



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 16, 1976

ATTORNEY GENERAL OPINION NO. 76- 130

Mr. Robert P. Anderson
Payne and Jones
Post Office Box 151
200 South Chestnut
Olathe, Kansas 66061

Re: Counties--Sewer Districts--Creation

Synopsis: Prior to the creation of a lateral, joint or main sewer district for the purpose of making preliminary plans, surveys and feasibility studies and the like, under the third paragraph of K.S.A. 19-2704 in a county declared an urban area, the notice by publication and mailing required by K.S.A. 1975 Supp. 19-2704a, as referenced in the last paragraph of K.S.A. 1975 Supp. 19-2704, must be given.

* * *

Dear Mr. Anderson:

As counsel for the Johnson County Board of County Commissioners as the governing body of various sewer districts in the county, including Indian Creek Main Sewer District No. 1, you inquire whether the notification requirements of the last paragraph of K.S.A. 1975 Supp. 19-2704 apply to the creation of sewer districts under the third paragraph of that statute, for the purpose of making preliminary plans, surveys, feasibility studies and the like.

That third paragraph states in pertinent part thus:

"For the purpose of making preliminary plans, survey and feasibility studies and gathering data and information as to the possible creation of lateral, joint or main

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sewer districts to provide for the building of storm sewers or sanitary sewers or both in any county which has heretofore been declared to be an urban area under the provisions of K.S.A. 19-3524, and amendments thereto, the board of county commissioners may, at their discretion and upon their own motion, create such lateral, joint or main sewer district *for the sole purpose of making such plans, surveys and feasibility studies, and not for the construction of sewer facilities. . . .* Thereafter, a sewer district or districts may be created for construction of facilities as otherwise provided by statute." [Emphasis supplied.]

This paragraph does not authorize the creation of a sewer district for the construction of sewer facilities, but only for the purpose of making preliminary plans, survey and feasibility studies and the like. The last paragraph of the section states thus:

"Prior to the creation of any such sewer district *as herein provided*, the board of county commissioners shall give notice of their intent to create such a district by publication and mailing in the manner provided for the creation of sewer districts under K.S.A. 1975 Supp. 19-2704(a) and amendments thereto." [Emphasis supplied.]

[Inasmuch as there is no K.S.A. 1975 Supp. 19-2704(a), the reference must be deemed to be to K.S.A. 1975 Supp. 19-2704a.]

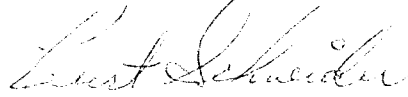
The only districts the creation of which is "herein provided" for, *i.e.*, by ch. 167, § 2, L. 1975, are districts not for construction of sewer facilities, but for making preliminary studies, plans, surveys. The cited last paragraph requires publication and mailing of notice prior to the creation of any district provided therein, which is necessarily, then, one which is created for the purpose of preliminary studies, etc.

Accordingly, it is my opinion that the publication and mailing of notice requirements of K.S.A. 1975 Supp. 19-2704a(a), incorporated by the last paragraph of K.S.A. 1975 Supp. 19-2704, apply to the creation of districts authorized by the latter statute, those not

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for the purpose of construction of sewer facilities, but for the making of preliminary plans, studies and surveys toward that end.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj