



STATE OF KANSAS

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October 2, 1978

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CONSUMER PROTECTION 29

ATTORNEY GENERAL OPINION NO. 78-310

Mr. Laurence R. Hollis  
Agency Counsel  
Urban Renewal Agency  
411 Colorado Derby Building  
Wichita, Kansas 67202

Re: Cities--Special Improvements--Costs

Synopsis: K.S.A. 12-6a01 *et seq.* authorizes the city to provide by ordinance for the establishment of a special improvement district for capital improvements, which may include beautification, which benefit described property specially, whether or not the maintenance of sidewalks is included therein. Only the city governing body has authority to levy special assessments therefor and to disburse the funds for the costs of the improvement.

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Dear Mr. Hollis:

As agency counsel for the Wichita Urban Renewal Agency, you inquire concerning the establishment of benefit districts.

First, you inquire whether a municipality may by ordinance establish a benefit district for capital improvements, beautification and maintenance, whether or not the project would include maintenance of sidewalks.

What is commonly referred to as the general improvement and assessment law is found at K.S.A. 12-6a01 *et seq.* K.S.A. 12-6a02 describes the scope of the act thus

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"As a complete alternative to all other methods provided by law, the governing body of any city is hereby authorized to make, or cause to be made, municipal works or improvements which confer a special benefit upon property within a definable area of the city and may levy and collect special assessments upon property in the area deemed by the governing body to be benefited by such improvement for special benefits conferred upon such property by any such municipal work or improvement and to provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of such special assessments as hereinafter provided."

The act provides broad statutory authority for the establishment of benefit districts for virtually any capital improvement which may justifiably be deemed to confer a special benefit upon property, including improvements for beautification. In *Davies v. City of Lawrence*, 218 Kan. 551, 545 P.2d 1115 (1976), the court stated that the "Act grants broad authority for undertaking all types of municipal improvements initiated either by petition or by a resolution of the city governing body." 218 Kan. at 556-557.

The question whether special assessments may be levied to pay the costs of maintenance of an improvement once it is completed is less certain. In *State Highway Commission v. City of Topeka*, 193 Kan. 335, 393 P.2d 1008 (1964), the court described the theory of special assessments thus:

"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,

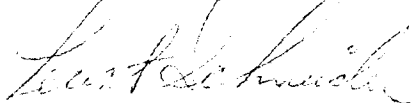
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the difference between a special assessment and general taxes is that a special assessment can be levied only on land, is based wholly on benefits conferred, and is exceptional both as to time and locality."

The costs of maintenance of an improvement once it is included is not permitted by the Act to be included in the special assessments levied therefor.

You inquire, secondly, who has statutory authority to levy special assessments and to disburse the funds derived therefrom for the improvement. Under the act, only the city governing body has authority to levy special assessments and, likewise, it is the city governing body which is responsible for the disbursement of funds expended to pay the cost of the improvement.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj