

Legally (Relevant



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What really happens when a city annexes land in a RWD? (Part I)

By now you have no doubt heard a lot about the conflicts that can occur when a city annexes land located in the territory of a rural water district. Few topics have generated as much excitement among KRWA members (both cities and rural water district's) in recent years.

By now, almost everyone interested in this topic knows the basic rules. Under state law, K.S.A. 12-527, if a city annexes land located in the territory of a rural water district, the city must negotiate with the

district to acquire title to facilities owned by the district located within the annexed area. The city and the district may agree for the district to retain facilities used to transport water outside the city. If negotiations fail, three appraisers are to determine the fair market value of the "property, facilities and improvements of the district annexed by the city," subject to review by the District Court on appeal. According to the Attorney General, as an alternative to this procedure, the district and the city may negotiate for the district to continue to remain the water service provider to the annexed area and retain its facilities.

This process contained in state law and outlined above gets trumped by federal law if the water district has a USDA loan. In that event, 7 U.S.C. § 1926(b) protects the district against competition from the annexing city if the district is already providing water service to the annexed area or has made water service available. This last phrase, "made service available" is frequently the source of controversy, and not infrequently the cause of litigation between competing water utilities over the right to serve these areas.

However, there are also some significant, although less headline grabbing, questions that arise in these cases that are important questions, sometimes with uncertain answers. The following discussion is about one of these.

What becomes of the boundaries of a Rural Water District when part of its territory has been annexed?

This question seems straightforward enough, and maybe the answer is obvious. But the fact is, there is no state statute that says exactly what becomes of the boundaries of a rural water district when part of its territory is annexed.

The question presents a number of important issues for the rural water district whose territory has been annexed, as well as for the annexing city.

The answer to this question is multifaceted. For example, most district's bylaws define a participating member as an owner of land "located within the District" having one or more benefit units. Only participating members are allowed to vote, and only participating members are eligible

to serve as directors of the district. It is generally accepted that when a board member moves out of the district, he or she is no longer eligible to serve on the board. If an annexation results in the annexed land being deleted from the territory of the district, are the benefit unit owners located in the annexed areas not allowed to vote at the next election? Does a board member who lives inside that annexed area automatically lose his or her position?

Perhaps more importantly, we generally understand that water districts are not to serve customers outside the territory of the district. We also understand that one of the options in the event of a partial annexation of rural water district territory is for the district and city to agree that the district will continue to provide water service to the annexed area, either for a specified term or indefinitely. In any event, state law provides that districts cannot diminish service to units supplied by the district at the time of annexation during the period of negotiations. Since those negotiations usually are not completed until after the annexation occurs (in fact, they often do not begin until after annexation), how do we square the district's right, or even obligation, to continue to provide water to annexed areas if the territory is somehow automatically deleted from the district at annexation?

The simple answer to these questions is that there is no simple answer. The only place you will find provision for removal of land from the territory of a rural water district is in K.S.A. 82a-646 and 82a-647. Both of these statutes involve written petitions for release signed by affected land owners, directed to the board of directors of the district for approval. Obviously, this is not what happens in the case of annexation, which occurs when the city adopts an annexation ordinance.

In addition, there is nothing in the annexation laws that squarely answers this question. A statute, K.S.A. 12-503a, gets close by providing that when a governmental unit is annexed it may provide services to the annexed area for the year in which



taxes have been collected, or surrender those taxes to the annexing city to be used for the purposes for which they were collected. Of course, this does not strictly apply, because rural water districts do not collect taxes. Further, it does not say that the annexed land is detached from the other governmental unit as a result of annexation, but that is the implication, and it may indicate a general scheme intended by the legislature to apply to these situations. (See, M. Heim, *Kansas Local Governmental Law*, § 2.66 (Kansas Bar Association, 2001))

Taking all of the relevant statutes, court decisions and Attorney General's opinions together, it makes sense that at some point annexed land is removed from the territory of the district without need to comply with the release laws. This conclusion can be reached through a two-step process. K.S.A 12-527 states that nothing in that section is to be construed as limiting the "authority of the city to select water service suppliers within the city limits," obviously including the authority of the city to select itself as that water supplier. Considering that the remainder of that statute authorizes (in fact, directs) the city to negotiate to acquire all the facilities located within the annexed area used for the transportation and utilization of water to units located within that annexed area, the effect of that statute is to give the

city, and no longer the water district, the right to provide that service, or at least to determine who will provide water service to the annexed area. We generally understand that as a result of Kansas statutes and court cases, water districts have the exclusive right to provide a public water supply within their territories. Because the provisions of K.S.A. 12-527 directly conflict with any idea of an exclusive right by a water district to serve customers within its territory, the only logical conclusion is that the territory of the district may be deleted from the district as a result of the city's annexation.

So how do we fit this conclusion, that the land is released through annexation, with the idea that the district may continue to be a supplier after the annexation and that districts are not to supply water to customers not located within their territory? We should assume that a Kansas statute would not command a district to do something (continue service uninterrupted to customers within annexed areas) that would be illegal, so either the annexation statute is intended to create an exception to the

general rule that districts are to not serve customers outside of their territory, or the land does not automatically release from the territory until after responsibility for service has been transferred to another provider.

This last explanation is the one that makes the most sense. Customers located in annexed areas should not suddenly find themselves in "no man's land" for their water service. We would not expect the law to intend to disenfranchise persons from their rural water district simply because their land has been annexed. If they are still getting water service from the district, and helping to support the district through payment of fees and charges, they should still be able to vote at meetings and serve on their boards. If someone needs new water service from the district, even though they have been annexed to the city (this is not an uncommon situation if the city has not extended water lines into the area), such a person should be able to buy a benefit unit from the district and participate like any other member. Taken altogether, the best answer

seems to be that annexation of rural water district territory by a city results in the removal of that annexed land from the territory of the district when the city has assumed responsibility for providing that service or has otherwise provided for other water service. Following completion of this transaction, our firm has recommended that the board of directors of the district adopt a resolution acknowledging the removal of that territory from the district and terminating the benefit units that had been assigned to land within the annexed area.

Conclusion.

It should be apparent that annexation of water district territory can create some sticky problems. The above discussion, focusing on just one of these problems, illustrates how complicated some of these problems can be.

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