STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

December 11, 1979

ATTORNEY GENERAL OPINION NO. 79- 283

Mr. Carl W. Hartley, Attorney
Rinehart, Bright & Hartley
116 South Pearl
Paola, Kansas 66071

Re: Drainage and Levees--Watershed Districts--Dissolution

Synopsis: A watershed district organized pursuant to the watershed district act, K.S.A. 24-1201 et seq., may not be dissolved using the procedures found in K.S.A. 24-1228 if a general plan for the district has been adopted. Furthermore, only the procedures prescribed by statute may be used to dissolve such a district.

* * *

Dear Mr. Hartley:

As counsel for the Middle Creek Joint Watershed District No. 50, located in Miami and Linn Counties, Kansas, you inquire concerning the construction to be given to K.S.A. 24-1228. That statute details procedures for the dissolution of a watershed district established pursuant to K.S.A. 24-1201 et seq., and we understand it is pursuant to these statutes that Joint Watershed District No. 50 was established. You further inform us that the district adopted a general plan which, among other things, detailed the method of financing the work which was to be done. However, no actual construction has occurred, and there are no contracts in existence for either the building of such projects or the ongoing maintenance of works already in existence.

K.S.A. 24-1228 provides for two methods of initiating the dissolution of a watershed district created under the terms of the watershed district act--by resolution of the district's board of directors or by petition of district voters. In either case, the action can be taken only if certain circumstances are met, in that the district must have been in existence for four years, and "said district has not adopted a general plan of work and projects to be undertaken by the district, nor constructed or contracted to construct any works of improvement, nor incurred any continuing obligations for maintenance of any works of improvement." K.S.A. 24-1228. (Emphasis added.) Your inquiry concerns the construction that should be given to this section of the statute, i.e., is it necessary for a district to take all three of the steps outlined above, or does the completion of just one, such as the adoption of a general plan, bar any move for dissolution?

In construing this statute, we find no prior court decisions or opinions of this office to look to for guidance. However, there does exist a well-recognized principle of statutory construction which is of some help. This is the principle that, whenever possible, the legislative intent is to be derived from the language of the statute, and where the language used is plain and unambiguous and also appropriate to an obvious purpose, the intent of the legislature, as expressed by the words used, should prevail. Jackson County State Bank v. Williams, 1 Kan.App. 2d 649 (1977); State v. V.F.W. Post No. 3722, 215 Kan. 693 (1974); and Brinkmeyer v. City of Wichita, 223 Kan. 393 (1978).

With this in mind, it remains to examine the wording employed in the statute. In our opinion, the key word used therein is "nor," and while no Kansas cases exist which construe it as used here, other states have recent cases that do. For example, the Wyoming Supreme Court held in Basin Electric Power Coop. v. State Bd. of Control, 578 P.2d 557, 566 (1978), that the conjunction "nor" performs the same function in negative propositions as does the word "or" in positive ones, i.e., marking an alternative or opposition--in short, in the disjunctive. The Court went on to note that when two clauses are expressed in the disjunctive, it is generally an indication of alternatives, requiring separate treatment; the subject of each clause should be considered separately, without requiring that the subjects both be satisfied. 578 P.2d at 566. See also Ruiz v. Industrial Accident Comm., 45 Cal.2d 409, 289 P.2d 229 (1955).

Employing the same construction, it is our opinion that it is not necessary for the district to have completed all three of the statutory requirements (general plan, construction of or contract to build works of improvement, continuing obligations to maintain) in order to bar dissolution proceedings. Rather, considering the subject of each clause separately, it is enough that one element has been satisfied in order to prevent the institution of dissolution procedures under K.S.A. 24-1228. Accordingly, it is our conclusion that a watershed district organized pursuant to K.S.A. 24-1201 et seq., may not be dissolved under K.S.A. 24-1228 if a general plan for the district has been adopted.

Furthermore, we have concluded that the dissolution procedures under 24-1228 are exclusive, and may not be supplemented or replaced with an alternate method, except as the legislature may provide. It has been recognized that the legislature of a state has plenary control over matters pertaining to the dissolution of water districts, and the statutory procedures prescribed therefor should be followed. C.J.S., Waters, §243(9), 1956. In a somewhat similar context, the Supreme Court of Kansas has recognized that the statutes under which a district was organized also control the procedures for its dissolution. Atchison, T. & S.F. Rly. Co. v. Drainage Dist. No. 1, 133 Kan. 586 (1931).

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Jeffrey S. Southard

Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk