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August 8, 1979

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ATTORNEY GENERAL OPINION NO. 79- 168

Mr. John Thompson
Attorney, Delaware Township Water Department
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Re: Townships and Township Officers--Water Supply--
Authority of Township Trustee and Township Board

Synopsis: In matters affecting a township water system established under K.S.A. 80-1601 et seq., the township board is empowered to operate and maintain the water system, and the township trustee may not unilaterally exercise powers or perform functions vested in the board by these statutes.

* * *

Dear Mr. Thompson:

As attorney for the Delaware Township Water Department, you have asked for our opinion concerning the nature and scope of authority of the township trustee and the other township officers, as that authority is defined in K.S.A. 80-101 et seq. Specifically, you inquire whether the trustee has sole power to hire and fire township employees, to contract for the purchase of materials and services for the maintenance of existing water lines, to determine which water lines need repair and to contract for repair of those lines, and to sell township personal property, or whether the trustee may only take such action with board approval. You also inquire whether the board is empowered to promulgate rules and regulations, or whether the trustee has sole authority to adopt and amend rules and regulations pertaining to the daily operation of township affairs.

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The principal duties of the township trustee are set forth at K.S.A. 80-301. That statute vests considerable authority in the trustee for the "care and management of [township] property" and to "superintend all the pecuniary concerns of [the] township." The Kansas Supreme Court has referred to the trustee as the township's "managing officer." Fisher v. Odell Township, 87 Kan. 687, 691 (1912). The principal duties of the offices of treasurer and clerk are established at Articles 4 and 5, respectively, of Chapter 80, Kansas Statutes Annotated.

However, as you have correctly noted, certain township functions established in Chapter 80, Kansas Statutes Annotated, require action by the "township board," i.e., the trustee, treasurer and clerk, acting in concert. See Johnson v. Reno County Commissioners, 147 Kan. 211, 227 (1938). With respect to those functions, the trustee cannot act alone. For example, the township board is vested with the authority for acquisition of buildings and sites for township purposes (K.S.A. 80-104), for sale of lands (K.S.A. 80-109), for levying taxes for repair and maintenance of a township hall (K.S.A. 80-115) and for the issuance of certain licenses (K.S.A. 80-1301 et seq.).

Likewise, for purposes of providing and maintaining a water supply for the township, K.S.A. 80-1601 et seq. vest authority for such function in the township board. K.S.A. 80-1601 provides, in pertinent part:

"Whenever there shall be presented to the township board of any township located in whole or in part within fifteen (15) miles of the limits of any city of the first class located within the same county in which such township is located or adjoining a township located in the same county having a publicly owned water supply system, a sufficient number of agreements or subscriptions to purchase water at a specified schedule of rates . . . such township board shall be authorized to contract for constructing such water mains and purchase any water mains which may be located in said township; to purchase or otherwise secure a suitable supply of water and to operate and maintain the water system thereby created, or contract for such construction and/or maintenance and operation and to use such funds as may be available, or thereafter shall become available, for such construction." (Emphasis added.)

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You have advised that the primary activity of the Delaware Township Board is maintenance and operation of the township water system. Thus, we may appropriately narrow our inquiry to examination of the questions you have raised in light of K.S.A. 80-1601 et seq.

First, you inquire whether the trustee has sole authority to (a) hire and fire township employees; (b) contract for the purchase of materials and services for the maintenance of existing water lines; (c) decide which water lines need repair and contract for the repair of the same; and (d) sell township personal property. In our opinion, the above-quoted statute provides an easy answer to parts (b) and (c) of your first question. Under K.S.A. 80-1601, the township board, not the trustee, is "authorized . . . to purchase or otherwise procure a suitable supply of water and to operate and maintain the water system thereby created." (Emphasis added.) Parts (b) and (c) of your question specifically refer to repair and maintenance of existing water lines in the system, the responsibility for which, as set forth in the above-quoted statute, falls upon the township board.

Parts (a) and (d) of your question are not as easily answered. However, consistent with our interpretation of K.S.A. 80-1601 et seq., the hiring and firing of township employees, which persons are employed for water system purposes, should be governed by the board, because the board is empowered "to operate . . . the water system." For persons employed for other township functions, it is our judgment that the trustee has the authority, as the township's "managing officer" to hire and fire, except as that authority may be limited or restricted by other statutes comparable to K.S.A. 80-1601 et seq. See, e.g., K.S.A. 1978 Supp. 68-101 and K.S.A. 68-523 et seq., which statutes constitute the township board of highway commissioners and impose on that body composed of the trustee, clerk and treasurer, the "general charge and supervision of all township roads and culverts" in counties not operating under the county road unit system. K.S.A. 68-526.

Similarly, in answer to part (d), concerning township personal property, although the trustee has the duty of "care and management of all property, real and personal, belonging to his or her township, and to superintend the various interests thereof," if said property is used for maintenance and/or operation of the water system, decisions to sell or dispose of such township property are for the board to make, in our judgment, since the sale or disposition of such property must necessarily affect the functions of maintenance and operation of the water system.

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You next inquire whether the trustee has sole authority to adopt and amend rules and regulations concerning the daily operation of township affairs, or whether such rules must be approved by a majority vote of the township board. You have enclosed for our review a copy of the document entitled "Rules and Regulations, Delaware Township Water District, Leavenworth County, Kansas."

We find no express statement of statutory authority by which the trustee or the board may promulgate rules and regulations governing the operation of the water system, but we conclude, without passing upon the validity of the particular rules and regulations you have submitted, that the board has such authority, implicit in K.S.A. 80-1601 et seq., to the extent that such rules and regulations are reasonably related to system maintenance and operation purposes, as the rules in question purport to be. In our opinion, since the power to maintain and operate the water system is vested in the board, only the board would have the authority to amend rules and regulations designed to implement its policies and to govern its operations, if that is the means by which the board chooses to perform its statutory duties. The trustee would have no authority, acting in his or her individual capacity as trustee, to adopt and amend rules governing the operation of the water system. In matters affecting the water system, the trustee is only one of three board members, with one of three votes which may be cast on maintenance and operations questions affecting the township water system.

At an earlier time, the township form of government was one in which considerable management authority was vested solely in the township trustee. The language of K.S.A. 80-301 remains very much the same as it was when originally enacted in 1868 (G.S. 1868, ch. 110, §22). Since 1868, however, the legislature has seen fit, in a number of enactments, to direct that with respect to certain township functions, the board should share management powers, acting as a governing body.

One such change in the law governing townships, analogous to the questions presented here, was discussed in Attorney General Opinion No. 78-147, a copy of which is enclosed for your consideration. In that opinion, former Attorney General Schneider concluded that, while formerly the trustee was empowered to appoint the township road overseer (K.S.A. 80-301, Second), only the township board, with consent of the county engineer, is authorized to make such appointments, pursuant to K.S.A. 68-530. The Attorney General wrote, in pertinent part:

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"This section [K.S.A. 68-530] was enacted in 1914 [sic, 1917]. K.S.A. 80-301 . . . was enacted in 1868. At that time, township road overseers were elective officers, and the trustee was empowered . . . to fill vacancies in the office when, e.g., the elected overseer died, resigned, or otherwise surrendered or forfeited the office. Under K.S.A. 68-530, township road overseers are no longer elected, but rather are appointed, and that appointive power is vested in the entire board. The person so appointed serves not for a fixed term, but under K.S.A. 68-581, at the pleasure of the township board. Thus, the entire board is empowered both to appoint and to discharge the road overseer. The trustee no longer has authority, acting alone, to fill the position of road overseer. The language of the 1868 act necessarily conflicts with the later enactment, first adopted in 1917, and under accepted rules of statutory construction, the earlier language must be deemed to be impliedly repealed to the extent that it conflicts with later statutory language dealing specifically with the same subject. Under the later enactment, there is no basis for the trustee, acting solely as trustee, to appoint the township road overseer."

The rationale of that opinion applies with equal force to the questions you have raised. K.S.A. 80-301 generally provides that the trustee shall attend to management of township property and township business. K.S.A. 80-1601 expressly provides that, for certain township business, i.e., providing and maintaining a township water supply, the township board has the management authority. The two statutes are obviously in conflict with respect to the ultimate question of management of the township water system. Under the well-established rule of statutory construction, the specific statute, K.S.A. 80-1601 should control. The Kansas Supreme Court's most recent application of the rule is found in State v. Makin, 223 Kan. 743, 745 (1978), where the Court states the rule, thus:

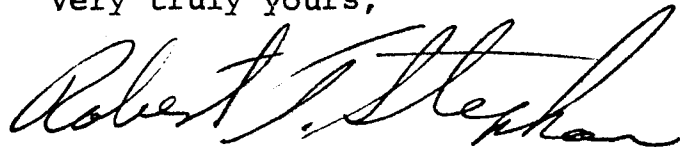
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"Repeals by implication are never favored and a general and specific statute should be read together and harmonized wherever possible. But to the extent of repugnancy between the statutes dealing generally with the subject and another statute dealing specifically with the subject, the specific statute is favored and controls. (Seltmann v. Board of County Commissioners, 212 Kan. 805, 512 P.2d 334; State v. Kliever, 210 Kan. 820, 504 P.2d 580.)."

In Seltmann v. Board of County Commissioners, *supra*, the Court declared that "a special statute prevails over a general statute unless it appears that the legislature intended to make the general act controlling." 212 Kan. at 811. (Emphasis in original.) We find no clear expression of legislative intent to that effect. Thus, K.S.A. 80-1601 is favored over K.S.A. 80-301 to resolve the particular conflict.

To recapitulate, we find that in matters affecting the township water system, the township board is empowered to operate and maintain the water system. We conclude that the hiring and firing of township employees, who are employed for water system purposes, should be governed by the board. Secondly, decisions to sell or dispose of township personal property used for maintenance or operation of the township water system should be made by the township board. Lastly, the board has implied authority to adopt rules and regulations to the extent that such rules and regulations are reasonably related to the system maintenance and operation purposes and only the board would have authority to amend its own rules and regulations.

Very truly yours,



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Attorney General of Kansas



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RTS:WRA:SC:gk
Enclosure - Attorney General Opinion No. 78-147