

LAW OFFICES
SPEER & HOLLIDAY, LLP

100 E. PARK STREET, SUITE 204
OLATHE, KANSAS 66061
PHONE: 913-782-1000 FAX: 913-782-0852

BARRY D. MARTIN, P.A.
Admitted in Kansas and Missouri

Email: bdmartin@speerholliday.com
Direct Line: (913) 747-1804

March 6, 2023

Chairperson Carolyn McGinn
Senate Committee on Local Government
Kansas State Capitol, Room 142-S
300 SW 10th Street
Topeka, Kansas 66612

Re: HB 2323
Detachment of Johnson County Fire
Districts Territory by Olathe

Dear Senator McGinn:

I represent Northwest Consolidated Fire District (“Northwest”), a Johnson County fire district, and wish to present written testimony (and hearing testimony) on HB 2323.

This written testimony will explain Johnson County Fire Districts (“Fire Districts”) and the concerns they have with HB 2323, which is supported by the City of Olathe (“Olathe”). I would also request to provide testimony at the hearing on March 7, 2023.

Johnson County Fire Districts

In general, fire protection in Kansas is provided by:

- a) City fire departments (Olathe)
- b) Rural fire departments organized pursuant to K.S.A. 19-3601 et seq.
- c) Johnson County Fire Districts in Johnson County pursuant to K.S.A. 19-3613 et seq.

There are currently three (3) Johnson County Fire Districts. Only two (2) of them are impacted by HB 2323:

- a) Northwest, which provides services to the City of DeSoto and unincorporated northwest Johnson County.

- b) Johnson County Fire District No. 1 (“District No. 1”), which provides services to the cities of Gardner, Edgerton, Spring Hill and unincorporated southwest Johnson County.

Northwest and District No. 1 have had unincorporated territory annexed and detached by Olathe on a multitude of occasions. To protect the tax basis of these fire districts, K.S.A. 19-3623f was adopted. It is this statute currently under attack by Olathe.

Olathe’s attack on K.S.A. 19-3623f is a local Johnson County issue, which should be addressed between Olathe, the Board of County Commissioners (“BOCC”) and the two (2) aforementioned fire districts, and does not require additional legislation.

Annexation vs. Detachment

A Two Step Process

Cities are required to notify fire districts by certified mail every time they propose annexing fire district territory, which affords a fire district the opportunity to oppose the annexation. K.S.A. 12-520(a)(d)(3). Cities in Johnson County do notify the fire districts, except Olathe. Olathe has been annexing fire district territory without notice.

Annexation completes the fire step of the process.

The second step is removing the annexed land from fire district territory, called “detachment”, which is done by “**agreement**” between the city and fire district.

Currently, there is only one (1) city in Johnson County which continues to seek detachment from Johnson County Fire Districts, and that is the City of Olathe.

How Does HB 2323 Impact the Agreement Process?

HB 2323, as suggested by Olathe, says if fire districts do not accept Olathe’s proposed detachment agreement, then within one (1) year the annexed land will unilaterally be removed from the fire district’s territory.

This is similar to your neighbor giving you an offer to purchase your home/farm, and if you do not accept their offer within a year, they automatically own your home/farm.

Ad Valorem Tax Impact

For ad valorem tax purposes annexed land continues to remain part of the fire districts until detached by the city. Once detached, it becomes land to be taxed by the city, **regardless of whether the city is providing the fire services.**

Who Provides the Fire Protection?

In Johnson County all fire and emergency services are dispatched through a county wide dispatch system. They dispatch to the fire and emergency responders nearest the fire or emergency.

Thus, for example, a fire or emergency in a rural area annexed by Olathe does not mean Olathe will respond to the incident. Rather, the service may come from one of the Johnson County Fire Districts.

It would be unfair for Olathe to receive the ad valorem taxes for fire protection when it does not provide the services.

No Double Taxation

Olathe indicated that HB 2323 was necessary to prevent “double taxation” on a landowner (i.e. taxation by city and fire district).

Existing K.S.A. 19-3623f already clearly prevents this unless a city (i.e. Olathe) tries to impose ad valorem taxes before the detachment.

Yes, Olathe tried to do just that, which resulted in K.S.A. 12-546:

“12-546. City annexation of land in fire district; dual taxation; refund. (a) If any land located within a fire district is annexed by a city and such land is not detached from the fire district by the end of the tax year, the owner of such land shall be entitled to a refund of all ad valorem taxes paid for fire service, excluding ad valorem taxes paid for general obligation bonds issued by the fire district, prior to annexation, to either the city or the fire district, whichever entity levies taxes for fire service against the land but does not provide such services.

(b) Cities and fire districts shall establish procedures for landowners to obtain refunds of ad valorem property taxes as required by this section.”

The Fire Districts Have Never Failed to Negotiate a Detachment Agreement

The question to be asked Olathe is “Has any current Johnson County Fire District ever failed negotiating a detachment agreement with Olathe? The answer is no.

Olathe’s goal is to limit the negotiations by saying “If you do not like our terms then the land will be detached from your territory in one (1) year.”

Adverse Impact on Other Cities

HB 2323 has an adverse impact on other cities in Johnson County which receive their fire and emergency services from a Johnson County Fire District.

Each time Olathe annexes and detaches land from Northwest, Northwest loses some of its tax basis. The remaining patrons of the fire district must make up the revenue shortfall, which includes the residents of DeSoto.

HB 2323-A Solution Looking For a Problem

There is nothing wrong with the current K.S.A. 19-3623f. It has worked for everyone, with no problems, except for the City of Olathe.

There is nothing wrong with the current detachment process. K.S.A. 19-3623f provides for the detachment by negotiating an agreement:

19-3623f. Same; annexation of district property by cities; procedure; agreements; outstanding obligations. (a) If any land included in a fire district created under the provisions of K.S.A. 19-3613, and amendments thereto, is thereafter annexed by any city, such land shall continue to be within and a part of the fire district unless the governing bodies of the **city and fire district shall negotiate an agreement** providing for the transfer of such land to the city. Such negotiations may include the transfer of other property of the fire district and the payment of compensation therefor. Any such agreement shall be submitted to and approved by the board of county commissions, and thereupon such land shall be detached from the fire district and any other property to be transferred to the city under the agreement shall be transferred.

What Olathe seeks is an **automatic detachment** without an agreement. If the fire district does not accept the terms of Olathe's proposed agreement, then the land is automatically detached in one(1) year (i.e. negotiating an agreement with Olathe holding a gun to your head).

Conclusion

For many years Johnson County cities have negotiated detachment agreements with existing Johnson County Fire Districts, without problems or incidents. If Olathe has a problem, it should first address it with the BOCC and fire districts, before proposing ill-advised and poorly drafted legislation.

We encourage Senate Committee on Local Government to unanimously reject HB 2323.

Thank you for your time and attention on this matter.

Sincerely,

SPEER & HOLLIDAY, LLP


Barry D. Martin

BDM:jas