



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

August 4, 1980

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ATTORNEY GENERAL OPINION NO. 80-176

David E. Retter  
Attorney at Law  
P.O. Box 676  
Concordia, Kansas 66901

Re: Cities and Municipalities--Public Improvements--  
Improvements by Cities In Unincorporated Territory  
Within Three Miles of Corporate Limits

Synopsis: A public improvement authorized by K.S.A. 12-6a01  
et seq. which is partially within the corporate limits  
of the city and partially within three miles of  
the city limits shall be commenced only upon petition  
found sufficient by the provisions of K.S.A. 12-6a04,  
and for the purpose of determining the sufficiency of  
the signatures to such petition, that area which is  
outside the corporate limits of the city shall be  
considered to constitute the proposed district in  
accordance with K.S.A. 1979 Supp. 12-693. Cited herein:  
K.S.A. 1979 Supp. 12-693, K.S.A. 12-6a01, 12-6a04.

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Dear Mr. Retter:

As city attorney for the City of Concordia, Kansas, you seek our  
opinion concerning the method of determining the sufficiency of  
a petition under K.S.A. 1979 Supp. 12-693, when the improvement  
district is partially within the city limits and partially within  
the three mile limit. K.S.A. 1979 Supp. 12-693 provides in  
pertinent part:

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"All cities are hereby authorized to make improvements authorized by and in the manner provided for in the general improvement and assessment law as contained in chapter 12, article 6a of Kansas Statutes Annotated, in those unincorporated areas beyond their corporate limits and within three miles thereof. . . . Improvements within such three (3) miles are located in a proposed improvement district which is partially within the corporate city limits of the city shall be commenced only upon a petition found sufficient by the provisions of K.S.A. 12-6a04, except that for the purpose of determining the sufficiency of the signatures of such petitions only, that area which is outside the corporate limits of the city shall be considered to constitute the proposed district." (Emphasis added.)

K.S.A. 12-6a04(f) provides in pertinent part:

"Such petitions may be found sufficient if signed by either (i) a majority of the resident owners of record of property liable for assessment under the proposal, or (ii) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (iii) the owners of record (whether resident or not) of more than one-half of the area liable to be assessed under the proposal."

Petitions submitted to the governing body pursuant to K.S.A. 1979 Supp. 12-693 will be determined to be sufficient as provided in K.S.A. 12-6a04(f); however, when considering the sufficiency of the signatures to such petitions, only that portion of the improvement district which lies in the three mile limit outside the city limits shall be considered as the area for the improvement.

You suggest that an unfair result would occur if only one resident landowner who was outside the city limit could sign a petition and the petition could then be determined to be sufficient for a proposed project in accordance with K.S.A. 12-6a04(f). The protest, if any, by the other members of the benefit district who live in the city would not be indicated to the governing body. Theoretically, such a result could occur. However, K.S.A. 1979 Supp. 12-693 also provides:

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"All cities are hereby authorized to make improvements authorized by and in the manner provided for in the general improvement and assessment law as contained in chapter 12, article 6a of Kansas Statutes Annotated, in those unincorporated areas beyond their corporate limits and within three miles thereof."  
(Emphasis added.)

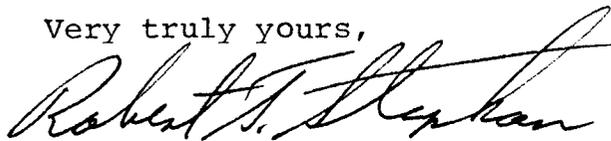
K.S.A. 12-6a04 further provides:

"Upon filing of such petitions, the governing body may make findings by resolution as to the advisability of the improvement . . . ."

Thus, in the light of these provisions, the decision to go forward on such an improvement would ultimately be a determination to be made by the governing body after reviewing the proposed improvement upon the filing of a sufficient petition in accordance with the provisions of K.S.A. 12-6a01, et seq.

Therefore, it is the opinion of this office that a public improvement authorized by K.S.A. 12-6a01 et seq. which is partially within the corporate limits of the city and partially within three miles of the city limits shall be commenced only upon petition found sufficient by the provisions of K.S.A. 12-6a04, and for the purpose of determining the sufficiency of the signatures to such petition, that area which is outside the corporate limits of the city shall be considered to constitute the proposed district in accordance with K.S.A. 1979 Supp. 12-693.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Donald E. Jensen  
Assistant Attorney General

RTS:BJS:DEJ:jm