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

Re:  Special Assesments--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
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