



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 26, 1977

ATTORNEY GENERAL OPINION NO. 77- 312

Mr. Robert G. Suelter
Barton County Attorney
Barton County Courthouse
Great Bend, Kansas 67530

Re: Waters and Watercourses--Counties--Navigable Streams

Synopsis: A county may proceed upon a petition filed under K.S.A. 82a-307 to clean and maintain banks and channels of both navigable and nonnavigable streams within such county.

* * *

Dear Mr. Suelter:

You advise that the board of county commissioners of Barton County have received a petition signed by taxpayers of the county, pursuant to K.S.A. 82-307, to clean and maintain banks and channels of certain streams flowing into the county, the Arkansas River and Walnut Creek. The Arkansas River has been designated a navigable stream, although the latter has not. You inquire whether K.S.A. 82a-307 et seq. is applicable to navigable streams as well as nonnavigable streams.

Upon the filing of a petition, under this section, the board of county commissioners is authorized "to clean and maintain the banks and channels of the streams and watercourses within definitely established bank lines" and "to keep said streams free of drift, trees and other obstructions, for the purpose of reducing floods and overflows."

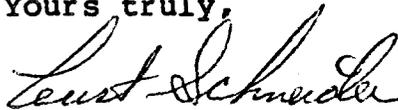
Concerning the control and regulation of navigable streams by state authorities, the writer at 56 Am.Jur.2d, Waters, § 197 states in pertinent part thus:

Mr. Robert G. Suelter
Page Two
September 26, 1977

"It may be stated as a general rule, subject to certain qualifications hereinafter noted, that each state has the power to regulate and control the navigable or public waters within its own boundaries. As to waters which lie wholly within a state, and which do not constitute a part of the navigable waters of the United States, the authority of the state is complete and exclusive. As to navigable waters of the United States, the regulatory power of the state is subject to the paramount authority of the Federal government for the regulation of interstate and foreign commerce; but the states may exercise such control as is not inconsistent with Federal actions or functions, and does not materially or unreasonably interfere with or burden such commerce. Furthermore, Congress has recognized the fact that it is desirable that the states should exercise a large measure of power over navigable waters, and has left to them the control and management of various matters relating to or affecting such waters, subject to the right of the Federal government at any time to interfere and supersede the state authority."

The cleaning of banks and channels, as proposed by the petition which has been filed, does not appear to interfere with any federal functions or regulation of the navigable portion of the Arkansas River flowing through the county, and in my judgment, there is no legal objection to the county proceeding pursuant to the petition respecting both navigable and nonnavigable streams in the county.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj