



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 30, 1975

Opinion No. 75-~~237~~

Mr. John T. Reid
City Attorney of Sedgwick
127 East Seventh Street
Newton, Kansas 67114

Dear Mr. Reid:

As City Attorney for the City of Sedgwick, you advise that you have been asked to determine the sufficiency of certain improvement petitions which have been filed pursuant to K.S.A. 1974 Supp. 12-6a04. Subsection (2)(f) provides in pertinent part thus:

"Such petitions may be found sufficient if signed by either (i) *a majority of the resident owners of record of property liable for assessment under the proposal*, or (ii) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (iii) the owners of record (whether resident or not) of more than one-half of the area liable to be assessed under the proposal." [Emphasis supplied.]

You inquire, first, whether if title to the property is held by a husband and wife the signature of one of them is sufficient, and secondly, if title to property is held by a husband and wife, are both counted in determining whether a majority of owners of record have signed the petition.

The general questions you pose are discussed in an annotation at 3 A.L.R.2d 127 at 132. By the substantial weight of authority, under statutes requiring the signature of owners of a majority of the land in question, the signature of one cotenant or joint owner is not sufficient to bring the property on the side of the improvement unless the petition itself shows the cotenant was

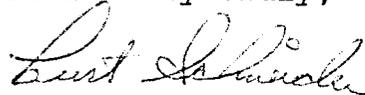
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authorized to sign for the other cotenants or joint owners. This rule appears to be predicated, at least in part, on the theory that ownership of the property among joint tenants is undivided, and that no one cotenant has a separate and undivided interest which entitles him to commit the entire property in favor of an improvement over the objection or without the authority of a cotenant.

Where, however, the sufficiency is to be determined not according to the owners of a majority of the land, but the majority in number of the owners, the Missouri courts have taken the view that where title to land is held by husband and wife as tenants by entirety, each is an owner of the land in contemplation of the statute, and that each must be counted as owners in determining the legal sufficiency of a remonstrance petition. See, e.g., *Blackwell v. Lee's Summit*, 326 Mo. 491, 32 S.W.2d 63 (1930) and *Kitchen v. Clinton*, 320 Mo. 569, 8 S.W. 602 (1928).

Where, under the Kansas statutes, the sufficiency of a petition is to be determined according to whether the owner of a majority of the land involved have signed, it is our view that when one cotenant signs and the other does not, that the signature of only one cotenant on a petition which does not indicate his authority to act for the other cotenants, does not entitle that land to be included on the side of the improvement. When, however, the sufficiency of the petition is to be determined according to whether a majority in number of the owners have signed, we believe the view would be followed in Kansas that the signature of one cotenant may be counted as an owner in favor of the improvement, notwithstanding another cotenant does not sign the petition, for each is indeed an owner of record. However, in determining the total number of record owners against which a majority is to be determined, it is our view that all record owners, including cotenants such as husband and wife holding property jointly, must be counted.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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