FILE

Subject Waters
Rural Water District

Copy to

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

February 14, 1974

Opinion No. 74- 55

Clark M. Fleming
Attorney for Rural Water
District #4, Neosho County
Legal Building
Erie, Kansas 66733

Dear Mr. Fleming:

You advise that on December 6, 1971, pursuant to the authority of K.S.A. 82a-622, there was attached to Rural Water District No. 4, Labette-Neosho counties, an additional 130 sections of land with approximately 240 users. Thereafter, it was determined that Rural Water District No. 4 could not serve the new area without requiring of the new users a higher water rate than that which was being paid by the old users.

The question arises concerning detachment of the new area from the District. Because of the probably divided views of landowners in that area, less than one hundred percent of the owners will petition for detachment, resulting in very irregular boundary lines remaining after release, and perhaps isolated sections standing alone remaining attached to the district.

You question whether there is any acceptable alternative method of removing a large area from a rural water district. Our own research discloses no alternative procedure other than you have already discussed.

You inquire, secondly, whether a new rural water district may be created by petition by fifty-one percent of the owners in the area involved, in effect superimposing a new district upon territory already incorporated and remaining within District No. 4. In the organization of a district, the petition therefor must define by metes and bounds the boundaries of the proposed district. K.S.A. 82a-619. If the petition is found in order, the board of county commissioners "shall thereupon immediately declare the district within the boundaries defined in the petition

to constitute a quasi-municipal corporation . . . ." At 56 Am.Jur.2d, Municipal Corporations, § 40, the writer states thus:

> "While the general rule is that there cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction, and privileges, this inhibition does not prevent the formation of two municipal corporations coextensive in area for different purposes. In other words, the legislature may, for one purpose, create a municipal corporation embracing territory situated wholly or partly within the boundaries of another municipal corporation already organized for another purpose." [Footnotes omitted.]

In City of Aurora v. Aurora Sanitation District, 149 P.2d 662 (Colo. 1944), the court stated thus:

> "'There cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdictions and privileges.' 1 Dillon Mun. Corp., 4th Ed., § 184. This proposition is fundamental and is not questioned . . . . . This rule does not rest upon any theory of constitutional limitation, but upon the practical consideration that intolerable confusion instead of good government, almost inevitably would attain in a territory in which two municipal corporations of like kind and powers attempted to function coincidentally. . . . It is to be observed that the inhibition is limited to a situation where the jurisdiction, powers and privileges conferred on the conflicting governmental agencies are substantially coextensive in scope and objective." 149 P.2d at 664.

This general rule against conflict in municipal authority is squarely applicable here. In our view, the creation of another water district superimposed over a portion of the territory presently included within an existing district and not released therefrom, is prohibited.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:jsm