

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

In the Matter of the Application of)	
Albert FRA, Bourbon County #3 FRA,)	
Butler County #1 FRA, Elkhart FRA,)	
Hillsboro FRA, Kansas City FRA,)	
Leavenworth County #1, Little River FRA,)	
Logan County FRA, Louisville TWP FRA,)	
Plainville FRA, Pottawatomie County #7,)	
Seneca FRA, Sheridan County #1 FRA,)	Docket No. 4050-FR
Thayer FRA , Winfield FRA)	

ORDER

After due and proper notice, this matter was called for hearing on November 23, 2009, 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 Albert Firefighters Relief Association evidence By Sworn Affidavit. The Bourbon County #3 Firefighters Relief Association presented evidence By Sworn Affidavit. The Butler County #1 Firefighters Relief Association presented evidence By Sworn Affidavit. The Elkhart Firefighters Relief Association withdrew their request for a Hearing. The Hillsboro Firefighters Relief Association presented evidence by Sworn Affidavit The Kansas City Firefighters Relief Association presented evidence by Sworn Affidavit. The Leavenworth County #1 Firefighters Relief Association presented evidence by Sworn Affidavit. The Little River Firefighters Relief Association withdrew their request for a Hearing. The Logan County Firefighters Relief Association presented evidence by Sworn Affidavit. The Louisville TWP Firefighters Relief Association presented evidence by Sworn Affidavit. The Plainville Firefighters Relief Association presented evidence by Sworn

Affidavit. The Pottawatomie County #7 Firefighters Relief Association presented evidence by Sworn Affidavit. The Seneca Firefighters Relief Association presented evidence by Sworn Affidavit. The Sheridan County #1 Firefighters Relief Association presented evidence by Sworn Affidavit. The Thayer Firefighters Relief Association presented evidence by Sworn Affidavit. The Winfield Firefighters Relief Association withdrew their request for a Hearing.

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.

Representing the Kansas City Firefighters Relief Association were Patrick Dunn, Chad Womble, and Eric Scruggs.

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 determination of public policy:

Findings of Fact

1. At issue is the 2010 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 **Albert FRA, Bourbon County #3 FRA, Butler County #1 FRA, Elkhart FRA, Hillsboro FRA, Kansas City FRA, Leavenworth Co FD #1 FRA, Little River FRA, Logan FRA, Louisville FRA, Plainville FRA, Pottawatomie Co #7 FRA, Seneca FRA, Sheridan County #1 FRA, Thayer FRA, Winfield FRA.** These FRAs have not requested redetermination in the past 3 years.

3. The Albert Firefighters Relief Association offered evidence of a decrease in population of 26 and an increase in the assessed tangible property valuation for the area served of \$2,792,808 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.

4. The Bourbon County #3 Firefighters Relief Association offered evidence of a decrease in population of 1,382 and an increase in the assessed tangible property valuation for the area served is \$4,611,772 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 #1 Firefighters Relief Association offered evidence of an increase in population of 1,818 and an increase in the assessed tangible property valuation for the area served is \$37,271,881 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.

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

7. The Hillsboro Firefighters Relief Association offered evidence that population has decreased by 78 and the assessed tangible property valuation has increased by \$12,575,977 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. The Kansas City Firefighters Relief Association offered evidence that population has decreased by 19,559 and the assessed tangible property valuation has increased by \$14,246,575 since 2005. Evidence produced at the hearing by John Boyd indicated that the County Clerk for Wyandotte County had certified the population on July 1, 2009 to the Kansas Secretary of State at 142,562 which would change the decreased population by 90 for an actual decreased total of 19,649. The record was supplemented by John Boyd on January 5, 2010 with attachment 4d, replacing attachment 4c, after obtaining verified assessed tangible property valuation from the Kansas Department of Revenue Property Valuation Division. This new evidence revealed an increase of \$25,854,020 in assessed tangible property valuation and it is recommended that the Hearing Officer consider this new evidence in his decision. 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 Leavenworth County #1 Firefighters Relief Association offered evidence that population has increased by 375 and the assessed tangible property valuation has increased by \$25,184,238 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.

10. The Little River Firefighters Relief Association withdrew its application for redetermination.

11. The Logan County Firefighters Relief Association offered evidence that population has decreased by 2,397 and the assessed tangible property valuation has increased by \$14,128,379 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.

12. The Louisville TWP Firefighters Relief Association offered evidence that population has increased by 164 and the assessed tangible property valuation has increased by \$3,661,495 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.

13. The Plainville Firefighters Relief Association offered evidence that population has decreased by 852 and the assessed tangible property valuation has increased by \$24,208,856 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. The Pottawatomie County #7 Firefighters Relief Association offered evidence that population has decreased by 30 and the assessed tangible property valuation has increased by \$3,829,264 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.

15. The Seneca Firefighters Relief Association offered evidence that population has decreased by 1,189 and the assessed tangible property valuation has increased by \$20,987,145 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.

16. The Sheridan County #1 Firefighters Relief Association offered evidence that population has decreased by 237 and the assessed tangible property valuation has increased by \$6,126,523 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.

17. Thayer Firefighters Relief Association offered evidence that population has increased by 646 and the assessed tangible property valuation has increased by \$18,899,019 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. The Winfield Firefighters Relief Association withdrew its application for redetermination.

Conclusions of Law

19. 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).

20. 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.

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

22. 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).

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

24. 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.

25. 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 ordered that from this point 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.
 4. It was discovered on or about 8 October 2009 that Kansas Insurance Department records incorrectly indicated that the Victoria FRA # 431 merged into Marshal County #9 on 21 April 2008 when, in fact, no merger took place. This resulted in the Victoria FRA being removed from the FRA program and their annual disbursement going directly to the Marshal County #9 FRA in the amount of \$7,843.13. In order to correct this error, the Kansas Insurance Department will reimburse the Victoria FRA \$9,843.13 and require a refund from the Marshal County #9 FRA in the amount of \$3,955.82 in accordance with K.S.A 40-1707.

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 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 2010 distribution amount calculated in accordance with K.S.A. 40-1706 on or about July, 2010.

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 12th DAY OF JANUARY, 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 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 January, 2010, addressed to the following:

Albert FRA #486
Donald Hanhart
4004 Centre St
Albert, Ks 67551

Bourbon County #3 FRA #513
Louella Howard
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Fort Scott, Ks 66701

Butler County #1 FRA #142
Dennis Smith
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Elkhart FRA #188
Matt Higgins
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Kansas City, Ks 66109

Leavenworth County #1 FRA #515
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/s/ John D. Boyd
John D. Boyd
Administrator, Firefighter Relief Act
Kansas Insurance Department