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September 23, 1980

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ATTORNEY GENERAL OPINION NO. 80- 210

The Honorable Donald E. Gragg
Commissioner, First District
Sedgwick County Commission
County Courthouse, Suite 320
Wichita, Kansas 67203

Re: Public Health--Water Pollution Control--Organization of
County Wastewater Management Committee

Synopsis: K.S.A. 1979 Supp. 65-3309, as amended by L. 1980, ch. 193, §1, provides that where a county has a multi-jurisdictional planning commission functioning solely within the county, such commission is designated as the county wastewater management committee, with the duty of formulating a comprehensive plan for management of wastewater within such county. The statute also provides for the formation of an advisory committee which is to include among its members representatives from each city to be affected by the plan. Alternatively, the advisory committee itself can be designated as the wastewater management committee. In either event, input is afforded all affected cities, whether or not they also participate in the area planning commission. Cited herein: K.S.A. 1979 Supp. 65-3308, 65-3309 (as amended by L. 1980, ch. 193, §1), K.A.R. 1980 Supp. 28-16-77, 28-16-80, 28-16-81, L. 1979, ch. 351.

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Dear Commissioner Gragg:

As a member of the Board of County Commissioners of Sedgwick County, you request our opinion as to the way in which the county wastewater management committee ("committee") should be organized.

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The purpose of the committee is to draw up a countywide wastewater management plan ("plan") that is mandatory for all counties with populations over 30,000 (those with fewer people are also required to do so, but may seek an exemption) [K.A.R. 1980 Supp. 28-16-77(a), (b)]. For those counties required to do so, the formation of such a committee is required by K.S.A. 1979 Supp. 65-3309 (as amended by L. 1980, ch. 193, §1), with the deadline for formation having already passed (June 30, 1980). You indicate reservations about the method used by Sedgwick County in establishing the committee there, and request our interpretation of the statute.

K.S.A. 65-3308 et seq. represents an effort by the legislature to address what is becoming a serious problem in this state, namely the treatment, handling and disposal of wastewater from sources such as feedlots, septic tanks, storm sewers, and industrial sites. The act is in effect an extension of the state water quality management plan which was also adopted in 1979 by Senate Concurrent Resolution No. 1640 (L. 1979, ch. 351), in that it requires counties to address many of the same problems and planning needs which the resolution recognized as being of statewide concern. Any plans which are approved by the secretary of health and environment [pursuant to K.S.A. 1979 Supp. 65-3309(e)] become part of the statewide plan, and future projects for which health and environment permits are required must conform to them (K.A.R. 1980 Supp. 28-16-81). Each committee is given two years to draw up the plan for its county [K.S.A. 1979 Supp. 65-3309(a)], subject to criteria set forth by the secretary of health and environment in administrative regulations (K.S.A. 1979 Supp. 65-3308, K.A.R. 1980 Supp. 28-16-80). While K.S.A. 1979 Supp. 65-3309 was amended somewhat by the 1980 Legislature, the changes are technical in nature and do not affect the provisions regarding the committee's formation.

Two principal methods of establishing a wastewater management committee are provided by the statute, with the difference lying in whether the particular county has a multi-jurisdictional planning commission in operation. If so, the planning commission is designated as being the wastewater management committee, as well. However, if no such planning commission exists, the committee is to be composed of a number of specified individuals, i.e., a county commissioner, the county engineer, the county health officer, the director of planning, a representative from each city to be affected by the plan, and two at-large members [K.S.A. 1979 Supp. 65-3309(b) (1)].

In the case of Sedgwick County, we are informed that an area planning commission does exist which is composed of representatives from the City of Wichita, a number of smaller cities, and the unincorporated regions

of the county. However, you indicate that not all of the seventeen second and third-class cities in the county are represented. You are concerned that, since the planning commission is not representative of all of the county, the committee dealing with wastewater problems will not be either, although all portions of the county will be subject to the plan once it is adopted.

It is our conclusion that the area planning commission is in fact the proper body under the statute to take on responsibility of developing a wastewater management plan, and that the statute has sufficient safeguards built into it to avoid the kind of result you fear may occur. We base this conclusion on three points. First, the statute does not say that the area planning commission method is to be used only if all cities within the county are presently participating. Such commissions are by definition voluntary (K.S.A. 12-716 et seq.), and it would be extraordinary in a county like Sedgwick if every city took part. A contrary interpretation would render this method unworkable as a practical matter, and we are not prepared to so conclude on the basis of the statute as it now reads.

Second, the statute makes it clear [at subsection (b)(2)] that if the planning commission is so designated, it must also appoint an advisory committee to assist it in the task of drawing up a comprehensive plan. Such an advisory committee is to be composed of the same representatives (enumerated above) as in counties which appoint their committees, together with representatives from each "improvement district" affected by the plan. The presence of this advisory group insures that all cities will be represented in some manner, even if they do not take part in the planning commission itself. Additionally, the planning commission may, at its discretion, give this advisory committee the primary input on the situation by designating it as the actual wastewater management committee [K.S.A. 1979 Supp. 65-3309(b)(2)].

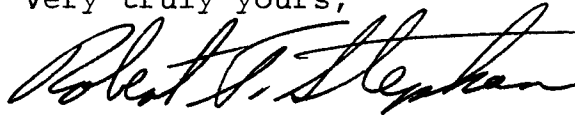
Finally, the statute provides at subsection (d) that "all entities affected by or that can contribute to the wastewater management plan shall have adequate opportunity for comment and input in the development of the plan." Therefore, even if the planning commission retains the designation as wastewater management committee, non-participating cities have statutory assurance of an opportunity to be heard. Furthermore, the statute provides that each local governing body which is affected can review the plan, and then transmit its review to the secretary of health and environment, who is empowered to approve or disapprove the final result. Thus, a method of input is provided for each city in the county.

In summary, K.S.A. 1979 Supp. 65-3309, as amended by the Kansas Session Laws of 1980, ch. 193, §1, provides that where a county has a multi-jurisdictional planning commission functioning solely within the

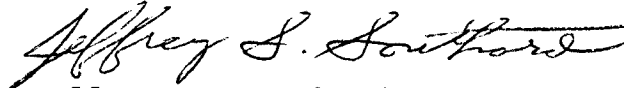
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Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJJ:JSS:phf