

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

In the Matter of the Application of ABILENE FIREFIGHTERS )  
RELIEF ASSOCIATION, BUTLER CO FD #3 FIREFIGHTERS )  
RELIEF ASSOCIATION, COFFEY CO #1 FIREFIGHTERS )  
RELIEF ASSOCIATION, FD #1 OF LEAVENWORTH CO )  
FIREFIGHTERS RELIEF ASSOCIATION, GALENA )  
FIREFIGHTERS RELIEF ASSOCIATION, GORHAM )  
FIREFIGHTERS RELIEF ASSOCIATION, JOHNSON CO #3 )  
FIREFIGHTERS RELIEF ASSOCIATION, LACYGNE )  
FIREFIGHTERS RELIEF ASSOCIATION, LEAVENWORTH )  
FIREFIGHTERS RELIEF ASSOCIATION, MILTONVALE )  
FIREFIGHTERS RELIEF ASSOCIATION, MILTONVALE )  
RURAL #3 FIREFIGHTERS RELIEF ASSOCIATION, )  
MOUNDRIDGE FIREFIGHTERS RELIEF ASSOCIATION, )  
NEWTON FIREFIGHTERS RELIEF ASSOCIATION, )  
OVERLAND PARK FIREFIGHTERS RELIEF ASSOCIATION, )  
POTTAWATOMIE COUNTY #8 FIREFIGHTERS RELIEF )  
ASSOCIATION, POTWIN FIREFIGHTERS RELIEF )  
ASSOCIATION, PRATT FIREFIGHTERS RELIEF )  
ASSOCIATION, RENO COUNTY #8 FIREFIGHTERS RELIEF )  
ASSOCIATION, RUSSELL CO #4 FIREFIGHTERS RELIEF )  
ASSOCIATION, SCOTT CITY FIREFIGHTERS RELIEF )  
ASSOCIATION, SEWARD CO FIREFIGHTERS RELIEF )  
ASSOCIATION, SHAWNEE CO #2 FIREFIGHTERS RELIEF )  
ASSOCIATION, TOPEKA FIREFIGHTERS RELIEF )  
ASSOCIATION )

Docket No. 3381-FR

**ORDER**

After due and proper notice, this matter was called for hearing on November 22, 2004, pursuant to Kansas Statutes Annotated (K.S.A.) 40-1706(c)(6) and the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.* Those Firefighter Relief Associations applying for a redetermination were Abilene Firefighters Relief Association, Butler Co. #3 Firefighters Relief Association, Coffey Co. #1 Firefighters Relief Association, FD #1 of Leavenworth Co. Firefighters Relief Association, Galena Firefighters Relief Association, Gorham Firefighters

Relief Association, Johnson Co. #3 Firefighters Relief Association, LaCygne Firefighters Relief Association, Leavenworth Firefighters Relief Association, Miltonvale Firefighters Relief Association, Miltonvale Rural #3 Firefighters Relief Association, Moundridge Firefighters Relief Association, Newton Firefighters Relief Association, Overland Park Firefighters Relief Association, Pottawatomie Co. #8 Firefighters Relief Association, Potwin Firefighters Relief Association, Pratt Firefighters Relief Association, Reno Co. #8 Firefighters Relief Association, and Russell Co. #4 Firefighters Relief Association. Scott City Firefighters Relief Association, Seward Co. Firefighters Relief Association, Shawnee Co. #2 Firefighters Relief Association, Topeka Firefighters Relief Association.

The Abilene Firefighters Relief Association presented evidence by Sworn Affidavit. The Butler County #3 Firefighters Relief Association presented evidence by Sworn Affidavit. The Coffey Co. #1 Firefighters Relief Association presented evidence By Sworn Affidavit. The FD #1 of Leavenworth Co. Firefighters Relief Association presented evidence by Sworn Affidavit. The Galena Firefighters Relief Association presented evidence by Sworn Affidavit. The Gorham Firefighters Relief Association presented evidence by Sworn Affidavit. The Johnson Co. #3 Firefighters Relief Association presented evidence by Sworn Affidavit. The LaCygne Firefighters Relief Association presented evidence by Sworn Affidavit. The Miltonvale Firefighters Relief Association presented evidence by Sworn Affidavit. The Miltonvale Rural #3 Firefighters Relief Association presented evidence by Sworn Affidavit. Moundridge Firefighters Relief Association presented evidence by Sworn Affidavit. Newton Firefighters Relief Association presented evidence by Sworn Affidavit. Overland Park Firefighters Relief Association presented evidence by Sworn Affidavit. Pottawatomie Co. #8 Firefighters Relief Association withdrew their request for a Hearing. Potwin Firefighters Relief Association

presented evidence by Sworn Affidavit. Pratt Firefighters Relief Association presented evidence by Sworn Affidavit. Reno Co. #8 Firefighters Relief Association presented evidence by Sworn Affidavit. Russell Co. #4 Firefighters Relief Association presented evidence by Sworn Affidavit. The Scott City Firefighter Relief Association Firefighters Relief Association presented evidence by Sworn Affidavit. Seward County Firefighters Relief Association presented evidence by Sworn Affidavit. Shawnee Co. #2 Firefighters Relief Association presented evidence by Sworn Affidavit. Topeka Firefighters Relief Association presented evidence by Sworn Affidavit.

The Kansas Insurance Department was represented by Keri Kish, Staff Attorney, and John Washburn, Fire & Casualty Division policy examiner assigned to Firefighter Relief Association regulatory activities.

Bob Tomlinson, Assistant Commissioner, is the Presiding Officer duly appointed by Commissioner Praeger and in accordance with K.S.A. 77-547.

Said Presiding Officer, being fully advised in the premises and giving due consideration to the evidence presented, makes the following findings of fact, conclusions of law, and order, to wit:

#### **Findings of Fact**

1. At issue is the 2005 and future distributions of the Firefighters Relief Fund to firefighters relief associations throughout the State of Kansas pursuant to the Firefighters Relief Act, K.S.A. 40-1701, *et seq.* Applicants are contending that changed circumstances exist to warrant a redetermination of proportionate amounts payable to all firefighters relief associations from the Firefighters Relief Fund pursuant to K.S.A. 40-1706.

2. Under the Firefighters Relief Act, every insurance company doing business in the State of Kansas is required to pay an annual two percent (2%) tax based on the amount of premium written on fire and lightning insurance covering risks located within the State of Kansas during the previous calendar year. The Firefighters Relief Act provides for the money collected to be distributed for the purposes outlined in K.S.A. 40-1706.

3. In 1984, K.S.A. 40-1706 was amended by the Kansas Legislature through the enactment of House Bill No. 3090. Part of that amendment dealt with the method by which distribution determinations were to be made to the various firefighter's relief associations in the State. This statute was further amended in 1987, 1988, and 1990. Specifically, the relevant provisions of the law are found in K.S.A. 40-1706(c)(4) and (5), which provide:

"(c) Prior to August 1, 1987, and each August 1 thereafter, except as provided in subsections (b) and (d), of the total amount of moneys credited to the State Firefighters Relief Fund as of July 1 of the same year the amounts determined as prescribed in subsection (c)(1) through (c)(6) shall be paid as provided therein ...

(4) The remaining amount of the moneys credited to the state firefighters relief fund, after the amounts are reserved or paid for the purposes authorized by subsection (b)(2), (c)(1), (c)(2) and (c)(3), shall be paid by the Commissioner of Insurance to firefighters relief associations so that the amount received by each firefighters relief association bears the same proportion to the total amount to be paid as received from the amounts collected from the tax received from the amounts collected from the tax imposed by K.S.A. 40-1703 and amendments thereto for all of calendar year 1983, years to the total amount paid to all firefighters relief associations from the taxes collected for all of calendar year 1983, subject to adjustments made to correct for errors in the payments distributed and as otherwise provided pursuant to this subsection (c)(4), adjustments made pursuant to subsection (c)(5) for firefighters relief associations that did not receive a payment from taxes paid for all of calendar year 1983 and adjustments pursuant to subsection (c)(6) for redeterminations based upon changed circumstances. The Commissioner of Insurance may make adjustments in the amounts of payments for the current year made under this subsection (c)(4) for error in the payments distributed for the prior year, except that adjustments may be made in the payments to be distributed by August 1, 1987, for any errors in the payments distributed during the period from July 1, 1984 through June 30, 1987, and an adjustment shall be made in the payment to be distributed by August 1, 1987, for each firefighters relief association which was in existence for only

part of calendar year 1983 and which received a payment for calendar year 1987 based on taxes received for only part of calendar year 1983, to reflect the total of the payments that would most probably have been received by such firefighters relief association during the period from August 1, 1984 through June 30, 1987, if such firefighters relief association had been in existence for all of calendar year 1983, reduced by the payments actually received by such firefighters relief association during the period from August 1, 1984 through June 30, 1987. For purposes of all payments under subsection (c)(4) after the adjusted payment distributed by August 1, 1987, such firefighters relief association shall be considered to have received for calendar year 1983, the amount it most probably would have received if it had been in existence for all of calendar year 1987, which shall be the amount having the same proportional relationship to 365 days as the amount actually received for calendar year 1983 has to the number of days that such firefighters relief association was in existence during calendar year 1983, subject to adjustments pursuant to subsection (c)(6) for redetermination based upon changed circumstances.

(5) Whenever a firefighters relief association is to receive a payment under subsection (c)(4) but did not receive a payment from any of the taxes collected for the calendar year 1983, the commissioner of insurance shall determine for the nonreceiving association, from such information as is made available to the commissioner by the nonreceiving association, the amount the nonreceiving association would most probably have received if it had actually received such payment from the taxes collected for all of calendar year 1983, with appropriate adjustments based on payments to firefighters relief associations of fire departments providing fire protection services within geographic areas having similar populations and assessed tangible property valuation as the geographic area provided fire protection services by the fire department of each such nonreceiving association. The commissioner shall make such determination as follows:

(A) One-half of the amount due shall be determined based upon the population figure provided by the association pursuant to administrative rules and regulations adopted by the commissioner. The determination of this 1/2 of the amount due shall be made in accordance with the following formula:

- (i) An association which received a payment from the taxes collected for all of calendar year 1983 and which has a population similar to that of the nonreceiving association shall be ascertained;
- (ii) The payment the comparable association received from the taxes collected for all of calendar year 1983 shall be divided by two;

- (iii) The population of the area served by the nonreceiving association shall be divided by the population of the area served by the association to which the nonreceiving association is being compared, to produce an adjustment factor reflecting the variance in population size; and
- (iv) The amount received from taxes collected for all of the calendar year 1983 by the association with the comparable population shall be multiplied by the population adjustment factor obtained in paragraph (iii) of this subsection (c)(5)(A).

(B) The remaining 1/2 of the amount due shall be determined based upon the assessed tangible property valuation figure provided by the nonreceiving association pursuant to administrative rules and regulations adopted by the commissioner. The determination of the remaining 1/2 of the amount due shall be made in accordance with the following formula:

- (i) An association which received a payment from the taxes collected for all of calendar year 1983 and which has an assessed tangible property valuation as of November 1, 1989, similar to that of the nonreceiving association shall be ascertained;
- (ii) The payment the comparable association received from taxes collected for all of calendar year 1983 shall be divided by two;
- (iii) The assessed tangible property valuation of the area served by the nonreceiving association shall be divided by the assessed tangible property valuation of the area served by the association to which the nonreceiving association is being compared, to produce an adjustment factor reflecting the variance in assessed tangible property valuation; and
- (iv) The amount received from taxes collected for all of calendar year 1983 by the association with the comparable assessed tangible property valuation shall be multiplied by the valuation adjustment factor obtained in paragraph (iii) of this subsection (c)(5)(B).

(C) The amount obtained in paragraph (iv) of subsection (c)(5)(A) shall be added to the amount obtained in paragraph (iv) of subsection (c)(5)(B) to determine the total amount the nonreceiving association most probably would have received if it had actually received a payment from the taxes collected for all of calendar year 1983. The amount a nonreceiving association most probably would have received if it had actually received a payment from taxes collected for all of calendar year 1983 shall be divided by the total amount paid to all firefighters relief associations from the taxes collected for all of calendar year 1983 to determine the

proportionate amount due the nonreceiving association for the current and succeeding years and thereafter such association shall not be considered to be a nonreceiving association. The commissioner of insurance shall include the amount so determined within the computations prescribed by subsection (c)(4) for payments thereunder.”

4. K.S.A. 40-1706(c)(6) provides for a determination of the proportionate amount payable to all firefighters relief associations from the Firefighters Relief Fund. The statute provides:

“One or more firefighters relief associations may apply, prior to October 1, of any year, to the commissioner of insurance for a redetermination of the proportionate amounts payable to all firefighters relief associations under subsection (c)(4) and, upon receipt of such application, the commissioner of insurance shall hold one joint hearing in accordance with the provisions of the Kansas Administrative Procedure Act prior to December 1 of such year, at which all applicants shall be heard and may present information. The commissioner of insurance may redetermine such proportionate amounts based upon such information as is presented to or otherwise made available by the applicants to the commissioner and may make a finding of changed circumstances. However, increases in the assessed tangible property valuation resulting from a statewide reappraisal conducted pursuant to K.S.A. 79-1476, *et seq.*, and amendments thereto, shall not constitute a changed circumstance. Upon making such finding, the commissioner of insurance may include such redetermination within the computations prescribed by subsection (c)(4) for payments in subsequent years. Any increase or reduction in the amounts to be distributed as a result of a finding of changed circumstances by the commissioner shall be proportionately distributed among all firefighters relief associations. An application for redetermination shall not be made by any firefighters relief association more than once every three years, but this restriction shall not apply with respect to applications for redetermination submitted in calendar year 1989 that were based in whole or in part on an increase in the assessed tangible property valuation resulting from statewide reappraisal.”

5. Presenting evidence of changed circumstances were the Abilene Firefighters Relief Association, the Butler Co. #3 Firefighters Relief Association, the Coffey Co. Firefighters Relief Association, the FD #1 of Leavenworth Co. Firefighters Relief Association, the Galena Firefighters Relief Association, the Gorham Firefighters Relief Association, the Johnson Co. #3

Firefighters Relief Association, the LaCygne Firefighters Relief Association, the Leavenworth Firefighters Relief Association, the Miltonvale Firefighters Relief Association, the Miltonvale Rural #3 Firefighters Relief Association, the Moundridge Firefighters Relief Association, Newton Firefighters Relief Association, the Overland Park Firefighters Relief Association, the Potwin Firefighters Relief Association, the Pratt Firefighters Relief Association, the Reno Co. #8 Firefighters Relief Association, the Russell Co. #4 Firefighters Relief Association, the Scott City Firefighters Relief Association, the Seward Co. Firefighters Relief Association, the Pratt Firefighters Relief Association, Shawnee Co #2 the Pratt Firefighters Relief Association, and the Topeka Firefighters Relief Association,"

6. Pottawatomie County #8 Firefighters Relief Association withdrew its application for redetermination based on their failure to submit necessary documentation.

7. The Abilene Firefighters Relief Association offered evidence that the area served by Abilene Fire Department has grown since 1983 and the assessed tangible property valuation for the fire protection area has increased by \$71,540,680 since 1983. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

8. As a result of the increase in population and in the assessed tangible property valuation as outlined in paragraph 7 above, it appears that Abilene Fire Department is providing fire protection services to a more valuable area than records maintained by the Kansas Insurance Department indicated was served in 1983. The area now has an additional \$71,540,680 in assessed tangible property valuation, as enumerated in paragraph 7.

9. Butler County Fire District #3 Firefighters Relief Association offered evidence, that the population increased by 392 that the assessed tangible property valuation for the fire protection district had increased \$15,065,737 since 1998. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

10. As a result of the additional area being served as outlined in paragraph 9 above, it appears that Butler County #3 Fire Department is currently providing fire protection to a more populous and larger area than reflected by the records maintained by the Kansas Insurance Department. The area currently being protected by Butler County #3 Fire Department has an increased population of 392 and additional assessed tangible property valuation in the amount of \$15,065,737, as enumerated in paragraph 9 above.

11. Coffey County Fire Department Firefighters Relief Association offered evidence, that the population for the fire protection district protected has increased since 1991 and the increased population of 595 since 1991. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

12. As a result of the additional area being served as outlined in paragraph 11 above, it appears that Coffey County Fire Department is currently providing fire protection to a more populous area than reflected by the records maintained by the Kansas Insurance Department. The area currently being protected by the Coffey County Fire Department has an additional population of 595, as enumerated in paragraph 11 above.

13. Fire District #1 of Leavenworth County Firefighters Relief Association offered evidence of an increase in population as well as an increase in the assessed tangible property

valuation. The increased population for the enlarged fire protection area is 2,261 since 1998 and the increased assessed tangible property valuation for the enlarged area is \$33,869,103 since 1998. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and the amendments thereto.

14. As a result of the increase in population and assessed tangible property valuation as outlined in paragraph 13 above, it appears that the FD #1 of Leavenworth County Fire Department is currently providing fire protection to a more populous and valuable area than is reflected by the records maintained by the Kansas Insurance Department. The area currently being protected by FD #1 of Leavenworth County Fire Department has an added population of 2,261 as well as an additional assessed tangible property valuation in the amount of \$33,869,103, as enumerated in paragraph 13 above.

15. Galena Firefighters Relief Association offered evidence that the population has increased by 861 and the assessed tangible property valuation has increased by \$66,865,936 since 1983. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

16. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 15 above, it appears that Galena Fire Department is providing fire protection services to a more populous and valuable area than the records maintained by the Kansas Insurance Department indicated was served in 1985. The area now has an additional 861 in population and \$66,865,936 in assessed tangible property valuation, as enumerated in paragraph 15 above.

17. Gorham Firefighters Relief Association offered evidence that population has increased by 212 and the assessed tangible property valuation has increased by \$5,534,662 since 1983. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

18. As a result of the growth in assessed tangible property valuation as outlined in paragraph 17 above, it appears that Gorham Fire Department is providing fire protection services to a more populous and valuable area than the records maintained by the Kansas Insurance Department indicated was served in 1983. The area now has an increased by 212 in population and an additional \$5,534,662 in assessed tangible property valuation, as enumerated in paragraph 17 above.

19. Johnson County #3 Firefighters Relief Association offered evidence with maps and contracts that the population has increased by 1,781 and assessed tangible property valuation has increased by \$18,101,444 since 1999. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

20. As a result of the growth in population and the assessed tangible property valuation as outlined in paragraph 19 above, it appears that Johnson County #3 Fire Department is providing fire protection services to a more populous and valuable area than the records maintained by the Kansas Insurance Department indicated was served in 1999. The area now has an increased population of 1,781 and an additional \$18,101,444 in assessed tangible property valuation, as enumerated in paragraph 19 above.

21. LaCygne Fire Firefighters Relief Association offered evidence, including a map, that the population of the area served by Garnett Fire Department has grown by 76 since 1983 and the assessed tangible property valuation has increased by \$4,404,569 since 1984. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

22. As a result of the growth in population and increase in the assessed tangible property valuation as outlined in paragraph 21 above, it appears that LaCygne Fire Department is providing fire protection services to a more populated and valuable area than the records maintained by the Kansas Insurance Department indicated was served in 1983. The area now has an additional population of 76 and an additional \$4,404,569 in assessed tangible property valuation, as enumerated in paragraph 21 above.

23. Leavenworth Firefighters Relief Association offered evidence that the assessed tangible property valuation for the fire protection area has increased by \$36,384,623 since 2000. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

24. As a result of the growth in the assessed tangible property valuation as outlined in paragraph 23 above, it appears that Leavenworth Fire Department is providing fire protection services to a more valuable area than records maintained by the Kansas Insurance Department indicated was served in 2000. The area now has an additional \$36,384,623 in assessed tangible property valuation, as enumerated in paragraph 23.

25. Miltonvale Firefighters Relief Association offered evidence, that the assessed tangible property valuation for the fire protection district had increased by \$711,178 since 1983. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

26. As a result of the additional area being served as outlined in paragraph 25 above, it appears that Miltonvale Fire Department is currently providing fire protection to a more valuable area than reflected by the records maintained by the Kansas Insurance Department. The area currently being protected by Miltonvale Fire Department has an assessed tangible property valuation in the amount of \$711,178, as enumerated in paragraph 25 above.

27. Miltonvale Rural #3 Fire Department Firefighters Relief Association offered evidence by Sworn Affidavit, that there was an increase in assessed tangible property valuation of 10,230,540 since 1985. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

28. As a result of the additional valuation area being served as outlined in paragraph 27 above, it appears that Miltonvale Rural #3 Fire Department is currently providing fire protection to a more valuable area than reflected by the records maintained by the Kansas Insurance Department. The area currently being protected by the Miltonvale Rural #3 Fire Department has an increased valuation of \$10,230,540 as enumerated in paragraph 27 above.

29. Moundridge Firefighters Relief Association offered evidence, by Sworn Affidavit, of increased population for the fire protection area is 277 since 1983 and the increased assessed tangible property valuation for the area is \$14,812,196 since 1983. Pursuant to K.S.A.

40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and the amendments thereto.

30. As a result, as outlined in paragraph 29 above, it appears that the Moundridge Fire Department is currently providing fire protection to a more populous and valuable area than is reflected by the records maintained by the Kansas Insurance Department. The area currently being protected by Moundridge Fire Department has an added population of 277 as well as an additional assessed tangible property valuation in the amount of \$14,812,196, as enumerated in paragraph 29 above.

31. Newton Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population of the area served by Newton Fire Department has grown by 3,773 since 1987 and the assessed tangible property valuation has increased by \$73,147,912 since 1987. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

32. As a result of the growth in population and increase in the assessed tangible property valuation as outlined in paragraph 31 above, it appears that Newton Department is providing fire protection services to a more populated and valuable area than the records maintained by the Kansas Insurance Department indicated was served in 1987. The area now has an additional population of 3,773 and an additional \$73,147,912 in assessed tangible property valuation, as enumerated in paragraph 31 above.

33. Overland Park Firefighters Relief Association offered evidence, by Sworn Affidavit, that the area served by Overland Park Fire Department has grown and the population

has increased by 11,288 and the assessed tangible property valuation has increased by \$233,876,209 since 2001. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

34. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 33 above, it appears that Overland Park Fire Department is providing fire protection services to a more valuable area than the records maintained by the Kansas Insurance Department indicated was served in 2001. The area now has an additional \$233,876,209 in assessed tangible property valuation, as enumerated in paragraph 33 above.

35. Potwin Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 53 and the assessed tangible property valuation of the area served by Potwin Fire Department has the valuation increased by \$2,159,609 since 2000. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

36. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 35 above, it appears that Potwin Fire Department is providing fire protection services to a more populous and valuable area than the records maintained by the Kansas Insurance Department indicated was served in 2000. The area now has an additional population of 53 and \$2,159,609 in assessed tangible property valuation, as enumerated in paragraph 35 above.

37. Pratt Fire Firefighters Relief Association offered evidence, by Sworn Affidavit, that the assessed tangible property valuation of the area served by Pratt Fire Department has

grown by \$12,136,356 since 1983. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

38. As a result of the growth in assessed tangible property valuation as outlined in paragraph 37 above, it appears that Pratt Fire Department is providing fire protection services to a more valuable area than the records maintained by the Kansas Insurance Department indicated was served in 1983. The area now has an additional assessed tangible property valuation of \$12,136,356.

39. Reno County #8 Firefighter Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 4,046 and the assessed tangible property valuation has increased by \$7,629,216 since 1985. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496 et seq., and the amendments thereto.

40. As a result of the increase in population and assessed tangible property valuation as outlined in paragraph 39 above, it appears that Reno county #8 Fire Department is providing fire protection services to a more populous and valuable area than the records maintained by the Kansas Insurance Department. The area currently being protected by the Reno County #8 Fire Department has an additional 4,046 population and assessed tangible property valuation of \$7,629,216, as enumerated in paragraph 39 above.

41. Russell County #4 Firefighters Relief Association offered evidence, by Sworn Affidavit, of an increase in assessed tangible property valuation. The increased assessed tangible property valuation for the enlarged area is \$4,108,602 since 1983. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the

1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496 et seq., and the amendments thereto.

42. As a result of the Russell County #4 Fire Department is currently providing fire protection to a more valuable area than is reflected by the records maintained by the Kansas Insurance Department. The area currently being protected by the Russell County #4 Fire Department has an additional assessed tangible property valuation in the amount of \$4,108,602, as enumerated in paragraph 41 above.

43. Scott City Firefighters Relief Association offered evidence, by Sworn Affidavit, of an increase in assessed tangible property valuation. The increased assessed tangible property valuation for the enlarged area is \$57,158,917 since 1983. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496 et seq., and the amendments thereto.

44. As a result of the Scott City Fire Department is currently providing fire protection to a more valuable area than is reflected by the records maintained by the Kansas Insurance Department. The area currently being protected by the Scott City Fire Department has an additional assessed tangible property valuation in the amount of \$57,158,917, as enumerated in paragraph 43 above.

45. Seward County Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 789 and the assessed tangible property valuation of the area served by Seward County Fire Department has the valuation increased by \$145,086,600 since 1983. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

46. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 45 above, it appears that Seward County Fire Department is providing fire protection services to a more populous and valuable area than the records maintained by the Kansas Insurance Department indicated was served in 1983. The area now has an additional population of 789 and \$145,086,600 in assessed tangible property valuation, as enumerated in paragraph 45 above.

47. Shawnee County #2 Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 459 and the assessed tangible property valuation of the area served by Shawnee County #2 Fire Department has the valuation increased by \$6,693,926 since 1998. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496, *et seq.*, and amendments thereto.

48. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 47 above, it appears that Shawnee County #2 Fire Department is providing fire protection services to a more populous and valuable area than the records maintained by the Kansas Insurance Department indicated was served in 1998. The area now has an additional population of 459 and \$6,693,926 in assessed tangible property valuation, as enumerated in paragraph 47 above.

49. Topeka Firefighters Relief Association offered evidence, by Sworn Affidavit, of an increase in assessed tangible property valuation. The increased assessed tangible property valuation for the enlarged area is \$158,950,334 since 2000. Pursuant to K.S.A. 40-1706(c)(6), the amount of increase has been evaluated so as not to recognize the effects of the 1989 statewide reappraisal conducted pursuant to K.S.A. 79-1496 et seq., and the amendments thereto.

50. As a result of the Topeka City Fire Department is currently providing fire protection to a more valuable area than is reflected by the records maintained by the Kansas Insurance Department indicated was served in 2000. The area currently being protected by the Topeka Fire Department has an additional assessed tangible property valuation in the amount of \$158,950,334, as enumerated in paragraph 49 above.

51. The Pleasanton FRA358 submitted request for redetermination on October 12, 2004. The deadline for consideration was noted as October 1, 2004. John Washburn testified that he informed the Pleasanton FRA358 in writing that their application would not be considered since it was submitted beyond the deadline. John Washburn testified that the Pleasanton FRA 358 acknowledged the fact that they would not be considered for redetermination in a telephone call. Hearing Officer Tomlinson noted the late application.

### **Conclusions of Law**

52. Based upon the information presented by Applicants and available to the Commissioner of Insurance, changed circumstances are found to exist for all Applicants, to support a redetermination of the proportionate amounts payable to all firefighters relief associations from the Firefighters Relief Fund for 2005 and future distributions pursuant to the Firefighters Relief Act, specifically K.S.A. 40-1706(c)(6).

53. K.S.A. 40-1706(c)(6), which gives the Commissioner of Insurance the authority to redetermine the proportionate amounts payable to all firefighters relief associations, is silent as to the specific method by which the Commissioner is to make such a redetermination. The statute gives the Commissioner the discretion to determine how the redetermination is to be made.

54. Applicants presented evidence that the increased population and/or assessed tangible property valuation has resulted from either the addition of areas or through sheer growth, which was not a record with the Kansas Insurance Department in 1983.

55. To redetermine the proportionate amount payable to all firefighters relief associations for the 2005 and future distributions, the additional population and assessed tangible property valuation added by each applying association shall be treated separately, as a nonreceiving association, and these figures of the additional population and assessed tangible property valuation of each association will be placed into the formula used to determine the proportionate amounts payable to nonreceiving associations, as contained in K.S.A. 40-1706(c)(5).

56. The procedure contained in paragraphs 53 and 54 above, shall affect the proportionate amount payable to all firefighters relief associations.

**IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED THAT:**

1. Changed circumstances exist as to all timely Applicants, to warrant a redetermination of the proportionate amounts payable to all firefighters relief associations.

2. The additional population and assessed tangible property valuation of each applying firefighters relief association, shall be individually placed into the formula found in K.S.A. 40-1706(c)(5) used to calculate that nonreceiving association's share of distribution. The resulting amount will be added to the amount that applying association would receive as a receiving association's proportionate share of future distributions.

3. Pottawatomie County Fire Department # 8 withdrew its application and was not considered for redetermination during this hearing

4. Pleasanton FRA 358's application for redetermination was not considered as it was not timely filed.

**IT IS SO ORDERED THIS 16<sup>th</sup> DAY OF DECEMBER, 2004, IN THE CITY OF  
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ Sandy Praeger \_\_\_\_\_

Sandy Praeger

Commissioner of Insurance

BY:

/s/ John W. Campbell \_\_\_\_\_

John W. Campbell

General Counsel

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Order was served by placing the same in the United States Mail, first class postage prepaid, on this 20<sup>th</sup> day of December, 2004, addressed to the following:

ROD LINDSAY  
ABILENE FFRA  
PO BOX 519  
ABILENE, KS 67410

KEVIN WEBSTER  
BUTLER CO FD #3  
PO BOX 383  
ROSE HILL, KS 67133

JOHN JARVIS  
COFFEY COUNTY FFRA #1  
PO BOX 65  
LEBO, KS 66856

GARY KENTON  
FD #1 OF LEAVENWORTH CO  
111 E LANSING ST  
LANSING, KS 66043

BILL HALL  
GALENA FFRAA  
301 W 7TH ST  
GALENA, KS 66739

BRUCE SANDER  
GORHAM FFRA  
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GORHAM, KS 67640

TODD MAXTON  
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25070 W 133RD TERR  
OLATHE, KS 66061

DEVONA HERRIN  
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LA CYGNE, KS 66040

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LEAVENWORTH, KS 66048

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MILTONVALE, KS 67466

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PRAIRIE VILLAGE, KS 66208

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RICHARD MORAN  
TOPEKA FFRA  
720 SW 21ST ST  
TOPEKA, KS 66612

/s/ John Washburn \_\_\_\_\_  
John Washburn  
Fire and Casualty Policy Examiner