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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>RURAL WATER DISTRICT NO. 4,</b>	)	
<b>DOUGLAS COUNTY, KANSAS</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 07-2463-JAR</b>
	)	
<b>CITY OF EUDORA, KANSAS,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**MEMORANDUM AND ORDER**

Before the court is Rural Water District No. 4’s (“Rural”) Renewed Motion to Strike the Testimony of Lee H. Tetwiler (Doc. 252). The issue is fully briefed and the Court is ready to rule. For the same reasons outlined in the Court’s March 3, 2009, Memorandum and Order (Doc. 256) granting defendant City of Eudora’s (“Eudora”) Motion to Exclude the Testimony Ray L. Connell (Doc. 148), Rural’s Motion is granted.

In its prior Memorandum and Order, the Court excluded the expert testimony of Connell on the basis that Connell intended to testify regarding the applicable law. Connell’s proposed testimony was that K.S.A. § 12-527 is mandatory and therefore, the City had to act when it annexed certain portions of the Rural’s territory. In that Memorandum and Order, the Court stated: “The Tenth Circuit has provided that ‘while expert witnesses may testify as to the ultimate matter at issue . . . this refers to testimony on ultimate facts: testimony on ultimate questions of law, i.e., legal opinions or conclusions, is not favored.’”<sup>1</sup>

In this case, Tetwiler merely intends to testify regarding the nature of the same statute, §

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<sup>1</sup>(Doc. 256) (citing *Anderson v. Suiters*, 499 F.3d 1228, 1237 (10th Cir. 2007) (citing *Specht v. Jensen*, 853 F.2d 805, 808 (10th Cir. 1998))).

12-527. But instead, he claims that the statute is directory. Again, this is testimony on the applicable law, an area reserved to the Court and on which it must advise the jury. In any event, the Court has already construed the nature of § 12-527 in its prior Memorandum and Order. Accordingly, for the same reasons in the Court's Memorandum and Order granting Eudora's motion to exclude the testimony of Connell, Tetwiler's testimony is also excluded.

**IT IS THEREFORE ORDERED THAT** Plaintiff's Renewed Motion to Strike the Testimony of Lee H. Tetwiler (Doc. 252) is granted.

**IT IS SO ORDERED.**

Dated: March 12, 2009

S/ Julie A. Robinson  
JULIE A. ROBINSON  
UNITED STATES DISTRICT JUDGE