

Date: November 20, 2015

To: 2015 Special Committee on Ethics, Elections and Local Government

From: Larry R. Baer
General Counsel

Re: Dissolution of Cities

Thank you for allowing the League to appear before you today and present information regarding cities and their dissolution. We appear today at the request of Chairman Holmes to assist the Committee in understanding the process that Kansas cities must follow when choosing to unincorporate, or dissolve, and the consequences of dissolution. We will also provide limited discussion regarding types of dissolution used in other states and some of the philosophies that accompany the various dissolution processes.

Dissolution Law: Generally.

Before exploring the Kansas provisions on dissolution, we will address a few general provisions. The act of dissolving or unincorporation of a city is generally referred to as "dissolution." This is an act that is defined as the termination of a political unit of an incorporated municipality, whether city, village, or incorporated town.¹ Because all incorporated municipalities in Kansas are referred to as cities, we will use "city" or "cities" throughout our discussion. There are many historical reasons for city dissolutions, including the decline that follows a budgetary crisis or a depopulation due to industrial or rural abandonment, reform to address corruption and mismanagement, and race in instances ranging from banishment to autonomy to desegregation.²

The ability of cities to dissolve comes directly from state law and/or the state constitution.³ Again, without elaboration, dissolution and dissolution law can be classified into three categories: passive, involuntary and voluntary. Passive and involuntary are solely in the power of the state. Voluntary dissolution requires affirmative action or consent by the city.⁴ Passive dissolution, usually defined as the failure to elect or appoint municipal officers, levy or collect taxes, provide services, or undertake other basic municipal activities, occur by operation of law. Some passive dissolution statutes provide for automatic dissolution when a city's population falls below a specified number of residents.⁵ More will be said about population based dissolutions during the discussion of Kansas law that appears below.

¹ Michelle Wilde Anderson, *Dissolving Cities*, 121 THE YALE LAW JOURNAL 1364, 1367 (2012).

² *Id.* at 1400, 1401.

³ Sandra M. Stevenson, *ANTIEAU ON LOCAL GOVERNMENT LAW, DISSOLUTION OF LOCAL GOVERNMENT ENTITIES* § 2.01-.05 (2d ed. 2010)

⁴ Anderson, *supra*, at 1376.

⁵ *Id.* at 1376.

States with passive dissolution laws include: Alabama, Arkansas, Georgia, Indiana, Iowa, Kentucky, Louisiana, Mississippi Missouri, Montana, Oklahoma, South Carolina, Tennessee, Utah, and West Virginia.⁶

Involuntary dissolutions are rare and, generally, confrontational.⁷ They are state-initiated, applied to populated cities and may override local preference against dissolution. They are not statute based, but, rather, are what are called reserved powers of the state within the particular state's constitution or other statutory authority that would allow the state to terminate its subdivisions.⁸ We do not believe that Kansas has any such reserved powers.

Either a city's residents or its elected officials initiate a voluntary dissolution. Recent research shows that thirty-seven states have some form of statutory voluntary dissolution. These are all locally initiated, locally approved processes.⁹ Most states with passive dissolution statutes also permit voluntary dissolution.¹⁰ Most state laws permitting voluntary dissolutions permit the city's residents to trigger the start of the dissolution proceedings – either by the petition for an election on the question or by the request for a study on the impacts of dissolution.¹¹

While the initiation process for voluntary dissolution is fairly standard from one state to the next, the method of approval does vary. In some states the petition for dissolution, itself, is the mechanism of approval without further election or legislative action. In these states it usually takes a significantly larger number of signatures on the petition than for a simple call of the electorate – Alabama requires three-fourths of the qualified electors in the city to sign the petition, while two-thirds are required in Arizona and Missouri.¹² Most commonly, voluntary dissolutions must be approved by the electors at a general or special election (see discussion on Kansas process below) whether initiated by petition or the elected officials.¹³ A few states require approval by either a state board, a local boundary commission, the legislature or a state court.¹⁴

Very few states require giving the county any notice of a pending dissolution proceeding. Even fewer states give counties any right to influence the outcome of a proposed dissolution.¹⁵

Other than those states that have some population determinant upon a city's eligibility for dissolution, whether under a voluntary process or by operation of law (involuntary process), states have done little or nothing to establish other factors to be considered – financial conditions, service needs,

⁶ *Id.* at Note 33.

⁷ *Id.* at 1377.

⁸ *Id.* at 1377.

⁹ *Id.* at 1377.

¹⁰ *Id.*, see notes 35 and 36.

¹¹ See generally, Stevenson, *supra* note 3, § 2.03 (summarizing dissolution law).

¹² Anderson, *supra*, see notes 38 and 39.

¹³ *Id.* see note 40.

¹⁴ *Id.* at 1378, 1379.

¹⁵ *Id.* see note 43.

administrative capacity, spatial characteristics, etc. – when looking at dissolution.¹⁶ Two exceptions appear to be California and Florida. Florida has statutory limitations and California has guidelines to be followed by its regional boundary commissions.¹⁷

As a general rule a dissolving city cannot pass its existing debt onto the entire county or unincorporated area.¹⁸ Thus, states with voluntary dissolution laws most often, by statute, grant the lowest level of government (either the county or township) the power to levy taxes to pay the debt. More often than not, the provisions to levy taxes to pay off the debts of the dissolved city specify that only the territory within the geographical limits of the extinct entity may be taxed to provide funds to pay off the dissolved city's indebtedness.¹⁹

Dissolution Law: Kansas.

Kansas law addressing dissolution is found in K.S.A. 15-111 and K.S.A. 2014 Supp. 15-111a.²⁰ A copy of these statutes are attached for your information and reference. K.S.A. 15-111 was adopted by the Kansas Legislature in 1872, codified in 1923, and has not been changed since.

We will look at and analyze K.S.A. 15-111 in the same manner as we discussed general dissolution law above.

K.S.A. 15-111 grants to all electors in cities of the third class the authority to vote on the status of the city. As you read further in 15-111 you will note that the "status" is to dissolve the city or to remain a city under state law. Thus, Kansas has directly granted cities of the third class the authority to dissolve.

Dissolution under the Kansas statute is strictly voluntary. The process is initiated by a "... petition of a majority of legal voters ...". K.S.A. 15-111 then directs that it is the duty of the city council to order an election on the issue within 10 days of the filing of the petition. This is to be an election decided by a majority of the electors voting on either to remain a city or to dissolve the city. Kansas is with the majority of states as a voluntary dissolution state.

Kansas does not provide an alternative means (other than the very narrowly drawn K.S.A. 15-111a) to dissolve a city. There are no provisions for the governing body to request dissolution nor can it be done by state action either involuntarily or by a passive process.

¹⁶ *Id.* at 1380. See also *id.* notes 47, 48 and 49.

¹⁷ *Id.* see notes 45 and 46.

¹⁸ U.S. Const. art I, §10, cl. 1 ("No state shall ... pass any ... Law impairing the Obligation of Contracts ... ") *Mobile v. Watson*, 116 U.S. 289 (1886); *Town of Mt. Pleasant v. Beckwith*, 100 U.S. 514 (1879); *Green v. City of Asheville*, 154 S.E. 852 (N.C. 1930); accord *Gomillion v. Lightfoot*, 364 U.S. 339, 344 (1960) ("[T]his Court [has] refused to allow a State to abolish a municipality ... without preserving to the creditors of the old city some effective recourse for the collection of debts owed them.") *Broughton v. Pensacola*, 93 U.S. 266 (1876).

¹⁹ *Anderson, supra*, at 1381, 1382. Also see *Supra.* notes 57:61.

²⁰ K.S.A. 2014 Supp. 15-111a was added in 2012 to address the need to dissolve the City of Treece following the buyout and relocation of its residents by the EPA. The buyout and resulting relocation of residents left Treece without an adequate number of residents to fulfill the petition requirements for dissolution under K.S.A. 15-111. Thus, special legislation was required.

The approval of the dissolution process is vested in the electors. If a two-thirds majority of the legal votes are "against the city", then the city shall cease to exist. If the vote is less than this number, then the city continues to remain a city.

Like the majority of states with voluntary dissolution, Kansas does not require that the city give any notice to the county or township where located. Likewise, there is no authority for either the county or township to try to block the dissolution.

Kansas, like most other states, has no constraints or requirements that must be met before dissolution can be considered, other than it must be a city of the third-class. The only requirement is that a valid petition be filed (must contain the names of a majority of the legal voters in the city), that the city council order an election, and that a two-thirds majority of the voters support dissolution.

K.S.A. 15-111 is very clear as to what occurs if the dissolving city has any outstanding debt. It provides, in part, "... if there be any debts unpaid of such city at the time it ceased to exist under the provisions of this act, then the township trustee shall, at the next annual levy of taxes, provide for a levy on the property within the limits of such city, sufficient to pay such debt according to its terms ...". The taxes are to be levied in the same manner as township taxes. Basically, K.S.A. 15-111 establishes a special taxing district within the township that covers the territory originally occupied by the dissolved city. The residents within that area are continued to be taxed until such time as the "city's debt" has been discharged. This is very consistent with what a majority of states do.

Lastly, 15-111 provides for the governance of the territory following the dissolution of the city. Once the city ceases to exist, "... the territory embraced within the city limits shall thenceforth be a part of the township in which said city was located, and governed in every respect under the general township laws" The former territory that was once the city then becomes a part of its original township and is a part of the unincorporated area of the county. The statute also provides that the records of the city are to be delivered to the township trustee.

Admittedly, there are some questions that can arise in the application of K.S.A. 15-111. Fortunately these have been well addressed in Attorney General Opinion No. 2001-50.²¹ The synopsis of the opinion follows²². It serves as both a good summary of the Kansas dissolution act and as answers to questions that are left after reading K.S.A. 15-111.

A petition seeking to bring before the electorate a question regarding the dissolution of a city of the third class pursuant to K.S.A. 15-111 must comply with the provisions of K.S.A. 25-3601 *et seq.*, except to the extent that K.S.A. 15-111 imposes specific requirements that conflict with those requirements set forth in K.S.A. 25-3601 *et seq.* Such a petition is to be filed with the county election officer of the county in which the city is located and must include signatures equal in number to not less than a majority of the latest voter registration certified by the county election officer to the Secretary of State. The election at which a question regarding the

²¹ AGO No. 2001-50 was issued November 26, 2001 by then Attorney General Carla Stovall at the request of Linn County Counselor, Gary E. Thompson.

²² The full opinion is available at <http://ksag.washburnlaw.edu/opinions/2001/2001-050.htm>.

status of a city of the third class is submitted to the electorate pursuant to K.S.A. 15-111 and 25-3601 *et seq.* is to be held at the next succeeding primary or general election, as defined by K.S.A. 25-2502, in which the city is participating. The provisions in Chapter 25 of the Kansas Statutes Annotated are to be followed when conducting such an election, however the obligation to count ballots cast in the election is placed upon the city council.²³

Comments and Observations.

The above information has been presented in a factual and generic manner to assist the reader in understanding the dissolution concepts and procedures. What follows are our observations on the subject and potential impact on Kansas cities.

Observation 1: We believe that it is fair to say that dissolution of Kansas cities, or the consideration of the act, is principally premised on the “decline theory” mentioned above. This may be simply the loss of population that many rural areas are experiencing. But, it may also be manifested in loss of interest in running for and holding elected public office.

Both loss of population and reduced interest in holding public office in the City of Frederick, in Rice County, appear to be at the heart of the reason for the Chairman to have requested information on the Kansas dissolution process. As reported in the media, no one ran for any elected office in Frederick at the last general election and there were no write in votes. We have talked with the former city clerk and are attempting to piece together information regarding the history of prior elections and office holders. Until that information is complete, we can only speculate as to the current status of the city’s governing body.

We will point out that K.S.A. 15-201 provides, in part “The mayor and council members shall hold their offices for two years and until their successors are elected and qualified.” In other words, even though no one ran for office, all current office holders would retain their positions. This assumes that the past elected officials continued to be qualified electors of the city or had not resigned their positions.

Comment 1: It may be possible for the City of Frederick or any other city in a similar situation to conduct a dissolution process under current state law. This assumes that a quorum of the council can be assembled using the “hold over provisions” contained in K.S.A. 15-201.

Observation 2: Some states with a voluntary dissolution process similar to Kansas provide that the citizen petition is filed with someone other than the city council such as the district court or the county clerk. The office in which the petition is filed is then charged, by statute, to conduct a hearing and/or election to approve the dissolution.

Comment 2: This approach does address the situation where there is a question of whether or not there is a duly constituted city council.

²³ Attorney General Opinion No. 2001-50, Synopsis, (November 26, 2001).

Observation 3: Kansas has a pure voluntary dissolution process. Many states have both a voluntary process and a passive process. As discussed above, a passive process often occurs by operation of law and can be dependent upon the failure of the city to do something for a specified number of years, such as elect officers, levy and collect taxes or the like. Some passive systems provide for the automatic dissolution of a city if the population drops below a specified number.

Comment 3: The passive process certainly addresses the “what if” situation where there appears to be no local government to address the city’s needs. However, it appears to us that this can bring about harsh results where there is no opportunity for resident input. Kansas is a local control state and, as such, the decision to dissolve or remain a city should be determined by the local voters and not a “one size fits all” piece of legislation.

Population constraints, whether as a threshold for initiating a voluntary procedure or for triggering some type of passive automatic process for dissolution when a certain population is reached are problematic in Kansas. There are 626 cities in Kansas. Of these, 107 have a population under 100 and 102 have a population between 100 and 199²⁴. Thus, drawing a line to say at “X” population that a city ceases to exist could arbitrarily eliminate many small, but vibrant cities. We hear daily from very small cities that are functioning well, given the restraints that they may have because of limited finances and persons to hold offices. Thus, population probably should not be a sole determinant.

In conclusion, our brief examination of the subject shows that there are many ways to approach the issue of dissolution of cities. We believe that it is fair to say that no one of them is perfect. The system that Kansas has in place has served us since 1872 and is similar to what a majority of the other states have in place. While it may be advisable to study the Kansas system and, perhaps, augment it with some type of backstop system, such as permitting the filing of the resident’s petition with the county clerk, this should be done with an eye on the fact that Kansas is a strong local control state and local voters should be in charge of their fate. We do not believe that it would be in the best interest of the cities of Kansas to shift the power of dissolution from local government to either the counties or the Legislature.

Thank you. I will stand for questions at the appropriate time.

²⁴ U.S. Bureau of Census estimates as of July 1, 2015 and certified to the Kansas Secretary of State by the Division of Budget on July 1, 2015.

15-111. Election to determine status of city; city as part of township; payment of debts. On the petition of a majority of the legal voters of any town or village which became a city of the third class or may hereafter become a city of the third class by virtue of section one [*] of the act to which this section is supplementary, it shall be the duty of the council of such city, within ten days after the filing of such petition, to order an election by the legal voters of such city, to determine whether such city shall remain a city under the provisions of the act to which this is amendatory, or be dissolved as a corporate body, and remitted to the conditions of being part of the township in which such city shall be.

The election shall be conducted like other elections, and the ballots shall have written or printed thereon: "For a city," or "Against a city," and within three days after the election said ballots shall be counted by the city council, and the result recorded; and if a two-thirds majority of the legal votes shall be against the city, then the city shall thenceforth cease to exist, and the territory embraced within the city limits shall thenceforth be a part of the township in which said city was located, and governed in every respect under the general township laws; and the records of such city shall be delivered to the township clerk, and if there be any debts unpaid of such city at the time it ceased to exist under the provisions of this act, then the township trustee shall, at the next annual levy of taxes, provide for a levy on the property within the limits of such city, sufficient to pay such debt according to its terms in the same manner as taxes are now levied for township purposes.

History: L. 1872, ch. 102, § 4; March 6; R.S. 1923, § 15-111.

* "Section 1 of the act to which this section is supplementary" evidently refers to L. 1871, ch. 60, § 1, which is, as amended, 15-101.

15-111a. Dissolution of certain cities. Any city who has received public moneys in 2010 or 2011 from the United States environmental protection agency through the Kansas department of health and environment relating to the buyout and relocation of its residents and such residents have been relocated is hereby dissolved as a corporate body.

History: L. 2012, ch. 36, § 1; Apr. 5.