

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

In the Matter of the Application of
Concordia FRA; Frontenac FRA;)
Garden City FRA; Lawrence FRA;)
Leavenworth FRA; Leawood FRA;)
Johnson County #2 Cons. FRA;)
Sedgwick County FRA; Shawnee FRA;)
Soldier Township FRA; Wamego FRA;)
Wilson County #1 FRA;)
Mitchell Cloud Ottawa FD #1 FRA;) **Docket No. 4224-FR**
Olpe Rural; FD#1 FRA; Butler County #4 FRA;)
Morton County FD #1 FRA; Meade County FRA;)
Lane County #1 FRA; Montgomery County #1 FRA;)
Mission TWP FRA; Jefferson County #5, FRA;)
Hoyt Rural FD #3 FRA; Osage County #5 FRA;)
Jefferson County #9 FRA; Osage County #1 FRA;)
Cloud County FD #4 FRA; St. Paul Mission TWP FRA)

ORDER

After due and proper notice, this matter was called for hearing on November 15, 2010, 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 Concordia Firefighters Relief Association evidence By Sworn Electronic Affidavit. The Frontenac Firefighters Relief Association presented evidence By Sworn Electronic Affidavit. The Garden City Firefighters Relief Association presented evidence By Sworn Electronic Affidavit. The Lawrence Firefighters Relief Association withdrew their request for a Hearing. The Leavenworth Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Leawood Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Johnson County #2 Cons. Firefighters

Relief Association presented evidence by Sworn Electronic Affidavit. The Sedgwick County presented evidence by Sworn Electronic Affidavit. The Shawnee Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Soldier Township Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Wamego Firefighters Relief Association withdrew their request for a Hearing. The Wilson County #1 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Mitchell Cloud Ottawa FD #1 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Olpe Rural Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Butler County #4 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Morton County FD #1 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Meade County Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Lane County #1 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Montgomery County #1 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Mission TWP Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Jefferson County #5 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Hoyt Firefighters Relief Association presented evidence at the hearing. The Osage County #5 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Jefferson County #9 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Osage County #1 Firefighters Relief Association presented evidence by Sworn Electronic Affidavit. The Cloud County FD #4 Firefighters Relief

Association presented evidence by Sworn Electronic Affidavit. The St Paul Mission TWP Firefighters Relief Association presented evidence by Sworn Electronic 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 Boyd, administering the Firefighter Relief Association regulatory activities for the Kansas Insurance Department.

Appearing on behalf of the Hoyt Firefighters Relief Association were Ed Kester and Jerry Harter. Appearing on behalf of the Kansas State Firefighters Association was President Andy Moffitt.

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

Findings of Fact

1. At issue is the 2011 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. **Exempt property** was not included in the evidence or used for computation of assessed tangible property valuations in accordance with K.S.A. 40-1706 (c) (6) and K.A.R. 40-10-2 (d) excluding exempt property.

2. Presenting evidence of changed circumstances were Concordia FRA; Frontenac FRA; Garden City FRA; Lawrence FRA; Leavenworth FRA; Leawood FRA; Johnson County #2 Cons. FRA; Sedgwick County FRA; Shawnee FRA; Soldier Township FRA; Wamego FRA; Wilson County #1 FRA; Mitchell Cloud Ottawa FD #1 FRA; Olpe Rural FD#1 FRA; Butler County #4 FRA; Morton County FD #1 FRA; Meade County FRA; Lane County #1 FRA; Montgomery County #1 FRA; Mission TWP FRA; Jefferson County #5, FRA; Hoyt Rural FD #3 FRA; Osage County #5 FRA; Jefferson County #9 FRA; Osage County #1 FRA; Cloud County FD #4 FRA; St. Paul Mission TWP FRA. These FRAs have not requested redetermination in the past 3 years.

3. The Concordia Firefighters Relief Association offered evidence in support of a finding of a population of 5,109 and assessed tangible property valuation of \$24,893,233.

4. The Frontenac Firefighters Relief Association offered evidence in support of a finding of a population of 3,194 and assessed tangible property valuation of \$20,506,124.

5. The Garden City Firefighters Relief Association offered evidence in support of a finding of a population of 42,074 and assessed tangible property valuation of \$451,133,347.

6. The Lawrence Firefighters Relief Association withdrew its application for redetermination.

7. The Leavenworth Firefighters Relief Association offered evidence in support of a finding of a population of 34,729 and assessed tangible property valuation of \$204,688,891.

8. The Leawood Firefighters Relief Association offered evidence in support of a finding of a population of 31,766 and assessed tangible property valuation of \$734,409,862 since.

9. The Johnson CO #2 Cons. Firefighters Relief Association offered evidence in support of a finding of a population of 48,138 and assessed tangible property valuation of \$711,819,845.

10. The Sedgwick CO Firefighters Relief Association was not able to offer evidence in support of a finding of population or assessed tangible property valuation

11. The Shawnee Firefighters Relief Association offered evidence in support of a finding of a population of 61,712 and assessed tangible property valuation of \$646,105,292.

12. The Soldier Township Firefighters Relief Association offered evidence in support of a finding of a population of 13,624 and assessed tangible property valuation of \$135,133,263.

13. The Wamego Firefighters Relief Association withdrew its application for redetermination.

14. The Wilson County #1 Firefighters Relief Association offered evidence in support of a finding of a population of 13,624 and assessed tangible property valuation of \$135,133,263.

15. The Mitchell Cloud Ottawa FD #1 Firefighters Relief Association offered evidence in support of a finding of a population of 412 and assessed tangible property valuation of \$7,173,026.

16. The Olpe Rural FD #1 Firefighters Relief Association did not offer evidence in support of population or assessed tangible property valuation

17. The Butler CO #4 Firefighters Relief Association offered evidence in support of a finding of a population of 363 and assessed tangible property valuation of \$4,595,826.

18. The Morton Co FD #1 Firefighters Relief Association offered evidence in support of a finding of a population of 3,031 and assessed tangible property valuation of \$135,055,658.

19. The Meade County Firefighters Relief Association offered evidence in support of a finding of a population of 1,177 and assessed tangible property valuation of \$96,063,985.

20. The Lane Co #1 Firefighters Relief Association offered evidence in support of a finding of a population of 1,742 and assessed tangible property valuation of \$54,718,492.

21. The Montgomery CO #1 Firefighters Relief Association offered evidence in support of a finding of a population of 10,278 and assessed tangible property valuation of \$184,123,774.

22. The Mission TWP Firefighters Relief Association offered evidence in support of a finding of a population of 9,029 and assessed tangible property valuation of \$95,313,266.

23. The Jefferson County #5 Firefighters Relief Association offered evidence support of a finding of a in population of 3,130 and assessed tangible property valuation of \$28,453,328.

24. The Hoyt Firefighters Relief Association offered evidence in support of a finding of a population of 2,294 and assessed tangible property valuation of \$16,077,663.

25. The Osage CO #5 Firefighters Relief Association offered evidence in support of a finding of a population of 2,306 and assessed tangible property valuation of \$18,646,814.

26. The Jefferson County #9 Firefighters Relief Association offered evidence in support of a finding of a population of 3,065 and assessed tangible property valuation of \$21,856,009.

27. The Osage CO #1 Firefighters Relief Association offered evidence in support of a finding of a population of 4,188 and assessed tangible property valuation of \$23,999,845.

28. The Cloud County FD #4 Relief Association offered evidence in support of a finding of a population of 1,192 and assessed tangible property valuation of \$19,291,965.

29. The St. Paul Mission Firefighters Relief Association offered evidence in support of a finding of a population of 1,267 and assessed tangible property valuation of \$7,508,625.

30. The presiding officer finds that the Kansas Department of Revenue does not yet have available the data necessary to verify the above property valuation information and that additional evidence is necessary to establish population for Sedgwick County and Olpe Firefighter Relief Associations. The presiding officer therefore finds that it is necessary to keep the record open and for the FRA

Administrator to review additional evidence to verify or establish the above population or valuation amounts and admit additional evidence as necessary.

Conclusions of Law

31. Based upon the information presented by Applicants and available to the Commissioner of Insurance, and subject to the limitations discussed herein, 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 2010 and future distributions pursuant to the Firefighters Relief Act, specifically K.S.A. 40-1706(c)(6).

32. 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.

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

34. To redetermine the proportionate amount payable to all firefighters relief associations, the Commissioner has previously determined and continues to hold that 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).

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

36. 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.

37. 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.

Determination of Public Policy

1. The presiding officer previously ordered that from 2009 and forward that the distribution to the FRAs that redetermine in the state of Kansas will be calculated by a formula based on the population and Assessed Tangible Property Valuation in accordance with K.S.A. 40-1706 (a) (5) (A) and K.A.R. 40-10-2 (d):

- 50% of the distribution is based on the population of the respective FRA in comparison to the entire population as certified to the secretary of state on July 1.

- 50% of the distribution is based on the assessed tangible property valuation of each FRA in proportion to the entire state of Kansas as reported by the County Clerks on the November 1 tax rolls.
2. **State Total Tangible Property Valuation** obtained from the State Department of Revenue Annual Statistical Report of Property Assessment.
 3. **Kansas Certified Population** from the Secretary of State July 1 of each calendar year.

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, subject to changes made based on additional evidence as discussed above.
2. The additional population and assessed tangible property valuation of each applying firefighters relief association shall be individually placed into the formula as described in the "Determination of Public Policy" paragraph 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.
3. Each firefighters relief association shall receive their 2011 distribution amount calculated in accordance with K.S.A. 40-1706 on or about July, 2011.
4. 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 ___23rd___ DAY OF NOVEMBER, 2010, 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 to the extent that this order constitutes final agency action. The petition for judicial review must be filed within thirty (30) days of service of this 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 __23rd__ day of November, 2010, addressed to the following:

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_____/s/ John D. Boyd_____
John D. Boyd
Administrator, Firefighter Relief Act
Kansas Insurance Department