

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

In the Matter of the Application of Alma FRA, Anderson County FRA, Anthony FRA, Axtell FRA, Bazine FRA, Beloit FRA, Butler County #3 FRA, Clay Center Rural #1 FRA, Crawford County #1 FRA, El Dorado FRA, Ellis FRA, Fairmount Township FRA, Gardner FRA, Geary County FRA, Hays FRA, Herington FRA, Iuka FRA, Junction City FRA, Lincoln-Ottawa-Harrison FRA, Lindsborg FRA, Marion FRA, McPherson FRA, McPherson County #8 FRA, Montezuma FRA, Neosho Township FRA, Oakley FRA, Overland Park FRA, Pottawatomie County #2 FRA, Pottawatomie County #5 FRA, Russell FRA, Russell Grant Township FRA, Salina FRA, Shawnee County #1 FRA, Shawnee County #4 FRA, Tonganoxie Township FRA, Wellington FRA, Wichita FRA, Lawrence FRA, McPherson County #2 FRA.

Docket No. 3749-FR

ORDER

After due and proper notice, this matter was called for hearing on November 19, 2007, 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: The Alma Firefighters Relief Association presented evidence by Sworn Affidavit. The Anderson County Firefighters Relief Association presented evidence By Sworn Affidavit. The Anthony Firefighters Relief Association withdrew their request for a Hearing. The Axtell Firefighters Relief Association presented evidence by Sworn Affidavit. The Bazine Firefighters Relief Association withdrew their request for a Hearing. The Beloit Firefighters Relief Association presented evidence by Sworn Affidavit. The Butler County #3 Firefighters Relief Association presented evidence by Sworn Affidavit. The Clay Center Rural Firefighters Relief Association presented evidence by Sworn Affidavit. The Crawford County #1 Firefighters Relief Association presented evidence by Sworn Affidavit. The El Dorado Firefighters Relief Association presented evidence by Sworn Affidavit. The Ellis Firefighters Relief Association presented evidence by Sworn Affidavit. The Fairmount Township Firefighters Relief Association presented evidence by Sworn Affidavit. The Gardner Firefighters Relief Association presented evidence by Sworn Affidavit. The Geary County Firefighters Relief Association presented

evidence by Sworn Affidavit. The Hays Firefighters Relief Association presented evidence by Sworn Affidavit. The Herington Firefighters Relief Association withdrew their request for a Hearing. The Iuka Firefighters Relief Association withdrew their request for a Hearing. The Junction City Firefighters Relief Association presented evidence by Sworn Affidavit. The Lincoln-Ottawa-Harrison Firefighters Relief Association presented evidence by Sworn Affidavit. The Lindsborg Firefighter Relief Association Firefighters Relief Association presented evidence by Sworn Affidavit. The Marion Firefighters Relief Association presented evidence by Sworn Affidavit. The McPherson Firefighters Relief Association presented evidence by Sworn Affidavit. The McPherson County #8 Firefighters Relief Association withdrew their request for a Hearing. The Montezuma Firefighters Relief Association presented evidence by Sworn Affidavit. The Neosho Township Firefighters Relief Association withdrew their request for a Hearing. The Oakley Firefighters Relief Association presented evidence by Sworn Affidavit. The Overland Park Firefighters Relief Association presented evidence by Sworn Affidavit. The Pottawatomie County #2 Firefighters Relief Association presented evidence by Sworn Affidavit. The Pottawatomie County #5 Firefighters Relief Association presented evidence by Sworn Affidavit. The Russell Firefighters Relief Association presented evidence by Sworn Affidavit. The Russell Grant Township Firefighters Relief Association presented evidence by Sworn Affidavit. The Salina Firefighters Relief Association presented evidence by Sworn Affidavit. The Shawnee County #1 Firefighters Relief Association presented evidence by Sworn Affidavit. The Shawnee County #4 Firefighters Relief Association withdrew their request for a Hearing. The Tonganoxie Township Firefighters Relief Association presented evidence by Sworn Affidavit. The Wellington Firefighters Relief Association withdrew their request for a Hearing. The Wichita Firefighters Relief Association presented evidence by Sworn Affidavit. The Lawrence Firefighters Relief Association presented evidence by Sworn Affidavit. The McPherson County #2 Firefighters Relief Association presented evidence by Sworn Affidavit.

The Kansas Insurance Department was represented by Deletria Nash, Assistant General Counsel, and John Washburn, Fire & Casualty Division Supervisor assigned to Firefighter Relief Association regulatory activities. Jim Lubbers, President, appeared on behalf of the Kansas State Firefighters Association.

Bob Tomlinson, Assistant Commissioner, was the Presiding Officer duly appointed by Commissioner Praeger.

On the request of the Kansas Insurance Department, the Presiding Officer granted a continuance of the hearing. After due and proper notice, this matter was continued on December 21, 2007. The Kansas Insurance Department was represented by Deletria Nash and John Washburn, Fire & Casualty Division Supervisor assigned to Firefighter Relief Association regulatory activities. Jim Lubbers appeared on behalf of the Kansas State Firefighters Association. Representing the Wichita Firefighter Relief Association were Earnest Schuler, Jason Jones, Kerry Tabler, Kenneth Ast, Jesus Gonzales, and Doug Pickard; and representing the Wichita Airport Public Safety were James Kilpatrick and John H. Barkus, Jr.

Bob Tomlinson, Assistant Commissioner, was the Presiding Officer duly appointed by Commissioner Praeger.

This Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made, pursuant to K.S.A. 77-542.

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 2008 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 firefighters 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 **Alma FRA, Anderson County FRA, Anthony FRA, Axtell FRA, Bazine FRA, Beloit FRA, Butler County #3 FRA, Clay Center Rural #1 FRA, Crawford County #1 FRA, El Dorado FRA, Ellis FRA, Fairmount Township FRA, Gardner FRA, Geary County FRA, Hays FRA, Herington FRA, Iuka FRA, Junction City FRA, Lincoln-Ottawa-Harrison FRA, Lindsborg FRA, Marion FRA, McPherson FRA, McPherson County #8 FRA, Montezuma FRA, Neosho Township FRA, Oakley FRA, Overland Park FRA, Pottawatomie County #2 FRA, Pottawatomie County #5 FRA, Russell FRA, Russell Grant Township FRA, Salina FRA, Shawnee County #1 FRA, Shawnee County #4 FRA, Tonganoxie Township FRA, Wellington FRA, Wichita FRA, Lawrence FRA, McPherson County #2 FRA.**

6. The Anthony Firefighters Relief Association withdrew its application for redetermination based on their failure to submit necessary documentation.

7. The Bazine Firefighters Relief Association withdrew its application for redetermination based on their failure to submit necessary documentation.

8. The Herington Firefighters Relief Association withdrew its application for redetermination based on their failure to submit necessary documentation.

9. The Iuka Firefighters Relief Association withdrew its application for redetermination based on their failure to submit necessary documentation.

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

11. The Neosho Township Firefighters Relief Association withdrew its application for redetermination based on their failure to submit necessary documentation.

12. The Shawnee County #4 Firefighters Relief Association withdrew its application for redetermination based on their failure to submit necessary documentation.

13. The Wellington Firefighters Relief Association withdrew its application for redetermination based on their failure to submit necessary documentation.

14. Alma Firefighters Relief Association offered evidence that population has increased by 41 and the assessed tangible property valuation has increased by \$9,476,048 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.

15. As a result of the growth in population and assessed tangible property valuation as outlined in paragraph 14 above, it appears that Alma 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 increased by

41 in population and an additional \$9,476,048 in assessed tangible property valuation, as enumerated in paragraph 14 above.

16. Anderson County Firefighters Relief Association offered evidence that population has increased by 302 and the assessed tangible property valuation has increased by \$13,451,479 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.

17. As a result of the growth in population and assessed tangible property valuation as outlined in paragraph 16 above, it appears that Anderson 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 1985. The area now has increased by 302 in population and an additional \$13,451,479 in assessed tangible property valuation, as enumerated in paragraph 16 above.

18. Axtell Firefighters Relief Association offered evidence that population has increased by 375 and the assessed tangible property valuation has increased by \$4,580,215 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.

19. As a result of the growth in population and assessed tangible property valuation as outlined in paragraph 18 above, it appears that Axtell 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 increased by 375 in population and an additional \$4,580,215 in assessed tangible property valuation, as enumerated in paragraph 18 above.

20. Beloit Firefighters Relief Association offered evidence of an increase in the assessed tangible property valuation. The increased assessed tangible property valuation for

the enlarged area is \$10,685,889 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.

21. As a result of the increase assessed tangible property valuation as outlined in paragraph 20 above, it appears that the Beloit Fire Department is currently providing fire protection to a more valuable area than is reflected by the records maintained by the Kansas Insurance Department in 1983. The area currently being protected by Beloit Fire Department has an additional assessed tangible property valuation in the amount of \$10,685,889, as enumerated in paragraph 20 above.

22. Butler County #3 Firefighters Relief Association offered evidence that population has increased by 1,334 and the assessed tangible property valuation has increased by \$8,025,213 since 2004. 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.

23. As a result of the growth in population and assessed tangible property valuation as outlined in paragraph 22 above, it appears that Butler 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 2004. The area now has increased by 1,334 in population and an additional \$8,025,213 in assessed tangible property valuation, as enumerated in paragraph 22 above.

24. Clay Center Rural Firefighters Relief Association offered evidence that population has increased by 271 and the assessed tangible property valuation has increased by \$2,287,424 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.

25. As a result of the growth in population and assessed tangible property valuation as outlined in paragraph 24 above, it appears that Clay Center Rural 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 increased by 271 in population and an additional \$2,287,424 in assessed tangible property valuation, as enumerated in paragraph 24 above.

26. Crawford County #1 Firefighters Relief Association offered evidence that population has increased by 415 and the assessed tangible property valuation has increased by \$16,586,994 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.

27. As a result of the growth in population and assessed tangible property valuation as outlined in paragraph 26 above, it appears that Crawford County #1 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 increased by 415 in population and an additional \$16,586,994 in assessed tangible property valuation, as enumerated in paragraph 26 above.

28. El Dorado Firefighters Relief Association offered evidence that population has increased by 1,178 and the assessed tangible property valuation has increased by \$121,533,810 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.

29. As a result of the growth in population and assessed tangible property valuation as outlined in paragraph 28 above, it appears that El Dorado 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 increased by

1,178 in population and an additional \$121,533,810 in assessed tangible property valuation, as enumerated in paragraph 28 above.

30. Ellis Firefighters Relief Association offered evidence that the assessed tangible property valuation for the fire protection district had increased by \$998,294 since 2003. 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.

31. As a result of the additional population growth being served as outlined in paragraph 30 above, it appears that Ellis Fire Department is currently providing fire protection to a more valuable area than reflected by the records maintained by the Kansas Insurance Department indicated was served in 2003. The area currently being protected by Ellis Fire Department has an assessed tangible property valuation in the amount of \$998,294 as enumerated in paragraph 30 above.

32. Fairmount Township Fire Firefighters Relief Association offered evidence that the population of the area served by Fairmount Township Fire Department has grown by 1,448 since 2002 and the assessed tangible property valuation has increased by \$39,081,999 since 2002. 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.

33. As a result of the growth in population and increase in the assessed tangible property valuation as outlined in paragraph 32 above, it appears that Fairmount Township 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 2002. The area now has an additional population of 1,448 and an additional \$39,081,999 in assessed tangible property valuation, as enumerated in paragraph 32 above.

34. Gardner Firefighters Relief Association offered evidence that population has increased by 13,137 and the assessed tangible property valuation has increased by \$121,969,684 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.

35. As a result of the growth in population and assessed tangible property valuation as outlined in paragraph 34 above, it appears that Gardner 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 increased by 13,137 in population and an additional \$121,969,684 in assessed tangible property valuation, as enumerated in paragraph 34 above.

36. Geary County Firefighters Relief Association offered evidence, by Sworn Affidavit, that the area served by Geary County Fire Department has grown and the assessed tangible property valuation has increased by \$15,659,145 since 1997. 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.

37. As a result of the assessed tangible property valuation as outlined in paragraph 36 above, it appears that Geary County 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 1997. The area now has an additional \$15,659,145 in assessed tangible property valuation, as enumerated in paragraph 36 above.

38. Hays Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 860 and the assessed tangible property valuation of the area served by Hays Fire Department has the valuation increased by \$20,780,104 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.

39. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 38 above, it appears that Hays 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 860 and \$20,780,104 in assessed tangible property valuation, as enumerated in paragraph 38 above.

40. Junction City Firefighters Relief Association offered evidence that the assessed tangible property valuation has increased by \$117,360,748 since 2002. 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.

41. As a result of the growth in assessed tangible property valuation as outlined in paragraph 40 above, it appears that Junction City 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 2002. The area now has increased by an additional \$117,360,748 in assessed tangible property valuation, as enumerated in paragraph 40 above.

42. Lawrence Firefighters Relief Association offered evidence that population has increased by 8,631 and the assessed tangible property valuation has increased by \$346,703,214 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.

43. As a result of the growth in population and assessed tangible property valuation as outlined in paragraph 42 above, it appears that Lawrence 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 2001. The area now has increased by 8,631 in population and an additional \$346,703,214 in assessed tangible property valuation, as enumerated in paragraph 42 above.

44. Lincoln-Ottawa-Harrison Firefighters Relief Association offered evidence, by Sworn Affidavit, of an increase in population and assessed tangible property valuation. The increased population is 42 and the assessed tangible property valuation for the enlarged area is \$28,260,312 since 1997. 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.

45. As a result, the Lincoln-Ottawa-Harrison 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 indicated was served in 1997. The area currently being protected by the Lincoln-Ottawa-Harrison Fire Department has an increased population of 42 and an additional assessed tangible property valuation in the amount of \$28,260,312, as enumerated in paragraph 44 above.

46. Lindsborg Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 2,734 and the assessed tangible property valuation of the area served by Lindsborg Fire Department has the valuation increased by \$19,499,676 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.

47. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 46 above, it appears that Lindsborg 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 2,734 and \$19,499,676 in assessed tangible property valuation, as enumerated in paragraph 46 above.

48. Marion Firefighters Relief Association offered evidence, by Sworn Affidavit, of an increase in population and assessed tangible property valuation. The increased population is 335 and the assessed tangible property valuation for the area is \$13,224,760 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.

49. As a result, the Marion 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 indicated was served in 1983. The area currently being protected by the Marion Fire Department has an additional population of 335 and an assessed tangible property valuation in the amount of \$13,224,760, as enumerated in paragraph 48 above.

50. McPherson Firefighters Relief Association offered evidence, by Sworn Affidavit, of an increase in population and assessed tangible property valuation. The increased population is 274 and the assessed tangible property valuation for the area is \$152,296,413 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.

51. As a result, the McPherson 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 indicated was served in 1983. The area currently being protected by the McPherson Fire Department has an additional population of 274 and an assessed tangible property valuation in the amount of \$152,296,413, as enumerated in paragraph 50 above.

52. McPherson County #2 Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 448 and the assessed tangible property valuation of the area served by McPherson County #2 Fire Department has the valuation increased by \$5,911,812 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.

53. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 52 above, it appears that McPherson 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 1983. The area now has an additional population of 448 and \$5,911,812 in assessed tangible property valuation, as enumerated in paragraph 52 above.

54. Montezuma Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 306 and the assessed tangible property valuation of the area served by Montezuma Fire Department has the valuation increased by \$7,395,724 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.

55. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 54 above, it appears that the Montezuma 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 306 and \$7,395,724 in assessed tangible property valuation, as enumerated in paragraph 54 above.

56. Oakley Firefighter Relief Association offered evidence, by Sworn Affidavit, that the assessed tangible property valuation has increased by \$398,290 since 2002. 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.

57. As a result of the increase in assessed tangible property valuation as outlined in paragraph 56 above, it appears that the Oakley 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 2002. The area currently being protected by the Oakley Fire Department has an additional assessed tangible property valuation of \$398,290, as enumerated in paragraph 56 above.

58. Overland Park Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 6,354 and the assessed tangible property valuation of the area served by the Overland Park Fire Department has the valuation increased by \$441,320,548 since 2004. 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.

59. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 58 above, it appears that the Overland Park 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 2004. The area now has an additional population of 6,354 and \$441,320,548 in assessed tangible property valuation, as enumerated in paragraph 58 above.

60. Pottawatomie County #2 Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 18 and the assessed tangible property valuation of the area served by Pottawatomie County #2 Fire Department has the valuation increased by \$1,545,819 since 1990. 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.

61. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 60 above, it appears that the Pottawatomie 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 1990. The area now has an additional population of 18 and \$1,545,819 in assessed tangible property valuation, as enumerated in paragraph 60 above.

62. Pottawatomie County #5 Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 43 and the assessed tangible property valuation of the area served by Pottawatomie County #5 Fire Department has the valuation increased by \$16,746,814 since 2003. 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.

63. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 62 above, it appears that Pottawatomie County #5 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 2003. The area now has an additional population of 43 and \$16,746,814 in assessed tangible property valuation, as enumerated in paragraph 62 above.

64. Russell Firefighter Relief Association offered evidence, by Sworn Affidavit, that the assessed tangible property valuation has increased by \$15,229,180 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.

65. As a result of the increase in assessed tangible property valuation as outlined in paragraph 64 above, it appears that Russell 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 currently being protected by the Russell Fire Department has an additional assessed tangible property valuation of \$15,229,180, as enumerated in paragraph 64 above.

66. Russell Grant Firefighter Relief Association offered evidence, by Sworn Affidavit, that the assessed tangible property valuation has increased by \$3,646,242 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 the amendments thereto.

67. As a result of the increase in assessed tangible property valuation as outlined in paragraph 66 above, it appears that Russell Grant 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 1999. The area currently being protected by the Russell Grant Fire Department has an additional assessed tangible property valuation of \$3,646,242, as enumerated in paragraph 66 above.

68. Salina Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 2,118 and the assessed tangible property valuation of the area served by the Salina Fire Department has the valuation increased by \$268,723,770 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.

69. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 68 above, it appears that the Salina 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 2,118 and \$268,723,770 in assessed tangible property valuation, as enumerated in paragraph 68 above.

70. Shawnee County #1 Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 1,181 and the assessed tangible property valuation, of the area served by the Shawnee County #1 Fire Department has the valuation increased by \$27,658,743 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.

71. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 70 above, it appears that the Shawnee County #1 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 1,181 and \$27,658,743 in assessed tangible property valuation, as enumerated in paragraph 70 above.

72. Tonganoxie Township Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 316 and the assessed tangible property valuation, of the area served by the Tonganoxie Township Fire Department has the valuation increased by \$6,512,459 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.

73. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 72 above, it appears that the Tonganoxie Township 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 316 and \$6,512,459 in assessed tangible property valuation, as enumerated in paragraph 72 above.

74. Wichita Firefighters Relief Association offered evidence, by Sworn Affidavit, that the population has increased by 69,769 and the assessed tangible property valuation, of the area served by the Wichita Fire Department has the valuation increased by \$1,550,560,612 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.

75. As a result of the increase in population and the assessed tangible property valuation as outlined in paragraph 74 above, it appears that the Wichita 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 2001. The area now has an additional population of 69,769 and \$1,550,560,612 in assessed tangible property valuation, as enumerated in paragraph 74 above.

76. Wichita Firefighters Relief Association submitted its Sworn Affidavit to the Department without a formal letter of intent to seek redetermination. On or about November, 2007, Wichita Firefighters Relief Association tendered a formal letter. Pursuant to K.S.A. 40-1706(c)(6), the Department requested that the application of Wichita Firefighters Relief Association be disqualified for filing a late application.

77. Hays Firefighters Relief Association, Iuke Firefighters Relief Association, McPherson Firefighters Relief Association, and Shawnee County Number Four submitted incomplete applications. The Department requested that Presiding Officer not consider the incomplete applications as applications.

78. Mr. Lubbers was asked and provided no evidence of inappropriate expenditures by any association.

79. The Manhattan Firefighters Relief Association submitted a request to the Kansas Insurance Department for the 2005 Redetermination Hearing based on property valuation figures from the Riley County Clerk's Office.

80. Based on the application submitted for the 2005 Redetermination Hearing, the proportionate amount that the Manhattan Firefighters Relief Association received for 2006 was \$527,365.33 and for 2007 was \$530,635.67.

81. In July 2007, the Kansas Insurance Department received information from the Riley County Clerk's Office that the figures provided to the Manhattan Firefighters Relief Association were based incorrectly on the appraised valuation rather than the tangible assessed valuation.

82. Based on the tangible assessed valuation that was received from the Riley County Clerk's Office, the proportionate amount that the Manhattan Firefighters Relief Association should have received for 2006 is \$307,058.43 and for 2007 is \$309,405.85.

83. Based on the tangible assessed valuation, the Kansas Insurance Department requested that the proportionate amount received by the Manhattan Firefighters Relief Association each year, subject to appropriate adjustments, be reduced for errors in the payments distributed to the Manhattan Firefighters Relief Association until approximately \$442,000 has been recouped.

84. After receiving notice and opportunity to be heard, the Manhattan Firefighters Relief Association requested that the Presiding Officer award the Association \$250,000 to cover outstanding obligations and recoup the remaining amounts from its proportionate amount until \$441,536.92 has been recouped.

Conclusions of Law

85. 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 2006 and future distributions pursuant to the Firefighters Relief Act, specifically K.S.A. 40-1706(c)(6).

86. 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.

87. 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.

88. To redetermine the proportionate amount payable to all firefighters relief associations for the 2006 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).

89. The procedure contained in paragraphs 86 and 87 above, shall affect the proportionate amount payable to all firefighters relief associations.

90. Associations that were deemed to have withdrawn their application did not file an application for redetermination as required by K.S.A. 40-1706(c) and were not considered for redetermination for purposes of this hearing.

91. Associations that gave the Department sufficient notice of its intent to apply for redetermination by filing crucial information in a timely manner, but submitted documents after the statutory deadline were deemed to have filed an application as required by K.S.A. 40-1706(c) are not prohibited from being considered for redetermination.

92. K.S.A. 40-1706 gives the Commissioner of Insurance the responsibility for the distribution of the funds and the oversight powers as to how distributed funds are accounted for once they get to the relief associations and the benefits they purchase.

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

1. Changed circumstances exist as to all 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. The redetermination application of Wichita Firefighters Relief Association shall be considered timely filed.

4. The incomplete applications of Hays Firefighters Relief Association, Luke Firefighters Relief Association, McPherson Firefighters Relief Association, and Shawnee County Number Four shall not be considered as applications under K.S.A. 40-1706(c).

5. The annual distribution amount of Manhattan Firefighters Relief Association shall be limited to \$250,000 per year until the overpayment in the amount of approximately \$442,000 has been recouped by the Kansas Insurance Department.

6. Each firefighters relief association that is entitled to receive an additional share of the annual distribution for 2006 and 2007 shall receive a payment in or about May, 2008 to distribute the overpayment in the amount of approximately \$442,000.

7. Each firefighters relief association shall receive their 2008 distribution amount calculated in accordance with K.S.A. 40-1706 in or about July, 2008.

8. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action necessary to dispose of this matter.

**IT IS SO ORDERED THIS 18th DAY OF JANUARY, 2008, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.**



_____/s/ Sandy Praeger
Sandy Praege
Commissioner of Insurance

BY:

_____/s/ Robert Tomlinson
Robert Tomlinson
Presiding Officer

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 18th day of January, 2008, addressed to the following:

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/s/ Deletria L. Nash _____
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