions from the Chairman and Sen. Burke regarding purchase of equipment by fire departments and the possible costs to rural districts due to higher mill levies because of the loss of property tax base.

The Chairman called on Robert J. Watson, City Attorney for the City of Overland Park, who testified in opposition to SB 24. (Attachment 5). Sen. Burke began a short discussion regarding possible problems in removing Overland Park from the bill. Mike Heim answered questions regarding the loss of sales tax with regard to a city imposed sales tax or county sales tax apportioned to the city. The Chairman said he felt he should visit with Rep. Nancy Brown, who was involved in the interim study, before any action is taken on the bill.

The minutes of January 29 were approved.

The meeting was adjourned at 9:45 a.m.



## RE: PROPOSAL NO. 23 -- FIRE DISTRICT ANNEXATION\*

Proposal No. 23 -- Fire District Annexation calls for the Committee to review issues involved in the city annexation of lands contained in fire districts. The study was prompted by the introduction of 1990 S.B. 738. The bill would have amended a section of a law providing for the formation and operation of fire districts in Johnson County. (See K.S.A. 19-3613 to 19-3623.) Specifically, the bill would have required territory of a fire district annexed to a city to be approved for detachment from the fire district no later than 120 days following the effective date of the annexation.

### Johnson County Fire Districts

If a city annexes the territory of a fire district created by Johnson County under K.S.A. 19-3613 *et seq.*, the territory will continue to be a part of the fire district unless the city and the fire district approve the detachment of the territory from the fire district. Territory located within the fire district and annexed by the city continues to be liable for the payment of any outstanding bonded indebtedness. (See K.S.A. 19-3616. See also Attorney General Opinion No. 82-97 which said the responsibility for fire protection within the City of Gardner was exclusively that of Johnson County Fire District No. 1.)

**A Special Rule for Overland Park.** A special law was enacted in 1985 authorizing the City of Overland Park to create its own fire department or to contract with any private or public entity for fire protection services by adoption of a resolution. Upon receipt of the city resolution, the board of county commissioners are required to order the dissolution of any fire district located wholly within the city and order the detachment of territory of other fire districts where a portion of their territory is inside the city. The property of the dissolved fire district is transferred to and becomes the property of the city. Provision is made for a transfer of moneys from a fire district whose territory is detached to the city corresponding to the proportion of assessed value in the city to the fire district as a whole. (See K.S.A. 13-796 to 13-7,101.)

### Certain Heavily Populated Township Fire Districts

If any territory in a fire district created by a township with a population of over 12,000 persons pursuant to K.S.A. 80-1512 is annexed by a city, the territory will continue to be within the fire district. Territory annexed from the township-created fire district by the city continues to be liable for the payment of any outstanding bonded indebtedness. The ownership of the fire station and the land upon which the fire station is located remains in the township even though the city has annexed the fire station. The township will continue to use and operate the fire station as if it had never been annexed. (See K.S.A. 80-1911a.) The township fire department located in the annexed territory has the right to use the streets and alleys of the annexing city in going to and from fires in the township.

Note the above rule does not apply if a township-created fire district is located in a county having a population of more than 138,000 but less than 175,000 and the territory of the township-created fire district is annexed by a city maintaining its own fire department. Then, the annexed territory is removed from the fire district and will be served by the city fire department. (See K.S.A. 80-1513(c).)

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\* S.B. 24 accompanies this report.

Senate L.G.  
1-30-91  
Attachment 1

## Effect of City Annexation on Other Fire Districts

Apparently, as a general rule, cities which annex territory of a fire district other than as noted above take over the territory of the fire district and are responsible for the levying of taxes and provision of fire services. The above conclusion is based on the rather vague statute, K.S.A. 12-503a, which provides:

. . . When all or any part of any township, improvement district, or other governmental unit is annexed to any city, such township, improvement district or other governmental unit may, continue to furnish services for the year for which taxes have been levied or collected in those areas of the district annexed, or in the alternative, shall surrender the taxes collected to the annexing city to be used specifically for the purposes for which the tax was collected. No improvement district shall continue to make a levy for its general fund upon territory annexed to any city, from and after the effective date of such annexation.

Note the statute does not state that the territory of "any township, improvement district, or other governmental unit" which is annexed shall be detached but that appears to be the reasonable implication of the statutory language. (See Attorney General Opinion No. 81-213 which construed the above statute. The opinion recognizes the ambiguity of K.S.A. 12-503a, but implies detachment is required.)

## Other States' Laws

States have come up with a variety of solutions to handle the issue of what happens to part of a fire district's territory upon the annexation of such lands by cities. The solutions, which are geared toward various special district governments and not only fire districts, are of six general types:

1. **Automatic Transfer.** The most common type of provision is that annexation of part of a district automatically withdraws territory from the jurisdiction of the district and brings it under the annexing municipality's authority.
2. **Transfer in Discretion of Annexing Municipality.** The annexing municipality may be empowered to determine, by ordinance, or resolution of its governing body, or vote of its citizens, whether to displace the authority of the district in the annexed portion of its territory.
3. **Transfer in Discretion of District Voters.** The consent of the district's voters, given in a special election or at a public meeting, may be required to effect a transfer of authority over the annexed territory to the municipality. The vote may be restricted to residents of the annexed portion of the district's territory or may include all residents of the district.
4. **Court or Administrative Decision.** Another alternative is to allow the residents or the district of the annexed area to petition a state executive authority or a local boundary body who decides the issue.
5. **Agreement Between District and Municipality.** A fifth kind of provision requires the municipal government and the district to agree on the reallocation of the district's authority over the annexed territory. Some of these statutes provide that, if agreement is not reached, the district retains control over the territory. Others provide that the municipality automatically assumes control, or may, at its option, take control in default of agreement. A Nebraska statute provides for court determination of the issue in default of agreement.

6. **No Transfer.** Finally, some statutes, usually applicable only when a specified small percentage of the district's territory is annexed, provide that a partial annexation has no effect, and that the district retains full authority over the annexed territory.

### Testimony of Conferees

Conferees who addressed the Committee included representatives of the cities of Gardner and Olathe and three fire districts from Johnson County. Representatives of cities wanted territory of fire districts to be detached from the district upon annexation of such land by cities. Concerns expressed were that, if land remains part of the fire district, confusion is created by having several different entities providing fire services for city residents, coordination of fire services become a problem, and there is a loss of local sales tax moneys since tax levies which are not imposed citywide cannot be used in the local sales tax distribution formula for cities.

Fire district representatives said that cities are not always able to provide adequate fire service to areas annexed, that detachment meant less tax base, may cause hardship for the remaining district, and may result in higher taxes.

In addition, the Committee Chairperson and another Committee member attended a meeting in Johnson County in early November where a number of cities, fire districts, and Johnson County were represented. The consensus of those attending that meeting was that the board of county commissioners should be given responsibility for deciding fire district detachment and transfer of property issues.

### Committee Conclusions and Recommendations

The Committee concludes that legislation is needed to insure that the interests of both cities and fire districts in Johnson County are protected when a city annexes lands contained in such a district. The Committee is recommending legislation applicable only to Johnson County since that is the area where concerns have been raised.

Specifically, the Committee recommends S.B. 24 to the 1991 Legislature. The bill contains the following major provisions:

1. The board of county commissioners would be given responsibility to determine whether the territory should be detached from a fire district upon annexation of a portion of such territory by a city. Further, the board would be responsible for deciding whether equipment and other property should be transferred from the district to the city.
2. The board of county commissioners would be required to make such decisions based on whether the transfer of the territory or property would cause manifest injury to the fire district if transferred or manifest injury to the city if it is not. Certain factors are listed in the bill which must be considered, including:
  - a. the response time of the city and the fire district to the area in question;
  - b. the impact of the loss of the tax base on the remaining part of the fire district for it to continue in operation;
  - c. the impact on a city's provision of fire service if the detachment is not permitted;
  - d. the impact on residents of the area in terms of possible confusion over which entity provides the service;

- c. the financial impact on cities including loss of local sales tax moneys if detachment is not permitted; and
  - f. the ability of residents of the remainder of a fire district to obtain fire service from another source if detachment would prevent the continued operation of the district.
3. Cities and fire districts would have 60 days following annexation of a portion of the territory of a fire district to reach an agreement on the issue of transfer of territory or property or both. Any such agreement must be submitted to the board of county commissioners for its ratification.
4. A public hearing would be required where representatives of the city, the fire district, and any interested person would be allowed to present their plan for resolving the issues of whether territory or property or both of the fire district should be transferred to the city and whether the city should pay compensation for property transferred.
5. Notice of the public hearing to be held not sooner than 60 days after the effective date of the annexation nor more than 120 days thereafter would be required to be published in a newspaper of general circulation in the county. Mailed notice of the hearing would be required for all residents of the area in the fire district affected. The city would be required to pay for the publication and notice costs. Mailed notice to property owners would not be required where the city and the fire district had reached an agreement and the purpose of the hearing before the board of county commissioners was for ratification of the agreement.



# CITY OF OLATHE

## MEMORANDUM

**TO:** Members of the Senate Committee on Local Government

**FROM:** Donald R. Seifert, Asst. Director, Adm. Services

**SUBJECT:** Senate Bill No. 24 - Fire Districts; Detachment  
Following Annexation

**DATE:** January 30, 1991

On behalf of the city of Olathe, I want to thank the Committee for the opportunity to appear today in support of Senate Bill No. 24, dealing with the detachment of fire district territory following annexation in Johnson County. This is by now a familiar topic to the Committee, having been discussed during the 1990 session and by the Special Committee during the interim session. Many of you served on the interim committee, and we certainly appreciate the attention you have given this subject.

I would like to begin with a brief word about Olathe's historical annexation practices and the reasons for our interest in this legislation. Olathe, like many cities in Johnson County, is fairly active in annexation. The city rarely initiates annexation, but regularly has expanded its boundaries to accommodate property owners' annexation requests. Since 1987, when the Legislature amended the annexation statutes, the city has annexed approximately 4000 acres of which 96% was voluntarily annexed by landowner petition prior to development. We believe Olathe has used the tool of annexation in a responsible matter. A map depicting these annexations by year is attached as Exhibit A.

Exhibit B illustrates how Olathe's boundaries have expanded into three Johnson County fire districts created pursuant to K.S.A. 19-3613 et seq. This particular statute is applicable only to fire districts in Johnson County. These volunteer districts all do an excellent job in meeting the fire protection needs of their respective portions of unincorporated Johnson County. A summary sheet with basic information about each district is attached as Exhibit C.

*Senate L.G.  
1-30-91  
Attachment 2*

The city of Olathe has a full service fire department consisting of 66 full time staff, 11 pieces of apparatus, and 4 fire stations. A fifth station is now under design, and is scheduled for completion in early 1992. Fire protection in Olathe includes plan reviews, regular inspections, and other fire prevention activities in addition to emergency response. Upon annexation, property owners expect the city to provide fire protection and the city does provide this service.

Our problem seems to be a procedural one. Under present law, the city cannot levy taxes for fire protection on newly annexed property unless and until it has been formally detached and excluded from the fire district by its governing body. Existing law is silent on the procedure for making a detachment decision and the time frame for its consideration. For example, there is some territory in the heart of our city annexed as far back as 1983, which is now fully developed with several hundred homes and apartments, that is yet to be formally detached. As a result, the city is providing fire protection to newly annexed areas without receiving the corresponding financial resources for its support.

We are hurt on two fronts. Exhibit D shows the fiscal impact of the presence of rural fire district territory within our city limits. Olathe annually loses approximately \$100,000 in property tax and county sales tax revenue because of this situation. In today's environment, our city needs every dollar of available revenue to provide fire protection and other basic services. To balance the 1991 budget, our governing body cut programs and eliminated eleven positions.

To put things in perspective, one of our neighboring fire districts has only \$44,000 in assessed valuation within Olathe. If this area were detached, the tax loss to the district would be a mere \$170. However, the presence of any fire district territory triggers the loss of the entire \$84,000 in sales tax revenue to Olathe.

Senate Bill No. 24 offers an approach for solving this technical problem. Following the advice of your Chairman and other committee members, the various parties affected by this issue have attempted to work out a mutually acceptable solution. Through the leadership of Senator Burke and Representative Nancy Brown, Chairperson of the interim committee, a meeting was convened among Johnson County







cities, fire districts, and the county government to reach a consensus on the procedure proposed in this bill. As proposed by the interim committee, the city believes this bill offers a workable solution which provides protection for the interests of both cities and fire districts.

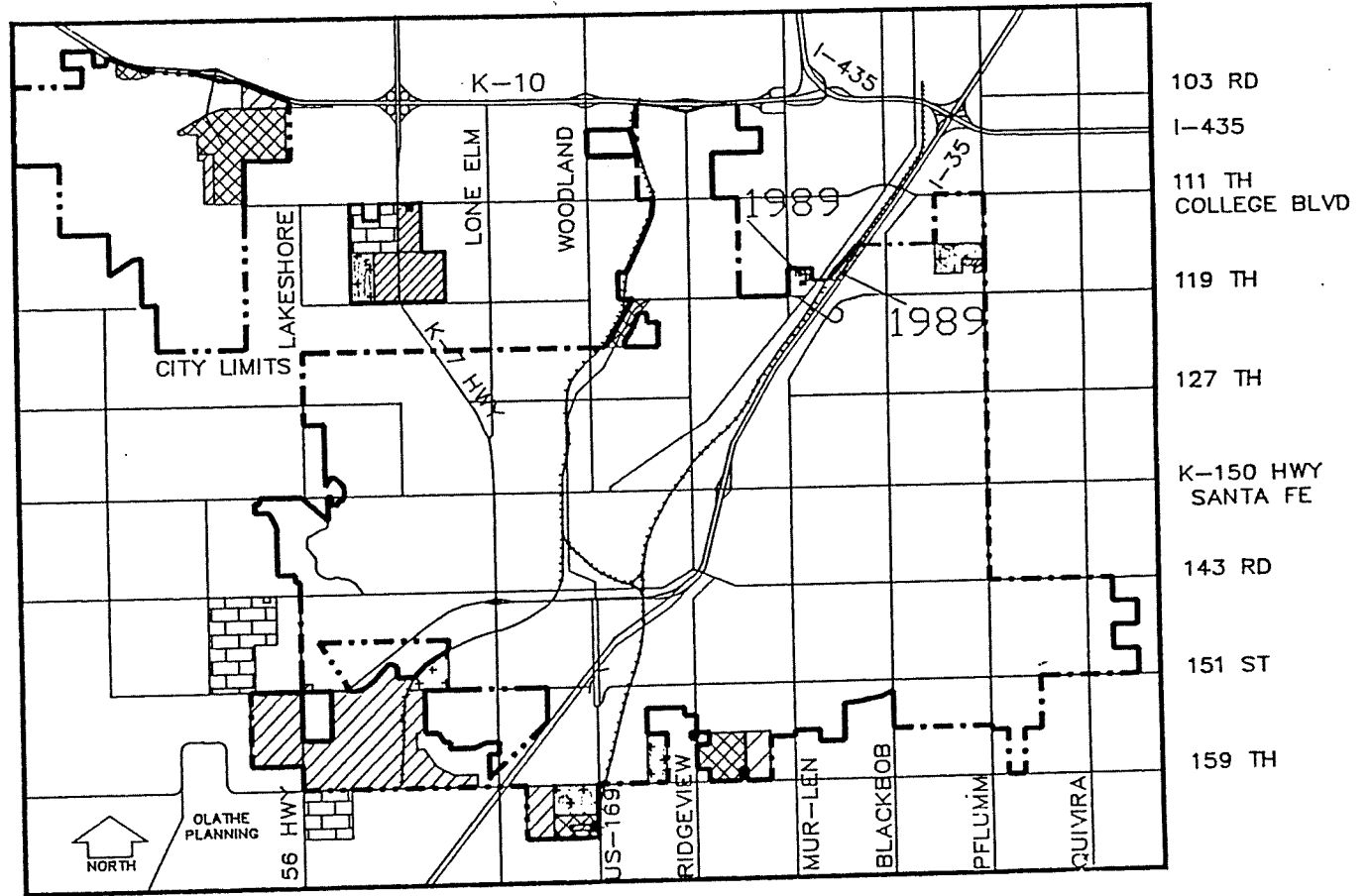
Senate Bill No. 24 applies only to Johnson County and provides a reasonable deadline for a city and fire district to negotiate a detachment agreement following an annexation. If the city and district are unable to reach an agreement, the Board of County Commissioners would conduct a hearing and make the final decision. We believe this responsibility logically rests with the Board since it already reviews city annexation and appoints the governing bodies of the various fire districts.

In supporting this bill, Olathe is in no way implying that fire districts have no place in providing service to county residents. Protecting the lives and property of persons living in unincorporated areas is equally important as it is within a city. Our concern is merely with the procedure for financing this service following an annexation. We do believe that urban services are best provided by cities once annexation has occurred. We view this bill as providing for an orderly transfer of jurisdiction as our fringe areas make a rural to urban transition.

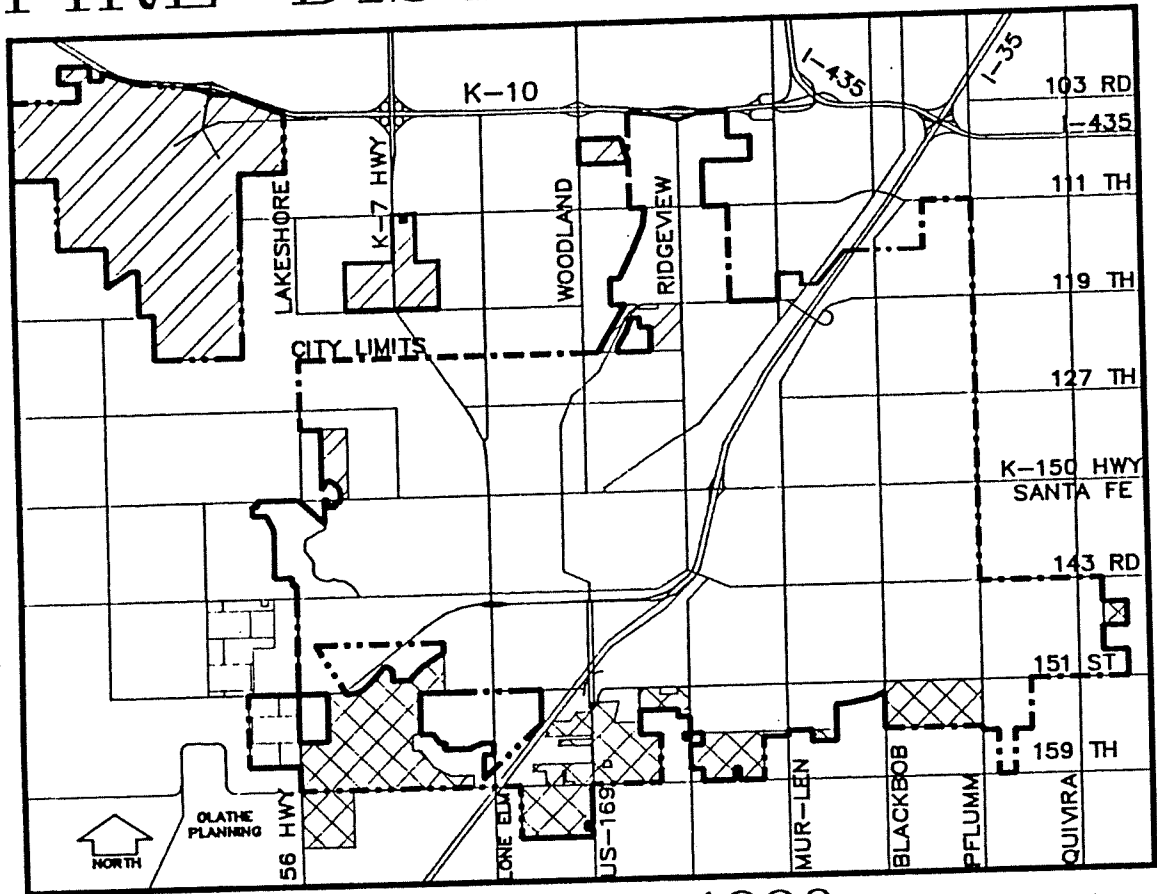
We appreciate the Committee's willingness to look at solutions to this problem, and urge you to favorably report this bill.

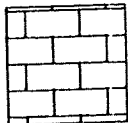
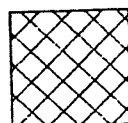
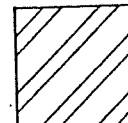
# ANNEXATIONS

-  1987
-  1988
-  1989
-  1990



# ANNEXATIONS IN RURAL FIRE DISTRICT AREAS



-  JOHNSON COUNTY RURAL FIRE DISTRICT No. 1
-  JOHNSON COUNTY RURAL FIRE DISTRICT No. 2
-  JOHNSON COUNTY RURAL FIRE DISTRICT No. 3

1983 - 1990  
CITY OF OLATHE, KANSAS

2-5

# Olathe Area Fire Departments

Name	Stations	Staff	Apparatus	Assessed Valuation	1991 Budget	Est. Tax Rate For 1991 (Mills)
Olathe Fire Dept.	#1 - Old 56 Hwy. & Harrison #2 - 119th & Renner Road #3 - 143rd & Blackbob Road #4 - 13301 S. Murlen Road #5 - Scheduled for 1991 construction near K-7 Hwy and Spruce	66 full time	6 - pumpers/tankers 1 - aerial ladder truck 1 - snorkel unit 1 - pumper 2 - pickup units	\$300,053,123	\$3,323,865	2.298
Johnson Co. Fire District No. 1	234 E. Park - Gardner	Volunteer	2 - pumpers 1 - tanker 2 - grass rigs	\$58,777,569	\$277,303	4.006
Johnson Co. Fire District No. 2	100 W. Nichols - Spring Hill 19495 Metcalf - Aubry	Volunteer	3 - pumpers 1 - tanker 3 - grass rigs 1 - pickup unit	\$55,188,867	\$543,167	8.188
Johnson Co. Fire District No. 3	#1 - 9745 Kill Creek Rd - Desoto #2 - 127th & Gardner Road	Volunteer	2 - pumpers 3 - pumpers/tankers 1 - grass rig 2 - pickup units	\$26,481,590	\$140,050	5.697

2-6

FISCAL NOTE

ANNUAL REVENUE LOSS AS A RESULT OF BOUNDARY  
OVERLAP WITH RURAL FIRE DISTRICTS

CITY OF OLATHE, KANSAS

The city of Olathe currently loses significant revenue from two sources due to the presence of rural fire district territory within the corporate limits of Olathe.

Lost Property Tax

K.S.A. 19-3622 does not allow a city to levy taxes for fire protection in annexed areas still technically within the boundaries of a rural fire district. However, the city does provide fire protection to these areas. For Olathe, the County Clerk is required to calculate two levies: the general levy and a separate levy for "no fire areas" which excludes the cost of Olathe fire protection.

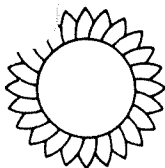
For 1991, the general city mill levy is 30.633, and the "no fire" levy is 28.335. Multiplying \$6,257,021 (the estimated assessed value of areas in the no city fire area) times 2.298 (the difference between the city levy and the "no fire" levy) yields a projected loss in 1991 property tax receipts of \$14,400.

Lost County Sales Tax

For distribution of the .5% Johnson County sales tax, K.S.A. 12-192 states that only the property tax levy applicable to the entire city is used to compute the "relative taxes levied" portion of the distribution formula. Since the "no fire" levy described above is applied to every property while the regular city levy is not, the lower "no fire" levy is used in the computation. The impact on 1991 receipts is an estimated loss of \$83,700.

Lost 1991 Revenue

Lost Property Tax	\$ 14,400
Lost Sales Tax	<u>83,700</u>
Total Lost Revenue	\$ 98,100



JANUARY 30, 1991

SENATE LOCAL GOVERNMENT COMMITTEE

HEARING ON SENATE BILL 24

TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL COORDINATOR  
JOHNSON COUNTY COMMISSION

Mr. Chairman members of the committee, my name is Gerry Ray, representing the Johnson County Board of Commissioners. I am appearing today in support of Senate Bill 24.

The need for an appropriate process for detachment of fire district territory after annexation takes place, has been a problem for some time in Johnson County. During the Interim Study of the subject this past summer, the County Commission was asked to become involved to bring about an acceptable solution.

A member of the County Commission and county staff met with Senator Burke and Representative Nancy Brown to discuss the exact nature of the problem and possible solutions. Separate meetings were then held with representatives of the cities and the fire districts involved, to ascertain their views and incorporate them into a plan. After a plan was developed all interested parties were invited to a meeting to review it. At that meeting there was an exchange of ideas and an excellent discussion of the plan that was to become Senate Bill 24.

As one that was involved in the meetings and the development of Senate Bill 24, I can verify that it is the result of many hours of work on the part of many people. I am also pleased to tell you that it was the general consensus of all parties that it is a means to provide a process that will achieve the necessary detachment of fire district territory in a reasonable manner.

The County, the Cities and the Fire Districts have done all they can to resolve this problem. We now need your help to make it work. We ask that Senate Bill 24 be recommended for passage.

Thank you.

*Senate L.G.  
1-30-91  
Attachment 3*

MEMO

TO: Members of the Senate Local Government Committee  
FROM: Mayor Carol Lehman  
DATE: January 30, 1991  
SUBJ: Senate Bill 24 (Fire District Annexation)

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On behalf of the City of Gardner, I want to thank the Committee for your consideration of Senate Bill 24 regarding the detachment of fire districts upon annexation by cities. The City of Gardner is probably more affected by this issue than any other public entity because of our rather rapid growth since the fire district boundaries were established and due to the fact that the fire district has been unwilling to detach annexed territory in the past.

For those of you who may be unfamiliar with Gardner, we are a City of 4,800 residents, located next to I-35 about seven miles southwest of Olathe. The City has annexed a very considerable amount of land since the fire district boundaries were established, most of which was done after receiving petitions from property owners requesting the annexations. I have attached a map to this memo which indicates the areas of the City which are currently still within the boundaries of a fire district. The yellow highlighted areas are those areas within the city limits of Gardner that are also in a fire district. As you can see, Gardner is almost equally divided between areas that receive City fire protection, and those that receive protection from the fire district. We estimate that nearly 40% of the City's population does not have the benefit of City fire protection services. Because Gardner is growing so rapidly, and because most of that growth is in newly annexed areas, we expect that in a few years the fire district will actually have responsibility for the protection of more Gardner residents than the City of Gardner will. I do not believe that the legislation which created fire districts ever intended, nor considered that a fire district would become the main provider of fire protection within the boundaries of a City.

We are not at all complaining about the level of service provided by the fire district; we think they are an excellent volunteer department. However, our citizens expect and deserve to have their local government, and the officials they elected, responsible for their fire protection; provided that we can provide equal or better service. These citizens look to the City for a wide variety of services, and they fully expect that the City is, or should be, responsible for what is one of the most basic of public services: that of fire protection.

Senate L.G.  
1-30-91  
Attachment 4

Senate Local Government Committee Memo  
Re: Senate Bill 24  
January 30, 1991  
Page 2 of 2

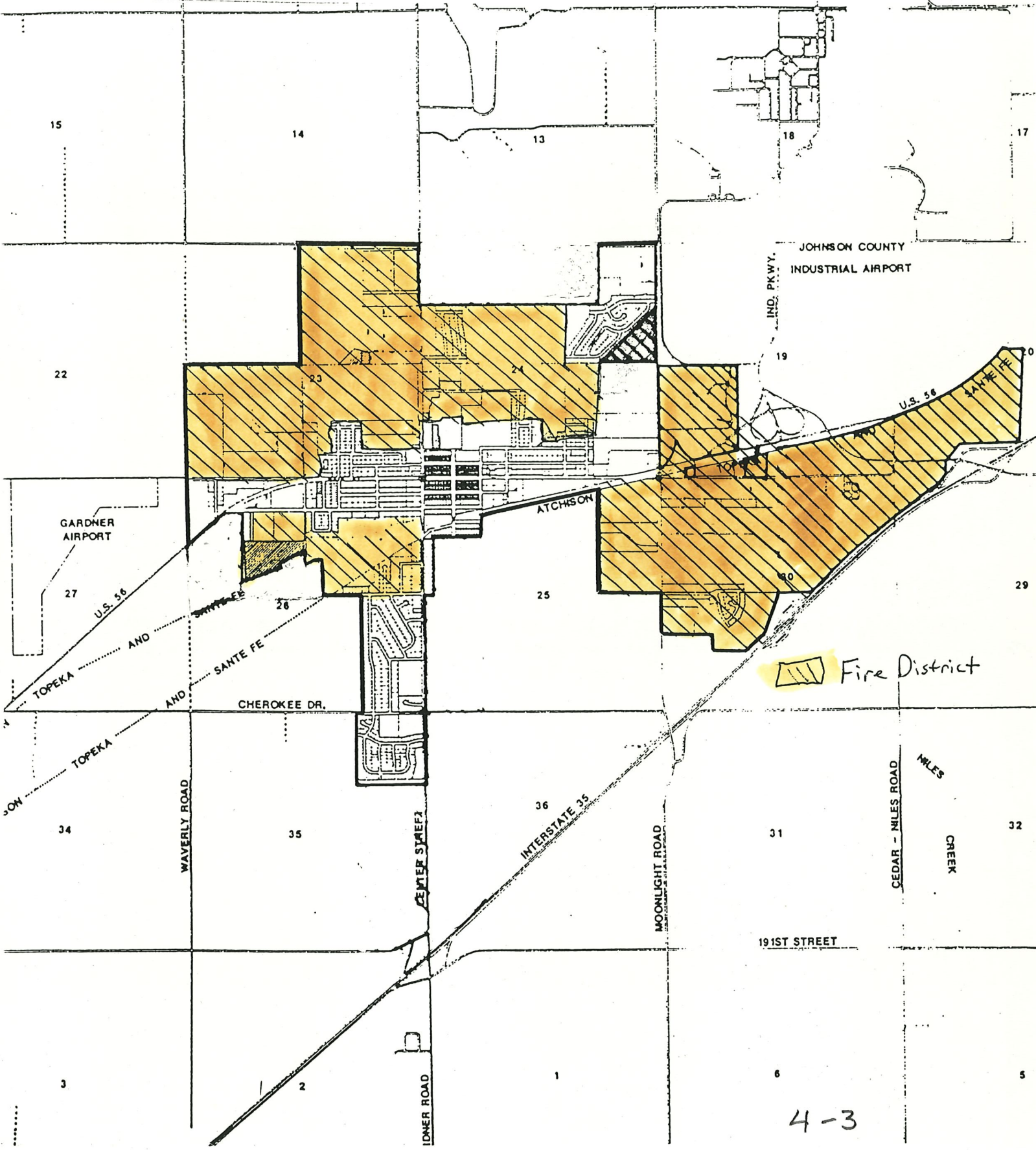
This brings up one of the basic issues of local government: accountability. Cities, especially the size of Gardner, continue to be directly responsible and accountable to the public that elected them. Our governing body approves every fire department expenditure in excess of \$1,500. It is also necessary for us to ask for voter approval of any bond issue for public safety improvements. Such direct accountability does not exist in the case of county fire districts.

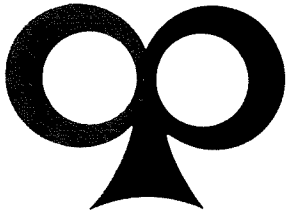
In closing, I would like for the committee members to try and understand the confusion of the general public regarding this issue. Although many residents are unaware of the situation, those who are aware can not understand why they receive fire protection from the county, while their neighbor across the street, or down the block receives city fire protection. They are further dismayed when they discover that their tax rate is higher for the county protection than if they received the service from the City.

The proposed legislation (Senate Bill 24) should eliminate that confusion. Fire district boundaries will become more logical because they will be based primarily on fire fighting capabilities, and not on some boundary line from the 1970's that no longer reflects the urban-rural distinctions of the community. The proposed legislation is the result of several meetings with the affected cities, fire districts and county officials, and we believe it will allow our citizens to receive the best possible fire service (whether city or county) and will also assure that the other related issues, such as loss of tax base, sale taxes, etc. will be seriously considered. The City of Gardner strongly supports this bill and I thank you for your consideration of this issue.



CITY OF  
PROMISE... PROGRESS...  
**GARDNER**





## Overland Park

TESTIMONY IN PARTIAL OPPOSITION TO SENATE BILL NO. 24

TO: The Honorable Don Montgomery, Chairman, and  
Members of the Senate Local Government Committee  
Kansas Legislature  
Room 531 North  
Kansas State Capitol  
Topeka, Kansas 66612

DATE: January 30, 1991

RE: Senate Bill No. 24 -- Fire District Annexation -- by  
Special Committee on Local Government.

Sometime prior to last summer, a meeting was held in Johnson County among representatives from Johnson County Rural Fire District Nos. 1, 2 and 3 and several Johnson County cities (Overland Park was not included). The purpose of the meeting was to discuss problems associated with detachment from fire districts of land newly annexed by those participating cities. Senate Bill No. 24 was developed by the Interim Special Committee on Local Government as an amicable solution to those cities' and the fire districts' problems. We concur and support wholeheartedly this legislation as a means of resolving conflicts among the fire districts, Olathe, Gardner, Spring Hill and whatever other jurisdictions participated in the meeting. However, we do not agree that repeal of K.S.A. 1990 Supp. 13-796 et seq., which pertains only to Overland Park and governs how detachments from fire districts occur in areas annexed by Overland Park, is either warranted or necessary.

Since its enactment in 1985, K.S.A. 1990 Supp. 13-796 et seq. has worked well for both the City of Overland Park and for Fire District No. 2 to its south from which land annexed by Overland Park since 1985 has been detached. There is no reason to change or to repeal it. Overland Park has taken great care to ensure that the fire district remain whole in the wake of the detachments that have taken place since 1985. The City has done so by compensating the fire district by contract in amounts equal to the revenues the fire district would have generated had it continued to be the taxing entity in the annexed areas. In

Senate L.G.  
1-30-91  
Attachment 5

Law Department

City of Overland Park • City Hall • 8500 Santa Fe Drive • Overland Park, Kansas 66212 • 913-381-5252 • FAX 913-381-9387

exchange for those payments from the City, the fire district has continued to provide fire service to the same area it served before the detachments. It is true that in the last two years the arrangement between the City and the fire district has changed, but the changes were made only after amicable negotiations between the City and the fire district and after an agreement was reached between the two entities. For example, the fire district agreed to convey an equipped fire station located beyond the city limits to the city and to enhance the fire service offered in the detached areas from fully volunteer service to paid, professional 24 hour service; in return the City agreed to pay for that enhanced service and to provide free fire service in certain agreed upon portions of the fire district outside the City of Overland Park. The concern of the City for the welfare of the fire district and the spirit of cooperation that has existed between the City and the fire district since 1985 is well documented.

Apart from the fact that repeal of the Overland Park statute is neither warranted nor necessary, the overriding concern of the City of Overland Park is that Senate Bill No. 24 will effectively repeal the ability of cities in Johnson County, and in particular Overland Park, to unilaterally annex land or to annex land with the consent of its owners under the authority of K.S.A. 1990 Supp.12-520, which is one of the annexation tools they, and all other cities in Kansas, presently possess under the annexation statutes. The bill will essentially require all annexations to be approved by the Board of County Commissioners. The reason why this would be the inevitable result is quite subtle:

Subsections (a) and (b) of K.S.A. 1990 Supp. 12-192 apportion the countywide retailers' sales tax among the county and the cities in the county on the basis of the proportion that the tangible property tax levies of each city in the county during the preceding year bear to the total of all tangible property tax levies levied in the county in the preceding year. Later in the statute subsection (c) states:

(c) For purposes of subsections (a) and (b), the term "total tangible property tax levies" means the aggregate dollar amount of tax revenue derived from ad valorem tax levies applicable to all tangible property located within each such city or county. The ad valorem property tax levy of any county or city district entity or subdivision shall be included within this term if the levy of any such district entity or subdivision is applicable to all tangible property located within such city or county. (Emphasis added.)

Should Overland Park annex land in the future, its general fund levy, being a citywide levy, would apply to the newly annexed land automatically; however, its fire levy would apply

to the newly annexed land only if the newly annexed land is detached from the county fire district in which it is located so that the City's fire levy could replace the county fire district's fire levy on that newly annexed land.

Under K.S.A. 1990 Supp. 13-797, the current statute dealing with detachment of newly annexed city land from county fire districts, the Board of County Commissioners "shall order such...detachment" upon receipt of a city resolution which expresses the city's intention to provide fire protection to the newly annexed area either itself or through contractual arrangements with another fire protection agency. (Emphasis added.)

If K.S.A. 1990 Supp. 13-797 is repealed and Senate Bill No. 24 is enacted, the Board of County Commissioners (1) must hold a hearing, after publication of notice thereof, and hear testimony on the advisability of the detachment; (2) will be acting in a quasi-judicial capacity; (3) will be given the discretion to order detachment or not to order detachment; (4) must make specific written findings of whether or not the detachment causes "manifest injury" to the fire district or to the city if the detachment is disapproved; (5) must base its findings and conclusions on the "preponderance of the evidence"; (6) must consider six specific criteria in making its decision on whether "manifest injury" would result, one of which is loss of sales tax revenue to the city if detachment is disapproved. Finally, the proposed act allows "any person aggrieved" to appeal the detachment decision of the Board of County Commissioners.

In other words, under the Senate Bill No. 24 the city's ability to secure detachment of newly annexed land from the county fire district would become much less certain. Any newly annexed land that is not detached from the county fire district results in the City being unable to use its fire levy in the countywide sales tax distribution computation since it will not be a citywide levy. Hence, there would be a large reduction in the amount of the countywide sales tax the City of Overland Park would receive.

The City's annexation decisions would be greatly affected if Senate Bill No. 24 were enacted. Before annexing unilaterally or with the consent of the landowners, the City would have to analyze whether or not it thought it later would be successful in persuading the Board of County Commissioners to detach. Even in county approved annexations, the Board of County Commissioners could theoretically disapprove the detachment after having approved the annexation; or even if the Board of County Commissioners approved the detachment, "any person aggrieved" could appeal their decision and a court could overturn their decision to detach. Thus, the City of Overland Park's share of the countywide sales tax would be put in great jeopardy.

The City of Overland Park would have no quarrel with Senate Bill No. 24 if all references to K.S.A. 1990 Supp. 13-796 et seq. were deleted from it and if it were made inapplicable to Overland Park.

*Robert J. Watson*

Robert J. Watson  
City Attorney

/rjw

Attachment

cc. Governing Body  
Don Pipes, City Manager