

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS****In the Matter of the Application of**

**Albert FRA; Butler County #8 FRA; Chapman FRA;)
Cheney FRA; Chetopa FRA; Cowley County #4 FRA;)
Cunningham FRA; Garfield FRA; Harper FRA;)
Hesston FRA; Holyrood FRA; Longford Rural FD FRA;)
Lucas FD #2 FRA; McPherson County #3 FRA;) Docket No. 4607-FR
Olpe Rural FD #1; Ottawa FRA; Parsons FRA;)
Rice County #1 FRA; Robinson FRA; Scammon FRA;)
Sumner County #11 FRA; Victoria FRA; Wakarusa)
TWP FRA; Woodson County Rural FD FRA;)**

FINAL ORDER

After due and proper notice, this matter was called for hearing on November 19, 2013, 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 presented evidence by sworn electronic affidavit. The Butler County No 8 Firefighters Relief Association presented evidence by sworn electronic affidavit. The Chapman Firefighters Relief Association presented evidence by sworn electronic affidavit. The Cheney Firefighters Relief Association presented evidence by sworn electronic affidavit. The Chetopa Firefighters Relief Association presented evidence by sworn electronic affidavit. The Cowley County No 4 Firefighters Relief Association presented evidence by sworn electronic affidavit. The Cunningham Firefighters Relief Association presented evidence by sworn electronic affidavit. The Garfield Firefighters Relief Association presented evidence by sworn electronic affidavit. The Harper

Firefighters Relief Association presented evidence by sworn electronic affidavit. The Hesston Firefighters Relief Association presented evidence by sworn electronic affidavit. The Holyrood Firefighters Relief Association presented evidence by sworn electronic affidavit. The Longford Rural Firefighters Relief Association presented evidence by sworn electronic affidavit. The Lucas No 2 Firefighters Relief Association presented evidence by sworn electronic affidavit. The McPherson County No 3 Firefighters Relief presented evidence by sworn electronic affidavit. The Olpe Rural Fire District No 1 Firefighters Relief Association presented evidence by sworn electronic affidavit. The Ottawa Firefighters Relief Association presented evidence by sworn electronic affidavit. The Parsons Firefighters Relief Association presented evidence by sworn electronic affidavit. The Rice County No 1 Firefighters Relief Association presented evidence by sworn electronic affidavit. The Robinson Firefighters Relief Association presented evidence by sworn electronic affidavit. The Scammon Firefighters Relief Association presented evidence by sworn electronic affidavit. The Sumner County No 11 Firefighters Relief Association presented evidence by sworn electronic affidavit. The Victoria Firefighters Relief Association presented evidence by sworn electronic affidavit. The Wakarusa Township Firefighters Relief Association presented evidence by sworn electronic affidavit. The Woodson County Rural Fire District Firefighters Relief Association presented evidence by sworn electronic affidavit.

Zachary Anshutz, Assistant Commissioner, was the Presiding Officer duly appointed by Commissioner Praeger.

The Kansas Insurance Department was represented by John Wine, General Counsel, and Steven Lehwald, administering the Firefighter Relief Association regulatory activities for the Kansas Insurance Department.

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

At issue is the 2013 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. Steven M. Lehwald researched the 2013 Kansas Certified Population and the Kansas Assessed Tangible Property Report in order to verify the population and valuation data submitted. After reviewing this additional evidence the Presiding Officer makes the following findings of fact:

EXHIBIT 1: The Albert Firefighters Relief Association offered evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 507 with a 2013 Kansas Assessed Tangible Property Report valuation of \$14,888,838.

EXHIBIT 2: The Butler County No 8 Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 2,492 with a 2013 Kansas Assessed Tangible Property Report valuation of \$18,742,958. Research showed a redetermination would decrease their distribution amount.

EXHIBIT 3: The Chapman Firefighters Relief Association offered evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 1,417 with a 2013 Kansas Assessed Tangible Property Report valuation of \$7,414,611.

EXHIBIT 4: The Cheney Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 3,627 with a 2013 Kansas Assessed Tangible Property Report valuation of \$32,111,869.

EXHIBIT 5: The Chetopa Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 1,666 with a 2013 Kansas Assessed Tangible Property Report valuation of \$9,995,493.

EXHIBIT 6: The Cowley County No 4 Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 2,258 with a 2013 Kansas Assessed Tangible Property Report valuation of \$19,751,656.

EXHIBIT 7: The Cunningham Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified

Population revealed 841 with a 2013 Kansas Assessed Tangible Property Report valuation of \$19,800,286.

EXHIBIT 8: The Garfield Firefighters Relief Association offered evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 320 with a 2013 Kansas Assessed Tangible Property Report valuation of \$6,038,223.

EXHIBIT 9: The Harper Firefighters Relief Association offered evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 2,124 with a 2013 Kansas Assessed Tangible Property Report valuation of \$28,179,352.

EXHIBIT 10: The Hesston Firefighters Relief Association offered evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 4,699 with a 2013 Kansas Assessed Tangible Property Report valuation of \$37,730,126.

EXHIBIT 11: The Holyrood Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 598 with a 2013 Kansas Assessed Tangible Property Report valuation of \$8,146,854.

EXHIBIT 12: The Longford Rural Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 1,588 with a 2013 Kansas Assessed Tangible Property Report valuation of \$23,822,812.

EXHIBIT 13: The Lucas Fire District No 2 Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 618 with a 2013 Kansas Assessed Tangible Property Report valuation of \$4,944,986.

EXHIBIT 14: The McPherson County No 3 Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 593 with a 2013 Kansas Assessed Tangible Property Report valuation of \$23,603,207.

EXHIBIT 15: The Olpe Rural Fire District No 1 Firefighters Relief Association offered evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 1,619 with a 2013 Kansas Assessed Tangible Property Report valuation of \$22,058,797.

EXHIBIT 16: The Ottawa Firefighters Relief Association offered evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 12,575 with a 2013 Kansas Assessed Tangible Property Report valuation of \$81,904,721.

EXHIBIT 17: The Parsons Firefighters Relief Association offered evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 10,327 with a 2013 Kansas Assessed Tangible Property Report valuation of \$52,449,663.

EXHIBIT 18: The Rice County No 1 Firefighters Relief Association offered evidence in support of changed circumstances. The July 1, 2013 Kansas Certified

Population revealed 2,695 with a 2013 Kansas Assessed Tangible Property Report valuation of \$107,426,411.

EXHIBIT 19: The Robinson Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 723 with a 2013 Kansas Assessed Tangible Property Report valuation of \$15,470,517.

EXHIBIT 20: The Scammon Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 473 with a 2013 Kansas Assessed Tangible Property Report valuation of \$1,316,022.

EXHIBIT 21: The Sumner County No 11 Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 191 with a 2013 Kansas Assessed Tangible Property Report valuation of \$6,116,622.

EXHIBIT 22: The Victoria Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 1,231 with a 2013 Kansas Assessed Tangible Property Report valuation of \$9,104,752. Research showed a redetermination would decrease their distribution amount.

EXHIBIT 23: The Wakarusa Township Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 2,342 with a 2013 Kansas Assessed Tangible Property Report valuation of \$89,976,031.

EXHIBIT 24: The Woodson County Rural Fire District Firefighters Relief Association did not offer evidence in support of changed circumstances. The July 1, 2013 Kansas Certified Population revealed 1,456 with a 2013 Kansas Assessed Tangible Property Report valuation of \$26,179,347.

The presiding officer therefore makes findings of fact consistent with the above evidence.

Conclusions of Law

As stated in K.S.A. 40-1706(d)(6), 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.

Based upon the evidence 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 2013 and future distributions pursuant to the Firefighters Relief Act, specifically K.S.A. 40-1706(c)(6).

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.

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)(6) and K.A.R. 40-10-16.

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

Determination of Public Policy

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. This formula has been codified in K.A.R. 40-10-16.

The presiding officer determined that it would not be good public policy to redetermine FRAs that would see a decrease in their distribution amount as a result of redetermination.

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

Changed circumstances exist as to all Applicants identified above, with the exceptions of The Butler County No 8 Firefighters Relief Association and The Victoria Firefighters Relief Association, to warrant a redetermination of the proportionate amounts payable to all firefighters relief associations.

The changed 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.

Each firefighters relief association shall receive their 2013 distribution amount calculated in accordance with K.S.A. 40-1706 on or about July, 2014.

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 __22nd__ DAY OF APRIL, 2014, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



_/s/ Sandy Praeger_____

Sandy Praeger

Commissioner of Insurance

BY:

/s/ Zachary J.C. Anshutz_____

Zachary J.C. Anshutz

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 Wine, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
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Certificate of Service

The undersigned hereby certifies that the foregoing Notice of Formal Hearing was deposited in the United States Mail, first-class postage prepaid, on the ___22nd___ day of April 2014, to the following:

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_____/s/ Jana L. Beethe_____
Jana L. Beethe
Legal Assistant