



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 8, 1977

ATTORNEY GENERAL OPINION NO. 77-255

Mr. Dale J. Paulsen
Attorney at Law
Professional Building
St. John, Kansas 67576

Re: Water and Watercourses--Groundwater Management Districts--
-Assessments and Notice

Synopsis: Annual assessments made pursuant to K.S.A. 1976 Supp. 80a-1030(a) are not special assessments and do not therefore fall within the purview of K.S.A. 12-3501 et seq.

* * *

Dear Mr. Paulsen:

As attorney for the Big Bend Groundwater Management District Number 5 you inquire whether assessments made upon state property pursuant to K.S.A. 1976 Supp. 82a-1030 are to be considered "special assessments" as governed by the provisions of K.S.A. 12-3501 et seq.

K.S.A. 82a-1030 provides in pertinent part:

"(a) In order to finance the operations of the district [groundwater management], the board may assess an annual water user charge against every person who withdraws groundwater from within the boundaries of the district The board may also make an annual assessment against each landowner of not to exceed five cents (5¢) for each acre of land owned within the boundaries of the district.

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Special assessments may also be levied, as provided hereafter, against land specially benefited by a capital improvement without regard to the limits prescribed above."
[Emphasis added.]

You indicate in your letter that the district's board of directors have levied the above emphasized "annual assessment" as distinguished from the "special assessment" which it may also levy. K.S.A. 12-3504 states

"Whenever (1) it is provided by law that any board is authorized to make a levy of special assessment taxes for any purpose, and

(2) such board proposes to, or does, act under such authority, and

(3) there is located within the territory upon which such special assessment tax is proposed to be levied, any real property owned by the state of Kansas; such board shall notify the secretary at the commencement of the proceedings intended to result in such levy. Such notice shall be in writing and shall be mailed to the secretary by registered mail. Such notice shall be in form and contain such information as is specified in rules and regulations relating thereto which shall be adopted by the secretary. The secretary shall also provide by rules and regulations for notification by such board of subsequent steps in such proceedings. Such rules and regulations may provide for notices subsequent to the initial notice to be mailed to particular state department heads in addition to the secretary. All rules and regulations adopted under authority of this act shall be subject to the approval of the state finance council as provided by law." [Emphasis added.]

It is clear therefore that the provisions of this statute address "special assessments" only. Thus the question becomes that of determining whether the "annual assessment" made per K.S.A. 1976 Supp. 82a-1030 falls within a definition for "special assessment" as employed in K.S.A. 12-3504. We believe it does not.

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K.S.A. 12-3501 *et seq.* does not provide a specific definition for the term "special assessment." However, K.S.A. 1976 Supp. 82a-1030 does in part distinguish the terms "assessment" from "special assessment" by qualifying the latter via referring to it as a benefit conferred upon property within the district by a capital improvement. This qualification parallels the generally accepted distinction between an assessment and a special assessment recognized by the Kansas Supreme Court which concluded in *State Highway Commission v. City of Topeka*, 193 Kan. 335, 393 P.2d 1008 (1964):

"While the word 'tax' in its broad meaning includes general taxes and special assessments, and in a general sense a tax is an assessment, and an assessment is a tax, yet this court has consistently held that under Article 11 of our Constitution, taxes and assessments technically considered, are different things.

A special assessment is in the nature of a tax levied upon property according to the benefits conferred on the property. The whole theory of a special assessment is based upon the doctrine that the 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 at least equal to the sum it is required to pay. Generally speaking, the difference between a special assessment and general taxes is that a special assessment can be levied only on land, is based wholly on benefits conferred, and is exceptional both as to time and locality. (1 Cooley (4th Ed.), *The Law of Taxation*, §31, p. 105; 14 McQuillin (3rd Ed.), *Municipal Corporations*, §38.73, pp. 200, 201)."

See *Davis v. City of Lawrence*, 218 Kan. 551, 545 P.2d 1115 (1976). Thus, the Court has clearly stated that an assessment is not considered or defined the same as a special assessment. Accordingly, it is the opinion of this office that inasmuch as the notice requirements and other various provisions of K.S.A. 12-3501 *et seq.* are specifically concerned with special assessments

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(as they may apply to state owned property) they do not govern
annual assessments made pursuant to K.S.A. 1976 Supp. 82a-1030(a).

Yours truly,


CURT T. SCHNEIDER
Attorney General

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