

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

In the Matter of the Application of)
Arma FRA, Bartlett-Hackberry FRA,)
Butler County #8 FRA, Chapman)
Rural FRA, Crawford County Fire)
District #2 FRA, Eudora Township)
FRA, FD #1 Leavenworth County FRA,)
Herington FRA, Iuka FRA, Jewell FRA,)
Kickapoo Township FRA, Lucas Fire)
District #2 FRA, Mankato FRA, Marshall)
County #7 FRA, McPherson County #5)
FRA, McPherson County Fire District #5)
FRA, McPherson County Fire District #8)
FRA, Mission Township FRA, Mitchell)
County Fire District #3 FRA, Olathe FRA,)
Ottawa County Fire District #4 FRA,)
Sedgwick County #1 FRA, Seneca FRA,)
Towanda FRA)

Docket No. 3944-FR

ORDER

After due and proper notice, this matter was called for hearing on November 20, 2008, 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 (“Applicants”) were: The Arma Firefighters Relief Association withdrew their request for a Hearing. The Bartlett-Hackberry Firefighters Relief Association presented evidence By Sworn Affidavit. The Butler County #8 Firefighters Relief Association presented evidence By Sworn Affidavit. The Chapman Rural Firefighters Relief Association withdrew their request for a Hearing. The Crawford County #2 Firefighters Relief Association withdrew their request for a Hearing. The Eudora Township Firefighters Relief Association presented evidence by Sworn Affidavit. The FD #1 Leavenworth County Firefighters Relief Association

withdrew their request for a Hearing. The Herington Firefighters Relief Association presented evidence by Sworn Affidavit. The Iuka Firefighters Relief Association presented evidence by Sworn Affidavit. The Jewell Firefighters Relief Association did not apply for a Hearing. The Kickapoo Township Firefighters Relief Association presented evidence by Sworn Affidavit. The Lucas #2 Firefighters Relief Association withdrew their request for a Hearing. The Mankato Firefighters Relief Association did not apply for a Hearing. The Marshall County #7 Firefighters Relief Association presented evidence by Sworn Affidavit. The McPherson County #5 Firefighters Relief Association presented evidence by Sworn Affidavit. The McPherson County #9 Firefighters Relief Association presented evidence by Sworn Affidavit. The McPherson County #8 Firefighters Relief Association presented evidence by Sworn Affidavit. The Mission Township Firefighters Relief Association withdrew their request for a Hearing. The Mitchell County #3 Firefighters Relief Association presented evidence by Sworn Affidavit. The Olathe Firefighters Relief Association presented evidence by Sworn Affidavit. The Ottawa County #4 Firefighters Relief Association presented evidence by Sworn Affidavit. The Sedgwick County #1 Firefighters Relief Association presented evidence by Sworn Affidavit. The Seneca Firefighters Relief Association withdrew their request for a Hearing. The Towanda Firefighters Relief Association presented evidence by Sworn Affidavit.

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

The Kansas Insurance Department was represented by John Wine, Staff Attorney, and John Washburn, administering the Firefighter Relief Association regulatory activities for the Property & Casualty Division.

Jim Lubbers appeared on behalf of the Kansas State Firefighters Association. Representing the Olathe Firefighters Relief Association were Paul Willy, John DuPont, and Eric Dossett. Also present were Dick Cook, John Boyd, Melanie Tuttle and Carol McCullough.

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:

Findings of Fact

1. At issue is the 2009 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. Presenting evidence of changed circumstances were **Arma FRA, Bartlett-Hackberry FRA, Butler County #8 FRA, Chapman Rural FRA, Crawford County Fire District #2 FRA, Eudora Township FRA, FD #1 Leavenworth County FRA, Herington FRA, Iuka FRA, Kickapoo Township FRA, Lucas Fire District #2 FRA, Marshall County #7 FRA, McPherson County #5 FRA, McPherson County Fire District #9 FRA, McPherson County Fire District #8 FRA, Mission Township FRA,**

Mitchell County Fire District #3 FRA, Olathe FRA, Ottawa County Fire District #4 FRA, Sedgwick County #1 FRA, Seneca FRA, Towanda FRA.

3. The Arma Firefighters Relief Association withdrew its application for redetermination.

4. The Bartlett-Hackberry Firefighters Relief Association offered evidence of an increase in the assessed tangible property valuation. The increased assessed tangible property valuation for the area is \$821,617 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.

5. The Butler County #8 Firefighters Relief Association offered evidence of an increase in the assessed tangible property valuation. The increased assessed tangible property valuation for the area is \$4,813,945 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 the amendments thereto.

6. The Chapman Rural Firefighters Relief Association withdrew its application for redetermination.

7. The Crawford County #2 Firefighters Relief Association withdrew its application for redetermination.

8. The Eudora Township Firefighters Relief Association offered evidence that population has increased by 498 and the assessed tangible property valuation has increased by \$10,937,212 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.

9. The FD #1 Leavenworth County Firefighters Relief Association withdrew its application for redetermination.

10. The Herington Firefighters Relief Association offered evidence of an increase in the assessed tangible property valuation. The increased assessed tangible property valuation for the area is \$9,870,478 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.

11. Iuka Firefighters Relief Association offered evidence of an increase in the assessed tangible property valuation. The increased assessed tangible property valuation for the area is \$1,303,565 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.

12. Jewel Firefighters Relief Association did not apply for a redetermination hearing. However, forms were sent to the association due to clerical error at Kansas Insurance Department.

13. Kickapoo Township Firefighters Relief Association offered evidence that population has increased by 531 and the assessed tangible property valuation has increased by \$10,444,491 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.

14. Lucas #2 Firefighters Relief Association withdrew its application for redetermination.

15. Mankato Firefighters Relief Association did not apply for a redetermination hearing. However, forms were sent to the association due to clerical error at Kansas Insurance Department.

16. Marshal County #7 Firefighters Relief Association offered evidence that population has increased by 971 and the assessed tangible property valuation has increased by \$4,792,902 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.

17. McPherson County #5 Firefighters Relief Association offered evidence that population has increased by 82 and the assessed tangible property valuation has increased by \$5,153,701 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.

18. McPherson County #9 Firefighters Relief Association offered evidence that population has increased by 322 and the assessed tangible property valuation has increased by \$10,276,719 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 con

19. McPherson County #8 Firefighters Relief Association offered evidence that the assessed tangible property valuation has increased by \$5,290,412 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.

20. Mission Township withdrew its application for redetermination.

21. Mitchell County #3 Fire Firefighters Relief Association offered evidence that the population of the area served by Fairmount Township Fire Department has grown by 146 since 1993 and the assessed tangible property valuation has increased by \$5,277,612 since 1993. 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. Olathe Firefighters Relief Association offered evidence that population has increased by 13,263 and the assessed tangible property valuation has increased by \$244,909,093 since 2005. 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. Ottawa County #4 Firefighters Relief Association offered evidence that the population has increased by 226 and the assessed tangible property valuation of the area served has increased by \$8,019,553 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.

24. Sedgwick County #1 Firefighters Relief Association withdrew its application.

25. Seneca Firefighters Relief Association withdrew its application.

26. Towanda Firefighters Relief Association offered evidence that population has increased by 1543 and the assessed tangible property valuation has increased by \$12,378,184 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.

27. Based on a question from Jim Lubbers at the hearing, the Presiding Officer requested clarification about the equipment and personnel shared by McPherson County Fire District #8 FRA and the Lindsborg City Fire Department. KID Staff has determined that generally such sharing is legally permissible and extremely common throughout Kansas. Specifically, McPherson County Fire District #8 has properly reported information concerning its property and geographical area and there is not any double reporting to the Department. Staff examined the resolutions adopted by the governing bodies.

Conclusions of Law

28. Based upon the information presented by Applicants and available to the Commissioner of Insurance, changed circumstances are found to exist for the Applicants as noted above, to support a redetermination of the proportionate amounts payable to all firefighters relief associations from the Firefighters Relief Fund for 2009 and future distributions pursuant to the Firefighters Relief Act, specifically K.S.A. 40-1706(c)(6).

29. 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 after hearing. The statute gives the Commissioner the discretion to determine how the redetermination is to be made.

30. Applicants presented evidence that the increased population and/or assessed tangible property valuation was not on record with the Kansas Insurance Department in 1983.

31. To redetermine the proportionate amount payable to all firefighters relief associations for the 2009 and future distributions, the additional population and assessed tangible property valuation added above 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).

32. The procedure described above shall affect the proportionate amount payable to all firefighters relief associations.

33. Associations that were deemed to have withdrawn their application did not file an application for redetermination as provided by K.S.A. 40-1706(c) and were not considered for redetermination for purposes of this hearing and are not prohibited from being considered for redetermination next year.

34. Associations that gave the Department notice of their intent to apply for redetermination but submitted documents after the statutory deadline are not deemed to

have filed an application as required by K.S.A. 40-1706(c) and are not prohibited from being considered for redetermination next year.

35. Although the Commissioner does not have authority to directly supervise shared services among fire departments, the Commissioner is authorized to determine that departments sharing equipment, personnel and duties properly report and receive distributions under the Firefighters Relief Act, K.S.A. 40-1701, et seq.

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

1. Changed circumstances exist as to all Applicants identified above, 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 shares of distribution. The resulting amount will be added to the amount that the applying association would receive as a receiving association's proportionate share of future distributions.

4. Each firefighters relief association shall receive their 2009 distribution amount calculated in accordance with K.S.A. 40-1706 on or about July, 2009.

5. 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 12th DAY OF DECEMBER, 2008, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



_____/s/ Sandy Praeger_____

Sandy Praeger

Commissioner of Insurance

BY:

_____/s/ Robert M. Tomlinson_____

Robert M. Tomlinson

Assistant Commissioner

Presiding Officer

NOTICE OF RIGHTS

Pursuant to K.S.A. §77-601 et seq. any party is entitled to judicial review of this Final Order. The petition for judicial review must be filed within thirty (30) days of service of this Final Order (Plus three (3) days for service by mail pursuant to K.S.A. §77-531). In the event a party files a petition for judicial review pursuant to K.S.A. §77-613(e), the Agency Officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

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 __12th__ day of December, 2008, addressed to the following:

Gerry Wayman, President
308 North 230th
Arma, KS 66712

Leighton Davis, Chief
1726 7000 Road
Bartlett, KS 67332

Chris Gray, President
108 South Forrest
Douglass, KS 67039

Gerry Wayman, President
308 North 230th
Arma, KS 66712

Keith Kohler, Treasurer
111 East Kansas
Lansing, KS 66043

Tim Bettles, Treasurer
700 South Broadway
Herington, KS 67066

Tina Bachman, Treasurer
500 West McClellan
Iuka, KS 67066

James Magee, President
18324 Springdale Road
Leavenworth, KS 66048

Richard Urban, President
P.O. Box 66
Lucas, KS 67648

Rick Bishop, Chief
413 Main Street
Blue Rapids, KS 66411

Dennis Schroeder, Treasurer
P.O. Box 426
Inman, KS 67546

Wayne Williams, Chief
P.O. Box 62
Galva, KS 67443

Delwin Koons, Treasurer
2134 15th Avenue
Lindsborg, KS 67456

Kenny Dick, Treasurer
3101 S.W. Urish Road
Topeka, KS 66614

Bill Bunger, Treasurer
1873 Howard Lane
Beloit, KS 67420

Paul Willy, President
P.O. Box 5
Olathe, KS 66051

Pat Ochs, Treasurer
P.O. Box 415
Bennington, KS 67422

Craig Leu, President
7750 N. Wild West Boulevard
Valley Center, KS 67147

Dale Olberding, Treasurer
P.O. Box 28
Seneca, KS 66538

Fred Thomas, Treasurer
Box 306
Enterprise, Kansas 67441

Kyle Dearmore, Treasurer
1303 Cherry Street
Eudora, Kansas 66025

Jerry Murphy, Treasurer
Box 358
Towanda, Kansas 67144

Jim Lubbers, President
Kansas State Firefighters Association
14635 20th Road
Parsons, Kansas 67357

_s/ Jana L. Beethe
Jana L. Beethe
Legal Assistant