



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 7, 1977

ATTORNEY GENERAL OPINION NO. 77- 184

Mr. Kenneth M. Wilke
Counsel
State Board of Agriculture
503 Kansas Avenue
Topeka, Kansas 66603

Re: Water Resources--Groundwater Management Districts--Rules
and Regulations

Synopsis: Under K.S.A. 82a-1028, a groundwater management district may adopt standards and policies relating to the conservation of groundwater within the district, but it has no authority to adopt rules and regulations to implement and enforce those standards and policies. It may only recommend such rules and regulations as it deems necessary to the chief engineer of the Division of Water Resources, who may then adopt such of the recommended rules and regulations as he deems appropriate. In doing so, the chief engineer must follow all provisions of the act relating to the adoption of rules and regulations, K.S.A. 77-415 et seq., except that such regulations are excepted from the requirement that they be filed with the Revisor of Statutes.

* * *

Dear Mr. Wilke:

You inquire concerning the role of the chief engineer of the Division of Water Resources in the adoption of rules and regulations of groundwater management districts.

K.S.A. 1976 Supp. 82a-1028 provides in pertinent part thus:

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"Every groundwater management district organized under this act shall be a body politic and corporate and shall have the power to:

* * *

(n) adopt, amend, promulgate and enforce by suitable action, administrative or otherwise, reasonable standards and policies relating to the conservation and management of groundwater within the district which are not inconsistent with the provisions of this act or article 7 of chapter 82a of the Kansas Statutes Annotated, and all acts amendatory thereof or supplemental thereto:

(o) recommend to the chief engineer rules and regulations necessary to implement and enforce the policies of the board. Such rules and regulations shall be of no force and effect unless and until adopted by the chief engineer to implement the provisions of article 7 of chapter 82a of the Kansas Statutes Annotated, and all acts amendatory thereof or supplemental thereto. All such regulations adopted shall be effective only within a specified district and shall be exempt from the filing requirements of K.S.A. 77-416, and all acts amendatory thereof or supplemental thereto; . . ."
[Emphasis supplied.]

Although the groundwater management district may adopt reasonable policies and standards relating to groundwater conservation and management, it has no power to adopt rules and regulations to implement those standards and policies. It may only recommend such rules and regulations to the chief engineer for his consideration, and unless and until adopted by him, they have no force and effect whatever.

K.S.A. 77-416 through -434 comprise an enactment which was adopted in 1965 to provide a standard procedure for the adoption of rules and regulations by state agencies. Clearly, the chief engineer of the Division of Water Resources is a "state agency" as that term is defined by K.S.A. 77-415(a), and is thus subject to the act. The procedures specified by that act include a notice to interested parties and a public hearing, K.S.A. 1976 Supp. 77-421; submission to this office for review as to form and legality

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K.S.A. 1976 Supp. 77-420; expedited procedure for adoption of emergency or temporary regulations, K.S.A. 1976 Supp. 77-422; preparation of a financial impact statement, K.S.A. 1976 Supp. 77-421; submission to the legislative coordinating council, K.S.A. 1976 Supp. 77-426; and filing with the Revisor of Statutes, K.S.A. 1976 Supp. 77-416.

The underscored language of K.S.A. 1976 Supp. 82a-1028(o), supra, exempts rules and regulations of groundwater districts which are adopted by the chief engineer pursuant to that provision from only the requirement that they be filed with the Revisor of Statutes. Had the legislature intended to exempt those rules from the entire act, K.S.A. 77-415 et seq., it would doubtless have so provided. Instead, it singled out the filing requirement of K.S.A. 77-416 as the sole requirement with which such regulations need not comply. I must conclude, accordingly, that in the adoption of any groundwater management district rule or regulation, the chief engineer must comply with all of the requirements of K.S.A. 77-415 et seq., except K.S.A. 1976 Supp. 77-416.

To respond specifically to your questions, it is my opinion, first, that a groundwater management district has no power to adopt any rule or regulation whatever; rather, it may only recommend rules and regulations which it deems needful to the chief engineer, who may adopt such of those proposed rules and regulations as he deems appropriate. Only those rules and regulations so adopted have the force and effect of law. Moreover, under K.S.A. 1976 Supp. 82-1028, the chief engineer has no independent authority to adopt rules and regulations other than those which are recommended to him by the groundwater management district itself. Stated otherwise, acting under this statute, the chief engineer has no authority to adopt a rule or regulation relating to the conservation and management of groundwater within a management district unless such rule or regulation is recommended to him by the district itself.

In response to your second question, it is my opinion that in the adoption of such rules and regulations, the chief engineer is required to follow all of the procedures set forth in K.S.A. 77-415 et seq., except K.S.A. 1976 Supp. 77-416.

Third, you inquire concerning K.S.A. 1976 Supp. 77-425, which provides in pertinent part thus:

"Any rule and regulation or compilation of rules and regulations not filed and published

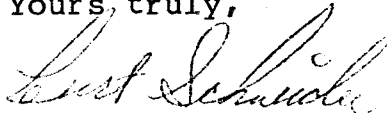
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as required by this act shall be of no force and effect" [Emphasis supplied.]

It is sufficient here to note that regulations adopted by the chief engineer under K.S.A. 1976 Supp. 82a-1028 are not subject to the filing requirements of the act. The effective date of a rule or regulation adopted by the chief engineer under the groundwater management district act is the date of adoption itself, rather than the date of filing, for the latter is not required.

Lastly, you point out that the regulations of a groundwater management district, if adopted, are effective only within the district itself, and you inquire whether the chief engineer of the Division of Water Resources of the Kansas Board of Agriculture may adopt rules and regulations pursuant to the Water Appropriation Act, K.S.A. 82a-701 et seq., which are applicable statewide and preempt conflicting rules and regulations already adopted by groundwater management districts. The rules and regulations of a groundwater management district which are duly adopted by the chief engineer under K.S.A. 1976 Supp. 82a-1028 are of no lesser dignity than rules and regulations adopted by the chief engineer under K.S.A. 82a-701 et seq. Although the former are of smaller territorial application, they have equally the force and effect of law as do other lawfully adopted regulations. Because the same authority is responsible for promulgating regulations under both acts, the likelihood of conflict is not substantial. Any conflict between regulations adopted under the two statutory provisions would necessarily have to be considered on a case-by-case basis. There is no suggestion, however, in either act that regulations adopted under K.S.A. 82a-701 et seq. are preemptive of those adopted under K.S.A. 1976 Supp. 82a-1028.

Yours, truly,



CURT T. SCHNEIDER
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