

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on January 28, 2003 in Room 245-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research
Dennis Hodgins, Legislative Research
Ken Wilke, Revisor of Statutes

Conferees appearing before the committee: Senator Gilstrap
Rich Huhn, Fire Chief, Delaware Township
Kenneth Bernard, Mayor of Lansing
David Van Parys, County Counselor, Leavenworth

Others attending: See attached list

Chairperson Allen called for bill introductions. Senator Schodorf requested the introduction of a bill regarding open meetings. The bill would address newly elected officials that have been certified, the Governor, city, county, and school boards, would amend the open meeting laws during the transition period. Senator Gooch moved to introduce the legislation as a committee bill, seconded by Senator Schmidt, and the motion carried.

Brad Bryant, Deputy Assistant Secretary of State, brought to the Committee requests introductions for four committee bills. The first which is a political party bill, would remove unconstitutional provisions from Kansas statutes restricting party names to two words, one of which must be the word "party". The second bill would improve the recall process. The third ballot bill would improve the distribution and tabulation of ballots. The fourth being the Presidential preference primary cancellation bill (Attachment 1). Senator Clark made a motion these four bills be introduced, seconded by Senator Jackson. The motion carried.

Senator Haley requested the introduction of two bills. The first bill, a candidate not intending to raise or spend over \$500 to file an affidavit within 10 days of the voting period, need not appoint a treasurer or campaign committee. Senator Gooch move to introduce the legislation, seconded by Senator Gilstrap and the motion carried. The second request, the candidate would be responsible for all the duties of treasurer until a person had been appointed. Senator Clark made a motion to introduce the legislation as a committee bill, seconded by Senator Huelskamp and the motion carried.

Hearing on bills

SB 40 - fire districts; board of trustees

Chairperson opened the hearing on **SB 40**. Senator Gilstrap introduced persons that came to the Capitol for today's hearing. Senator Gilstrap introduced Mayor of Lansing, Ken Bernard, Fire Chief from Delaware Township, Rich Huhn and his wife. He also introduced Mike Smith, City Administrator of Lansing and David Van Parys, City Counselor, Leavenworth County.

Rich Huhn gave a brief synopsis and history of the Delaware Township Fire Department. Rich presented testimony in support of **SB40** (Attachment 2).

Mayor of Lansing, Kenneth Bernard spoke in support of **SB 40**. The agreement covers the appointment of board members, the disposition of assets, and the organizational controls the three entities will place on the board of the Fire District. His testimony shows support from City of Lansing, High Prairie Township

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT at on January 28, 2003 in Room 245-N of the Capitol.

and Delaware Township with input from Leavenworth County, (Attachment 3).

David Van Parys presented testimony in support of **SB 40**. He stated it is the position of Leavenworth County, Kansas, that a joint board created by agreement between the constituent local governments comprising a Fire District is as competent to govern the Fire District as the Board of County Commissioners and, in a better position to determine the best interests of the Fire District (Attachment 4).

There being no others to testify on **SB 40**, Chairperson Allen closed the hearing.

Chairperson Allen informed the committee it would be hearing Senator Schodorf's bill on Thursday, January 30th.

Adjournment

The meeting was adjourned at 2:08 p.m.

RON THORNBURGH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

Senate Committee on Elections and Local Government

Request for Bill Introductions

Brad Bryant, Deputy Assistant Secretary of State
Elections and Legislative Matters

January 28, 2003

Madam Chairman and Members of the Committee:

The office of the Secretary of State requests introduction of four committee bills.

1. Political party bill—

This bill is needed to remove unconstitutional provisions from Kansas statutes. It arises from a lawsuit filed last year against the Secretary of State by the Natural Law Party and the American Civil Liberties Union. Current laws restrict the names of new parties to two words, one of which must be the word "party." Two other statutes prohibit the formation of seditious political parties. This bill would repeal those statutes because they have been ruled unconstitutional.

2. Recall bill—

This bill would improve the recall process in three ways: (a) having the grounds for recall and statements in defense of the officer being recalled filed in the election office rather than posted at the polling place, (b) clarify which election results to use in calculating the number of signatures required on a recall petition, and (c) establishing a recall board to review the grounds for recall and the form of the petition.

3. Ballot bill—

This bill would improve the distribution and tabulation of ballots by making two changes: (a) requiring voters who applied for a mailed advance ballot but wish to vote in person instead to vote a provisional ballot, and (b) requiring the canvassing boards to count a partial ballot when a person cast a provisional ballot in a precinct other than where the person resides.

4. Presidential Preference Primary cancellation bill—

The Secretary of State favors the presidential preference primary and is requesting \$1.75 million in funding to reimburse counties for the costs associated with conducting it. However, if the Legislature does not provide funding, we recommend the primary be canceled for 2004. We are requesting a bill that would cancel the 2004 presidential preference primary.

Thank you for your consideration.

Senate Elec & Loc Gov
1-28-03

Attachment 1

DELAWARE TOWNSHIP FIRE DEPARTMENT

111 e. Kansas
Lansing Kansas 66043
Phone 913-727-5844 Fax 913-727-1791
e-mail delawarefd@mail.lvnworth.com

January 28, 2003

Committee Hearings on Unified Fire District

What is the history of the area in question?

- Delaware Township Volunteer Fire Department provides fire protection to four governmental entities; Delaware Township, High Prairie Township, Lansing City, and Lansing Correctional Facility
- Delaware Fire covers 78 square miles,
- Major problem for volunteer departments of this day – daytime response
- Lansing City and High Prairie contract for fire protection, no voice in its operations

Why do we need a fire district?

- need to provide all 4 entities with the best possible protection for their tax dollars
- need to increase coverage to High Prairie to raise their ISO ratings to the minimum of 9 from 10
- need to provide career daytime staff to all entities
- need to provide entities with a vested interest in their fire protection

What are the benefits for forming a fire district?

- provide lower costs to participants – mil levy would be equalized
- all entities get daytime coverage that they would not necessarily want or able to fund individually
- all entities to be represented in the new fire board

What are the benefits for the changes proposed to current legislation

- Attorney General had questions and concerns about the application of current statutes with our entities agreements
- County commissioners deal with bigger county issues, individual entities not always a priority
- Local representation on the boards would be best served by those who know the needs of the constituents served
- Law would make it an option for other districts to create unified districts to address similar problems they may face in the future

Senate Elec + Loc Gov
1-28-03
Attachment 2

Fire District Proposal



City of Lansing

**Delaware Township
Fire Department**

**High Prairie
Township Fire
Department**

*Requesting Consideration For
Amendment To K.S.A. 19-3612a*

*Senate Elec + Loc Gov
01-28-03*

Attachment 3



The City of
Lansing

www.lansing.ks.us

Testimony of Mayor Kenneth Bernard

Mister Chairman, members of the committee, on behalf of the City of Lansing and the surrounding area, I thank you for the opportunity to speak on behalf of the proposed change to Kansas State Statute 19-3612a.

The City of Lansing and Delaware Township have had an excellent working relationship since Lansing became a third class city in 1959. Both the fire department and the water department were organized under Delaware Township and remained that way until Lansing became a second-class city in 1982 and thus were no longer part of the township. In 1985, the water board was formed under state statute 80-1616 which provided membership from both the city and the township. The fire department remained under the control of the township with the city contracting services from the fire department.

The fire department is an outstanding, professional department that is staffed totally by volunteers. Lansing is a community that is expanding rapidly and the time has come to start a new approach to manning the fire department. Everyone is extremely satisfied with the fire department and has no desire to split or dismantle the fire department, as it now exists. The issue revolves around funding and the structure of the board.

Plans, as they now exist, will begin to phase in some full-time personnel for the fire department. This does several things for the area, which includes training for fire department personnel, inspections, and the close monitoring of day-to-day operations. The entities all realize there will be a tax increase as we move toward more full-time, paid employees and are willing to make that sacrifice.

Under the existing statute, the County Commissioners must appoint the fire district board. Each of the three entities involved feel strongly that we should have the authority to appoint our OWN board members as per the proposed change to statute 19-3612a. As the taxes increase from the present 1.5 mils to as much as 5 mils we all would like some measure of control to chart our future destiny.

In the packets, which you received, is an agreement that was developed over about a six-month period between the City of Lansing, High Prairie Township and Delaware Township with input from Leavenworth County. The agreement covers the appointment of board members, the disposition of assets, and the organizational controls the three entities will place on the board of the Fire District. Although the City of Lansing is by far the largest taxed entity in the agreement, controls were structured so that no one entity could control the vote of the board.

Passage of this proposal would greatly enhance plans for future growth of the City of Lansing and the corresponding fire protection to facilitate that rapid growth. I strongly urge passage of this proposed amendment.

***** end of statement*****



State of Kansas

Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

May 9, 2002

MAIN PHONE: (785) 296-2215
FAX: (785) 296-6296

David Van Parys
Leavenworth County Counselor
300 Walnut
Leavenworth, Kansas 66048

Re: Interlocal agreement for funding and operating fire district

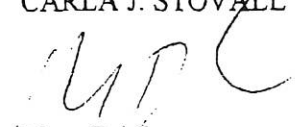
Dear David:

In response to your letter, I did some research to determine whether the County could delegate its appointment authority to the City of Lansing and the two townships. I could not find any Kansas appellate decisions but McQuillin's treatise concludes that the power of appointment cannot be delegated. *McQuillin Mun. Corp.* § 12.72 (3rd Ed). Moreover, the County cannot enter into a contract that will bind its successors to appointing fire district trustees nominated by the City and townships. See *Griffin v. Oklahoma Natural Gas Corp.*, 37 F.2d 545 (10th Cir. 1930); *Board of County Comm'rs of Edwards County v. Simmons*, 159 Kan. 41 (1944). Such an effort would be an unlawful attempt to bind future commissioners "in matters incident to such successors' administration and responsibilities."

As far as the township leasing its real property to the fire district is concerned, K.S.A. 80-109 prohibits township real estate from being "sold or disposed of" unless the conditions in the statute are satisfied. "Sold or disposed of" has been interpreted to mean that the township is completely divesting itself of title. *State, ex rel., v. City of Garnett*, 180 Kan. 405 (1956). Therefore, leasing township property would not fall within the statute's parameters. Attorney General Opinion No. 79-66.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL


Mary Feighny
Assistant Attorney General

MF:jm



State of Kansas

Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

March 6, 2002

MAIN PHONE: (785) 296-2215
FAX: (785) 296-6296

David Van Parys
300 Walnut
Leavenworth, Kansas 66048

Re: Interlocal agreement for funding and operating fire district

Dear David:

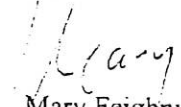
I've got some concerns about the draft you asked me to review because it appears that the agreement conflicts with the statutes that address fire districts, K.S.A. 19-3601 *et seq.* and K.S.A. 80-109.

A fire district is a creature of statute and, therefore, can only act according to what the statutes provide or what can be implied from those statutes. There are only two methods of providing for a governing body of a fire district. The district can be governed by the county commissioners or a district board of trustees pursuant to K.S.A. 19-3612a. The district board is appointed by the county commissioners who can dismiss the board members at will. Your agreement removes the appointment and removal authority from the county commissioners. The City and the townships can recommend candidates but only the county can appoint board members. The same is true for removal.

The other problem is transferring township real property to the fire district after a prescribed period of time. The only way that a township can "dispose" of real property is pursuant to K.S.A. 80-109 which requires publication and a possible protest petition.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL


Mary Feighny
Assistant Attorney General

MF/mf

AN INTERLOCAL AGREEMENT FOR THE FUNDING AND OPERATION OF A FIRE DISTRICT COMPOSED OF THE CITY OF LANSING, KANSAS, AND THE TOWNSHIPS OF DELAWARE AND HIGH PRAIRIE, LEAVENWORTH COUNTY, KANSAS.

COME NOW THE PARTIES TO THIS INTERLOCAL AGREEMENT, the City of Lansing, Kansas, hereinafter referred to as "Lansing", Delaware Township, Leavenworth County, Kansas, hereinafter referred to as "Delaware" and High Prairie Township, Leavenworth County, Kansas, hereinafter referred to as "High Prairie" and recite and agree to the following:

1. **AUTHORITY.** This agreement is entered into pursuant to the provisions of K.S.A 12-2901 et. seq.
2. **TERM.** The term of this agreement shall be for an initial period of five years from the date of entry into the agreement by the last of the parties to approve the agreement. Upon the expiration of the initial term of this agreement the agreement shall automatically renew for succeeding four year terms unless terminated by any party as provided for in this agreement.
3. **PURPOSE AND NAME.** That the purpose of this agreement is to provide for the operation and funding of a Fire District to be formed by the County of Leavenworth pursuant to the provisions of K.S.A. 19-3601, et. seq. and composed of the parties to this agreement. The name of the Fire District shall be "Fire District No. 1, County of Leavenworth".
4. **JOINT GOVERNING BOARD.** That a joint board to govern and oversee the operation and funding of the Fire District is hereby created. The joint board shall be composed of five (5) members: three (3) members appointed by the governing body of Lansing; one (1) member appointed by the governing body of Delaware; and one (1) member appointed by the governing body of High Prairie. Each person so appointed shall serve at the pleasure of the governing body having so appointed that person. The joint board so created shall exercise those powers enumerated in the provisions of K.S.A 19-3612 (a). Each party shall appoint their respective joint board members on or before April 1, 2002. The parties to this agreement shall review the composition of the joint board on or about every fifth anniversary date of this agreement.
 - a. **Qualifications.** No member of the joint board shall be an employee or official, elected or appointed, of either Lansing, Delaware, High Prairie or Leavenworth County, Kansas. No member of the joint board shall be a firefighter or employee of the District. Members of the joint board shall be qualified electors of the governmental entity appointing them.
 - b. **Ex officio member.** The Fire Chief of the District shall serve as a non-voting advisor to the joint board.

c. **Quorum.** 3 members of the joint board shall constitute a quorum of the joint board.

d. **Special voting requirements.** A minimum of four (4) affirmative votes of the joint board shall be required prior to any of the following acts being undertaken by the joint board:

1. Issuance of any bonds, entry into any lease purchase agreement or creation of any indebtedness on the part of the District.
2. Expenditure of District funds in excess of five-thousand dollars (\$5,000.00)
3. Entry into any agreement with any other entity for fire protection services.
4. The hiring or firing of any permanent employee of the District.
5. Any action substantially and detrimentally affecting fire protection services to any part of the District.
6. The adoption or modification of the operational policies of the District.

e. **Representation of entire District.** Each member of the joint board so appointed shall represent the whole of the District and shall act in the best interests of the District.

5. **FUNDING.** The operation of the Fire District governed by the joint board created herein shall be funded through the provisions of K.S.A 19-3610 and through any additional contributions to the District by any of the parties to the agreement. A treasurer for the District shall be appointed by the joint board and shall maintain the financial records of the District and assist the joint board in the preparation of the budget for the District.

6. **TITLE TO PROPERTY.**

a. **Title in name of District.** On or after January 1, 2003, any equipment, vehicle or building acquired by the District, by purchase, contribution or otherwise, except as otherwise provided below, shall be titled in the name of the District.

b. **Title specified cases.**

1. The existing Delaware Township Fire Station, located at 111 E. Kansas, Lansing Ks, shall remain titled to Delaware. On the tenth (10th) anniversary date of this agreement title to the building shall be transferred by Delaware to the District.

2. The fire station building to be constructed by High Prairie shall be titled in the name of High Prairie. On the tenth (10th) anniversary date of this agreement title to the building shall be transferred by High Prairie to the District.

3. All fire equipment owned by Delaware on December 31, 2002, shall remain titled to Delaware. Such equipment shall pass to the District upon the fifth (5th) anniversary date of this agreement.

4. Fire protection vehicles owned by Delaware on December 31, 2002, shall remain titled to Delaware. Title to said vehicles shall be transferred to the District on the tenth (10th) anniversary date of this agreement.

5. In the event that this agreement is terminated prior to the transfer dates set out above it is expressly understood that no transfers of title or ownership shall take place.

c. **Lease by District.** Delaware and High Prairie agree to lease to the District, for use by the District, the buildings, equipment and vehicles specified in section 6(b) of this agreement for the sum of one (\$1.00), payable by the District, for each calendar year, or part thereof, of use by the District. In addition, the District shall be responsible, during the term of this agreement, for the payment of any debt service on the equipment, buildings and vehicles so leased and shall adequately insure and maintain such equipment, buildings and vehicles. In the event that any leased equipment, building or vehicle is damaged or destroyed the insurance proceeds shall first be applied to any repairs, where appropriate, then to the payment of any outstanding debt attributable to the item.

7. **TERMINATION.**

a. **Notice.** Subject to the provisions of paragraph 2 of this agreement any party may terminate this agreement by providing to the other parties written notice of that parties election to terminate the agreement. Such notice shall be ineffective unless received by the other parties not less than eighteen (18) months prior to the effective termination date.

b. **Disposition of property.** In the event of the termination of this agreement the property utilized and or owned by the District shall be disposed of as follows:

1. Paragraph 6 (b) of this agreement shall apply and the property referenced shall be disposed of per the terms of that section.

2. All other assets of the District shall be apportioned between the parties based upon the assessed valuation of each party as compared to the assessed valuation of the District as a whole. In so apportioning the assets the parties shall utilize accepted accounting and depreciation practices to value the assets of the District and shall attempt to reach an agreement as to the value and apportionment of the assets of the District. In the event that

no agreement can be reached, the parties shall submit to binding arbitration on the matter.

c. **Apportionment of liabilities**. In the event that there exists any liability of the District at the time of the termination of this agreement the parties shall jointly be responsible for the discharge of that liability. In determining each parties respective obligation in discharging said liability each party shall contribute towards the discharge of the liability of the District based upon a comparison of the assessed valuation of each party as compared to the assessed valuation of the District as a whole.

8. **LEGAL SERVICES**. The joint board may hire and retain an attorney, or attorneys, to represent the legal interests of the District. No attorney representing Lansing, Delaware or High Prairie shall serve as the attorney for the District.

9. **ASSUMPTION OF EXISTING FIRE PROTECTION AGREEMENTS**. The parties agree that all mutual aid agreements and any other agreement regarding fire protection, existing at the time of entry into this agreement and binding any party to this agreement, shall be assumed and honored by the District.

10. **DATE OF ENTRY**. For the purpose of this agreement the "date of entry" shall be the date of approval of this agreement by the Office of the Attorney General.

11. **MODIFICATION**. This agreement may be modified by the parties only through the adoption of a subsequent interlocal agreement.

SIGNATURE PAGES FOLLOW

Fire District Interlocal Agreement

WHEREFORE IT IS SO AGREED TO THIS _____ DAY OF _____,
2002.

FOR THE CITY OF LANSING, KANSAS: _____

ATTEST: _____

Fire District Interlocal Agreement

WHEREFORE IT IS SO AGREED TO THIS _____ DAY OF _____,
2002

FOR DELAWARE TOWNSHIP; _____

ATTEST: _____

Fire District Interlocal Agreement

WHEREFORE IT IS SO AGREED TO THIS _____ DAY OF _____,
2002

FOR HIGH PRAIRIE TOWNSHIP; _____

ATTEST: _____

Fire District Interlocal Agreement

**OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF KANSAS:**

APPROVED AS TO FORM THIS _____ DAY OF _____, 2002

LEAVENWORTH COUNTY, KANSAS

David C. Van Parys, County Counselor

300 Walnut

Leavenworth, Kansas 66048

(913) 684-0415

Fax: (913) 680-2748

e-mail: dvanparys@LVCOKS.com

January 28, 2003

**MEMBERS OF THE SENATE COMMITTEE
ON ELECTIONS AND LOCAL GOVERNMENT**

RE: SB40; AN ACT RELATING TO FIRE DISTRICTS

Dear Committee members,

Attached please find the position paper of Leavenworth County, Kansas, in support of SB40, an act that would allow the Boards of County Commissioners throughout the State to transfer the authority to appoint the trustees of a Fire District to a joint board comprised of the Municipalities and/or Townships which comprise the Fire District.

On behalf of the Board of County Commissioners of Leavenworth County, Kansas, I would ask that you view SB40 with favor and support it's adoption. I thank you for you kind attention to this.

Sincerely,


David C. Van Parys

Senate Elec + Loc Gov
01-28-03
Attachment 4

**POSITION PAPER OF LEAVENWORTH COUNTY, KANSAS,
IN SUPPORT OF SB 40**

**Presented to the Senate Committee on Elections
and Local Government**

January 28, 2003

INTRODUCTION

The City of Lansing, Kansas, Delaware Township and High Prairie Township, all located in the County of Leavenworth, Kansas, desire to form a Fire District pursuant to the provisions of K.S.A 19-3601, *et seq.* Such a Fire District is, however, by statute governed either by the Board of County Commissioners of the County in which it is formed or by a board of trustees appointed by and serving at the pleasure of the Commission. It is the desire of all governmental entities involved, including the Board of County Commissioners of Leavenworth County, that the authority to appoint the board of trustees of the proposed Fire District be devolved to a joint board formed by the City of Lansing and Delaware and High Prairie Townships. SB40 effects this desired result. A fuller explanation follows.

HISTORY

Fire protection is currently provided to the City of Lansing, Delaware Township and High Prairie Township through the Delaware Township Fire Department. The three entities have expressed a desire to coordinate future fire protection services through the mechanisms of K.S.A 19-3601, *et seq.* A proposed interlocal agreement relating to the operation and funding of the Fire District was reached between the parties during 2002. A separate interlocal agreement was reached between the parties and the County wherein the Board of County Commissioners would delegate the power to appoint the trustees of the Fire District to a joint board formed through the initial interlocal agreement. The proposed interlocal agreement was approved by the local governments and submitted to the Attorney General for review. The review by the Attorney General raised two (2) obstacles to the the interlocal agreement. One dealt with a conflict between the agreement between the City of Lansing and the Townships regarding the disposition of Township property used for Fire District purposes. This conflict can be resolved without recourse to amending the applicable statute. The other obstacle leads to SB40. (A copy of A.G. Opinion discussed above is attached)

Cont.

EFFECT OF SB40

1. Would allow the constituent local governments the option of having a Fire District created under K.S.A. 19-3601, *et seq.* governed by a board of trustees selected and controlled by the local governments whose tax bases fund, and whose constituents are served by, the Fire District so created. Under current law the governance of such a Fire District remains with the Board of County Commissioners and cannot be devolved, even when all parties wish to do so.
2. The amendment to K.S.A. 19-3612a created by SB40 has no effect unless all affected local governments reach agreement. The provisions of SB40 allow the devolution of the control of Fire Districts from the County Commissions to a joint board of the local governments of the Fire District only when the County Commission and the local governments, and the local governments between themselves, have reached an interlocal agreement specifying the governance of the Fire District. All interlocal agreements must satisfy certain requirements and pass muster with the Attorney General. A Fire District utilizing the amendment created by SB40 would be at least as well governed as one governed by the Board of County Commissioners.
3. **NO FISCAL IMPACT.**

CONCLUSION

The genesis of SB40 is discussion between local units of government wishing to take advantage of the provisions of K.S.A. 19-3601, *et. seq.* while maintaining local control over the tax levy used to fund the Fire District and the structuring of fire protection services. It is the position of Leavenworth County, Kansas, that a joint board created by agreement between the constituent local governments comprising a Fire District is every bit as competent to govern the Fire District as the Board of County Commissioners and, in fact, are likely in a better position to determine the best interests of the Fire District. SB40 serves as an encouragement for the formation of Fire Districts by agreement between local governmental units by offering the option of the devolution of the control of the Fire District to the most local level of government.

The Board of County Commissioners of Leavenworth County, Kansas, thanks you for your time and consideration of this matter and urges you to approve SB40.



State of Kansas

Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

March 6, 2002

MAIN PHONE: (785) 296-2215
FAX: (785) 296-6296

David Van Parys
300 Walnut
Leavenworth, Kansas 66048

Re: Interlocal agreement for funding and operating fire district

Dear David:

I've got some concerns about the draft you asked me to review because it appears that the agreement conflicts with the statutes that address fire districts, K.S.A. 19-3601 *et seq.* and K.S.A. 80-109.

A fire district is a creature of statute and, therefore, can only act according to what the statutes provide or what can be implied from those statutes. There are only two methods of providing for a governing body of a fire district. The district can be governed by the county commissioners or a district board of trustees pursuant to K.S.A. 19-3612a. The district board is appointed by the county commissioners who can dismiss the board members at will. Your agreement removes the appointment and removal authority from the county commissioners. The City and the townships can recommend candidates but only the county can appoint board members. The same is true for removal.

The other problem is transferring township real property to the fire district after a prescribed period of time. The only way that a township can "dispose" of real property is pursuant to K.S.A. 80-109 which requires publication and a possible protest petition.

Sorry A
can't bless
this one.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL


Mary Feighny
Assistant Attorney General

MF/mf