

STAGE 1: Identification of Available Options for Providing Public Improvements and Services to Residents of Blue Township

I. SUMMARY:

This paper identifies the means Kansas law provides whereby residents of developed and developing areas of Blue Township can be provided with the public services and public improvements they need and they want without the costs of those services and improvements necessarily being borne by the taxpayers at-large of Pottawatomie County.

Some of the options identified authorize the BOCC to initiate and govern the exercise of the option (*e.g.*, revisions to land use regulations, sewer districts). Most however require initiation by others (*e.g.*, a petition for incorporation, establishment of an improvement district, the Township, annexation or formation of a benefit district). Some options require the approval by the BOCC followed by governance by another governmental entity (*e.g.*, incorporation, improvement district), what is referred to in this paper as a transfer of “governance”.

It should be noted that in even those instances where state law says the option involves a transfer of governance from the BOCC it is still possible, by creative exercise of the County’s Home Rule powers, and/or the Interlocal Cooperation Act (K.S.A. 12-2901 *et seq.*), for the BOCC to retain meaningful ongoing involvement in how that option is carried out.

II. DEFINITIONS:

While self-explanatory, the following two terms are defined here to try to ensure a clear understanding of the objectives and parameters of this paper.

Governance. Simply stated, this is “who governs” with respect to specified governmental functions. Here the function is regulation of land use, growth and development. With respect to land within Blue Township governance today is by the BOCC, the elected governing body of Pottawatomie County. As noted in the options below, some of them involve the transfer of governance from the BOCC to another public or quasi-public entity.

Internalizing costs. Currently at least some of the public’s cost of providing public services and public improvements to persons and property in Blue Township are borne by county taxpayers at-large. It is the principal objective of this paper to identify means whereby some of such public costs can be fairly placed upon those who benefit directly from them. This is “internalizing” those costs, taking them from county taxpayers at-large and placing them on properties in Blue Township, or portions therein.

III. OPTIONS:

A. Incorporation

Summary. In terms of internalizing costs of public improvements, and shifting governance away from the BOCC, incorporation is clearly the most consequential option. However, as explained below, it is not in the BOCC's power to initiate incorporation.

As for how incorporation shifts tax burdens from the County at-large to the taxpayers in the incorporated area, the BOCC need look no further than the cost of services it provides to residents within Westmoreland or Wamego or any other city in the County.

1. The procedure set out in state statute for incorporation of a city is relatively simple: the territory to be incorporated must have at least 250 persons, and a petition signed by at least 50 of those people must be submitted to and approved by the BOCC.
2. The law does not compel the BOCC to approve a sufficient petition, nor does it provide a means to force a public referendum. Whether to approve incorporation is wholly and solely the decision of the BOCC.
3. State law is found at K.S.A. 15-115 *et seq.* There are a number of petition requirements, *e.g.*, data on assessed valuation of platted and unplatted land, and the value of personal property in the area. It appears that submitting a sufficient petition does compel the BOCC to hold a public hearing on the issue. K.S.A. 15-117:123.
4. The BOCC is to consider a number of factors when determining the advisability of incorporation, *e.g.*, population size and density, extent of nonresidential development. K.S.A. 15-121.
5. State law provides some special requirements when incorporation is within 5 miles of a city, which is the case for much of developed Blue Township. The BOCC has to approve such an incorporation by unanimous vote, and must consider an additional six factors, *e.g.*, a city's willingness to annex the territory included in the petition. K.S.A. 15-121.
6. Following incorporation the BOCC would likely deed to the new city public roads and bridges, as well as open space/parks, all to be the responsibility of the new city and its taxpayers.
7. Likewise the new city would either create and fund a police department and fire department, or provide for such via services contract with the BOCC, Manhattan, etc. Of course the Pottawatomie County Sheriff would continue to provide some law enforcement services, just as it does for Wamego and other cities.

8. As the new city grows that new growth likely will result in additional demands upon programs and facilities the County now provides, and for which County taxpayers provide the funding – this would include, for example, recreation programs, libraries, community centers, etc., as well as wear-and-tear on County roads and bridges.

B. Annexation

Summary. If any portion of the developed or developing area of Blue Township were to be annexed, such would occur only if: (a) the area was annexed at the request of, or with consent given by, property owners to the annexing city (K.S.A. 12-520c or K.S.A. 12-520(a)(7)); (b) the area met criteria for unilateral annexation without owner consent (K.S.A. 12-520(a)(1)-(6)); or (c) the area could only be annexed with the approval of the BOCC (K.S.A. 12-521).

The important points for BOCC consideration are:

- The BOCC cannot initiate any annexation of any property. Only the landowners or an annexing city can do so.
 - While an annexed area obviously remains part of the County, and remains in its tax base, and remains subject to County laws, etc., governance does shift, in large part, from the BOCC to the elected governing body of the annexing city.
 - Some, likely most, of the costs associated with growth and development within the area annexed shifts from the County to the annexing city. The extent to which future costs of city-provided public services, improvements, etc. are borne by the annexing city at-large or by the properties benefitting from those improvements and services is a matter of policy for the annexing city, not the BOCC.
 - The County would continue to bear at least some costs associated with both existing and future development, *e.g.*, law enforcement and maintenance of any streets, bridges, etc. that it retains ownership of following annexation.
1. State annexation law provides three procedures for annexing: (a) unilateral authority where the city annexes without the landowner's consent (K.S.A. 12-520(a)(1)-(6)); (b) by petition by a landowner, either of adjoining land (K.S.A. 12-520(a)(7)) or non-adjoining land (K.S.A. 12-520c); or (c) by approval of a BOCC (K.S.A. 12-521).
 2. Some of the platted residential land in Blue Township is relatively close to the city limits of Manhattan, making it conceivable for Manhattan to annex unilaterally, whether with or without landowner consent, and at least initially, without involvement by the BOCC. Through serial annexations Manhattan could annex a

significant part of developed Blue Township should it choose to do so. Given the economics of serving low-density residential areas, annexation of any portion of Blue Township seems unlikely at this time.

3. While an annexing city could request BOCC approval via K.S.A. 12-520c or K.S.A. 12-521, such seems very unlikely and will not be discussed further at this time, other than to note that while state law sets out factors for a BOCC to consider in taking action on an annexation request brought under either of these statutes, it is still largely a matter of the BOCC's judgment as to whether approval is appropriate.
4. Once annexed, decisions as to the types and levels of public services and improvements would be in the hands of the annexing city, and subject to what the city has set out in the service extension plans required by state law in cases of non-consented-to annexations.
5. Once annexed, land in Blue Township becomes part of the annexing city's tax base, but it remains in Pottawatomie County's tax base as well. Just as described above for incorporation, certain public service costs would pass from the County to the taxpayers of the city at-large or of the annexed land, *e.g.*, law enforcement, parks and recreation, libraries. The County could either retain the streets, bridges and other public property it holds title to, or offer to deed such property (and the responsibility for maintaining it) to the annexing city.

C. Improvement Districts

Summary. These special units of government can be an effective way to internalize the cost of certain public improvements and services to defined areas within Blue Township, shifting the property tax burden (to some extent) from the County at-large to those properties needing, and wanting, improvements and services more commonly seen in urban areas. Improvement districts require a petition to be brought to the BOCC. The BOCC cannot initiate their establishment.

1. Improvement districts are considered quasi-municipal corporations. As such they can exercise only those powers expressly provided by statute or clearly implied from those express powers. They are formed under K.S.A. 19-2753 *et seq.* to perform municipal-type services.
2. They are incorporated by a submission of a sufficient petition to the BOCC and favorable action on that petition by the BOCC. To be sufficient the petition must be signed by either (a) a majority of the taxpayers of real property in the proposed district who reside within its proposed boundaries, or (b) the owners of all real property in the proposed district, regardless of residency (K.S.A. 19-2755).
3. Once a sufficient petition is filed the BOCC has to hold a public hearing, and is to consider a number of factors, including population density, likelihood of population growth, proximity to existing cities, the present cost and adequacy of "governmental

services and controls in the area”, and the need for public improvements (K.S.A. 19-2755). These factors all pertain to the “advisability” of incorporating the district, and are quite similar to the statutory factors the BOCC is to consider in cases of incorporation of cities.

4. Following the hearing the BOCC is to make its finding as to whether the proposed district would be in the best interest of the County.
5. Other statutes cover the expansion and consolidation of improvement districts (K.S.A. 19-2782 *et seq.* and K.S.A. 19-2786a *et seq.*), the incorporation of an existing drainage district as an improvement district (K.S.A. 19-2786), and the dissolution of an improvement district (K.S.A. 19-2786g).
6. State law also provides procedures for detaching land from a district (K.S.A. 19-2786j).
7. If a district is incorporated by the BOCC with fewer than 100 qualified resident electors the BOCC is to appoint an interim board of directors of three property owners. The board serves until there are at least 100 qualified electors, at which time an election is called by the BOCC. If there are 100 or more qualified electors residing within the district at the time it is established the BOCC calls an election, at which three directors are to be elected. Only taxpayers or residents of the district may vote or be directors (K.S.A. 19-2758 and 19-2760).
8. Powers of an improvement district: Districts can construct “public works or improvements” which A.G. Opinions have said include street lighting, fire hydrants and public recreation facilities. Districts can buy, sell or hold real and personal property, exercise eminent domain, sue and be sued, and make contracts. They can abate nuisances, remove weeds, adopt animal control regulations and adopt resolutions to preserve peace and order, all among other listed powers (K.S.A. 19-2765).
9. Districts can levy an annual property tax of up to five mills, with a sixth mill possible subject to a 10% protest petition.
10. Districts can issue general obligation bonds in an amount not to exceed 25% of its assessed valuation, levy special assessments and issue revenue bonds (K.S.A. 19-2765, 19-2770, 19-2776:2777).
11. County attorneys have authority to prosecute violations of district resolutions (A.G. Opinion 1990-55).
12. Property within an improvement district remains part of the County’s tax base. All countywide mill levies are unaffected by establishment of a district.

13. There are several dozen improvement districts in Kansas, none in Pottawatomie County.

D. Township

Summary. The option of having Blue Township provide as many services and public improvements as possible is another way to internalize the costs of growth and development, although real property in areas of Blue Township which are not likely to see development would nonetheless have to bear part of the burden of public cost.

This option does change the current governance, at least to a degree. Some functions now provided by the County would transition over to the Township Board.

Importantly, none of the following can be mandated by the BOCC to be undertaken by the Township.

1. K.S.A. 80-101 labels townships as “a body politic and corporate,” with the power to sue and be sued, and to make contracts necessary for the exercise of its corporate powers.
2. Townships do not have Home Rule powers, they have only those powers expressly granted to them by statute.
3. Townships may acquire land of less than 10 acres without a vote (K.S.A. 80-104b). They can adopt building, electrical and plumbing codes according to the Attorney General (A.G.O. No. 2017-1).
4. Townships in counties not having the county unit road system (e.g., Riley and Shawnee) typically have road and street construction and maintenance as their primary function. Pottawatomie County does have the county unit road system, so Blue Township has as its principal legal authority the following:
 - Establish emergency medical services (K.S.A. 65-6112) and ambulance services (K.S.A. 80-1557).
 - Create cemetery districts (K.S.A. 17-1342 *et seq.* and K.S.A. 15-1013 *et seq.*).
 - Create fire districts or provide firefighting services (K.S.A. 80-1501 *et seq.*).
 - Establish libraries or library districts (K.S.A. 12-1218 *et seq.* and 12-1236 *et seq.*).
 - Construct drainage works (K.S.A. 24-201 *et seq.* and 24-701 *et seq.*).
 - Provide parks or cemeteries and care for abandoned cemeteries (K.S.A. 80-905 *et seq.* and 80-916).

- Establish recreational facilities (K.S.A. 80-939).
 - Construct sidewalks (K.S.A. 68-131 *et seq.*).
 - Control noxious weeds (K.S.A. 2-1314 *et seq.*).
5. A township finances its activities via taxes on property within its jurisdiction. Some statutes authorizing township action will specifically provide for a levy, and levy limits.

E. Special Districts

Summary. The County is experienced in the creation of special benefit districts and likely will draw upon that experience in weighing this option against others. Some of these districts can be created only by the BOCC, others can be created by either the BOCC or a township, as noted in D. above.

1. The more common special districts are sewer districts, of which the County already has three (K.S.A. 19-27a01 *et seq.*), road districts (K.S.A. 19-270); recreation districts (K.S.A. 19-117 and 19-101a); library districts (K.S.A. 12-1236 *et seq.*); fire districts, of which the County has nine (K.S.A. 19-3601 *et seq.*); and drainage districts, of which the County has two (K.S.A. 24-401 *et seq.* and K.S.A. 24-458).
2. Special districts are financed via property taxes levied on land within the districts.

F. Benefit Districts

Summary. An important tool Kansas cities have had to internalize costs of various public improvements to those properties benefitting from the improvements is K.S.A. 12-6a01 *et seq.* – The General Improvement and Assessment Law. As explained below the BOCC can exercise its Home Rule power to pass its own version of K.S.A. 12-6a01 *et seq.*, or its own version of special legislation Sedgwick County enjoys by which it essentially does what cities can do – K.S.A. 19-27,181 *et seq.*

By having its own Home Rule benefit district law the BOCC would have a customized, flexible tool by which it could limit the cost of public improvements to those properties which benefit from those improvements, and do so without giving up any of its existing governance over areas of Blue Township, as it would if the incorporation, annexation or improvement district options were taken.

1. A Pottawatomie County General Improvement and Assessment Law, modeled after (a) K.S.A. 12-6a; (b) the Sedgwick County special legislation; or (c) the sewer benefit district law at K.S.A. 19-27a01 *et seq.*, would provide a means whereby citizens could petition the BOCC for new or improved public improvements, to be financed

via special assessments placed upon their own property. The BOCC could, at its discretion and subject to any policy it adopts, have the County at-large contribute to the cost of the public improvement financed by the benefit district by any amount between 1% and 95% of the cost (if the BOCC followed K.S.A. 12-6a as its model). Of course, any decision by the BOCC to proceed with a requested public improvement is discretionary, even if the petition is sufficient.

2. Both state law “models” authorize a broad range of public improvements, including, under 12-6a: opening, widening and extending streets; curbs, gutters, sidewalks; drainage works; stormwater drains; sanitary sewer systems; street lights; waterworks; parks, playgrounds and recreational facilities; landscaping; flood control works, lift stations and bridges; and retaining walls (K.S.A. 12-6a02). The law allows multiple improvement projects to be combined within a single benefit district (K.S.A. 12-6a03).
3. While a Home Rule benefit district could authorize the BOCC to create a district and levy assessments without a petition first being brought, it is assumed that would not be a desired course of action so the following will assume initiation of the process via a petition.
4. The County’s law would not only define what a public improvement is, it would establish assessment method(s) which will meet the legal standard of imposing substantially equal shares of cost upon property which is similarly benefitted. Commonly used assessment methods include foot frontage, square footage, and value. The 12-6a law allows for any reasonable assessment plan.
5. If a BOCC-passed benefit district law tracked either the 12-6a or Sedgwick County law, the procedure would generally be as follows:
 - a. A sufficient petition (*e.g.*, a majority of the resident owners of property liable for assessments, or the owners of record (resident or not) of a majority of such property) is presented to the County Clerk.
 - b. The petition would state the proposed improvement, its estimated cost, the proposed area of the benefit district, the proposed method of assessment, and the proposed apportionment of the cost between the benefitted properties and the County at-large.
 - c. The BOCC would hold a public hearing on the advisability of the public improvement, then pass a resolution setting out its findings and determinations and authorizing the improvement.
 - d. The improvement work is performed, with a determination of total costs.
 - e. Costs are apportioned and filed with the County Clerk.

- f. The BOCC meets to give notice of a public meeting for comment on the proposed assessments, followed by mailed notice to owners liable for the assessments.
 - g. The BOCC would then hold a public hearing to consider the proposed assessments, followed by adoption of a resolution levying the assessments, and financing of the improvement via temporary notes and g.o. bonds.
6. Property owners assessed are typically given the choice of paying their assessments up front or via special assessments placed on their property tax statements for a period of up to 20 years.
 7. The BOCC can use its Home Rule power to enact a law modeled after the two state laws mentioned above. The BOCC, in such exercise, can supplement or substitute its own procedures, subject to legal standards of reasonableness and due process. As noted above this approach has the benefit of having the County engaged in public improvements which citizens petition for, and by definition are willing to pay for (some, most, or all) via assessments imposed upon their property. This is the epitome of internalizing the cost of public improvements, and doing so at the initiative of those who want the improvements and are willing to pay for them, and doing so without transferring any BOCC governance to another unit of government or quasi-municipal corporation.

G. County Zoning and Subdivision Regulations

Summary. This option involves no change in governance. It internalizes the cost of development only to the extent of new development or redevelopment, but can be an effective means of ensuring that BOCC-approved subdivisions have streets, sidewalks, stormwater and other public improvements paid for either solely, or largely, by either the subdivider or the owners of the platted lots.

1. The County's current zoning and subdivision regulations are well-drafted. However the subdivision regulations make liberal opportunity for exceptions from the more significant provisions relating to when public improvements are required, as well as the standards for those improvements.
2. Examples of amendments to the zoning regulations include:
 - Increasing minimum lot sizes, if less density is desired.
 - Limiting lot sizes in certain residential zoning districts, if greater density is desired.
 - Increasing or decreasing maximum lot coverage areas, depending on the desired effect.

3. Examples of zoning map amendments include:

- Rezoning some areas now zoned residential to agricultural or other non-residential use.
- Creating new residential zoning districts designed to promote either greater or lesser density (depending upon the desired effect) followed by map amendments rezoning properties to the newly-created zoning districts.

4. Examples of amendments to the subdivision regulations include:

- More stringent requirements for public improvements which a subdivision must meet, e.g., must take access from a hard-surfaced public road.
- Parkland or open space land dedications, or payments in lieu of dedications, as a condition of plat approval.
- Imposition of development impact fees.
- Increased plat fees.