



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 2, 1977

ATTORNEY GENERAL OPINION NO. 77- 41

Honorable W. Edgar Moore
Kansas State Representative
District #26
House of Representatives
Room 174W - Statehouse
Topeka, Kansas 66612

Re: Special Assessments--Benefit districts--K.S.A. 12-6a01
et seq.

Synopsis: A special assessment is a tax levied on property according to the benefits conferred on such property. The whole theory is that the tax burden to such property is offset by the enhanced value to that property caused by the beneficial improvement. Property incapable of receiving benefits from an improvement cannot be specially assessed for such improvement.

* * *

Dear Representative Moore:

You ask if land, which lies in a flood plain and the City has passed an ordinance prohibiting construction of any kind upon it or use of it for any other purpose than agriculture, can be placed in a special sewer assessment district by a subsequent ordinance passed by the City?

The Kansas Supreme Court has recently held an attempt to include properties in a special assessment district, when there was no way in which such properties could benefit from the public improvement to be constructed by use of a special assessment, was arbitrary and void. Davies v. City of Lawrence, 218 Kan. 551 (1976). This case held that a special assessment is based upon the doctrine that property against which it is levied derives some special benefit

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from the improvement; that while the property is made to bear the cost of the improvement, it or its owner suffers no pecuniary loss thereby since the property is increased in value by an amount equal to the sum it is required to pay. (Syl. #2)

Obviously, if the City has by ordinance prohibited any construction on the land which could be connected with a sewer, it could not, under this decision, pass another ordinance to specially assess this land for the construction of a sewer, as part of a beneficial sewer district.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:jj