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April 20, 1979

ATTORNEY GENERAL OPINION NO. 79- 69

Mr. David E. Retter
City Attorney
Concordia, Kansas 66901

Re: Cities and Municipalities -- General Improvement and Assessment Law -- Sewer Improvement Districts

Synopsis: The procedure for making municipal improvements set forth in the General Improvement and Assessment Law (K.S.A. 12-6a01 et seq.) is a distinct alternative to all other methods provided by law for effecting such improvements. Thus, declaration of a sewer taxing district pursuant to K.S.A. 12-617 et seq. is not a requisite step in the procedure for creation of a sewer improvement district under the provisions of the General Improvement and Assessment Law.

* * *

Dear Mr. Retter:

You have asked for our opinion as to the proper procedure for determination of an improvement district pursuant to the General Improvement and Assessment Law, K.S.A. 12-6a01 et seq. Specifically, you ask whether a city which undertakes a sewer improvement project under that law must also declare by ordinance the existence of a sewer district pursuant to K.S.A. 12-617.

As you have noted, the procedure established in K.S.A. 12-6a01 et seq. (hereinafter referred to as "6a procedure") is intended as a "complete

alternative to all other methods provided by law" for municipal improvements, as expressly stated in K.S.A. 12-6a02. The Kansas Supreme Court consistently has held it to be a complete and separate procedure for all types of municipal improvements. The Court first interpreted the 6a procedure in Giddings v. City of Pittsburg, 197 Kan. 777 (1966). Plaintiff Giddings complained, and the trial court agreed, that Pittsburg's special assessments for certain street improvements, levied pursuant to the 6a procedure, were unlawful because the city had failed to establish a benefit district, as defined in the general paving law (K.S.A. 12-601 et seq.).

In that case, the trial court ruled that K.S.A. 12-601 required that the boundaries of any such street improvement district shall extend to the midpoint of the block on each side of the improved street, and that since the improvement district created under the provisions of the 6a procedure failed to conform with that requirement, it was not legally constituted and the special assessments were, therefore, unlawful. The Supreme Court disagreed, ruling that "[t]he trial court's conclusion that resort must be had to K.S.A. 12-601 to discover the meaning of an 'improvement district' is erroneous since the definition thereof is contained in the Act itself [K.S.A. 12-6a01(f)]." Id. at 781. Regarding the 6a procedure, the Court quoted from a League of Kansas Municipalities pamphlet, which noted that the legislature "'has provided the general formula, which city governing bodies must apply to the specific facts and local conditions and at their discretion, within the framework of the act, determine the specific property benefitting and liable for assessment for a particular improvement.'" Id. at 782.

In sum, the Court found that the 6a procedure operates exclusively, independent of any provision of alternative municipal improvement methods. As the Court declared in a later case, "with respect to procedure the Act is intended to be complete within itself." Board of Education v. City of Topeka, 214 Kan. 811, 814 (1974). (emphasis added.)

The Kansas Supreme Court also has held that, given the alternative statutory means available for improvement projects, once a city has elected to use a particular procedure for a project it is bound by that election. In Dodson v. City of Ulysses, 219 Kan. 418 (1976), the city had engaged in a paving improvement project pursuant to the general paving law (K.S.A. 12-601 et seq.). The city then sought to levy special assessments on district beneficiaries on a "front footage" basis, which effort the Court declared invalid. The general paving

law, under which the city was proceeding in this instance, only allowed assessments apportioned among the various parcels of land in the benefit district according to value, as prescribed by K.S.A. 12-608. The Court stated:

> "We cannot escape the conclusion that in making the assessment challenge here the city deliberately ignored the statute under which it purported to be operating. The 'new' general improvement law (K.S.A. 12-6a01 et seq.) permits a front foot basis as one alternative method of assessment in 12-6a08; the 'old' general paving law under which this improvement was made provides only for apportionment according to value. When it initiated this project the city had a choice of statutes to follow. Once it elected to employ the 'old' statute it was bound to follow it." Id. at 425 (Emphasis added.)

Analogously, the sewer district established pursuant to K.S.A. 12-617 et seq. is subject to the "old" law, whereby a city may make sewer improvements, and as noted in Dodson, the 6a procedure is the "new" alternative means for municipal improvements of all types, including sanitary sewer systems, as authorized by K.S.A. 12-6a02(c). The two statutory methods for making such improvements are distinct alternatives, complete within themselves.

Thus, we conclude that when a city initiates a sewer improvement project under the 6a procedure, and creates an improvement district as provided by K.S.A. 12-6a04, the provisions of K.S.A. 12-617 et seq. are not applicable. Declaration of a sewer district pursuant to K.S.A. 12-617 is not a requisite step in the 6a procedure for municipal improvements.

Very truly yours,

Robert T. Stephan

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RTS:WRA:may