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September 23, 1980

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ATTORNEY GENERAL OPINION NO. 80-211

John E. Wright
President
University Park Improvement District
R.R. 4, Box 295
Manhattan, Kansas 66502

Re: Counties and County Officers--Public Improvements--
Qualifications and Powers of Improvement District
Directors

Synopsis: A person who is not a resident of an improvement
district established under K.S.A. 19-2753 et seq.
may seek and hold the office of director of the
district.

Directors of an improvement district established
under K.S.A. 19-2753 et seq. take office and commence
carrying on the duties of their office from the date
they are elected and are issued a certificate of
election pursuant to K.S.A. 19-2759.

Funds belonging to an improvement district established
under the provisions of K.S.A. 19-2753 et seq. are
to be placed in the possession of the county treasurer,
and paid out by said county treasurer upon receipt
of duly executed orders of the improvement district
officers.

Finally, an improvement district established under the
provisions of K.S.A. 19-2753 et seq. may not levy a
special assessment for the purpose of maintaining
the roads, ditches and parks within the improvement
district. Cited herein: K.S.A. 19-2759, K.S.A. 1979
Supp. 19-2760, K.S.A. 1979 Supp. 19-2762, K.S.A. 19-
2763, K.S.A. 1979 Supp. 19-2765 and 19-2786i.

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Dear Mr. Wright:

You seek our opinion on several questions concerning public improvement districts created under the provision of K.S.A. 19-2753, et seq. Specifically, you inquire:

- (1) May a person who owns property in the district, but does not reside in the district, seek and hold the office of director of the district?
- (2) When do the directors of an improvement district take office?
- (3) In whose possession should funds of the district be held, the treasurer of the district or the county treasurer?
- (4) Can the Directors of such an improvement district levy a special assessment upon all the real estate in the district for the purpose of maintaining the roads, ditches and parks within the improvement district?

In regard to your first inquiry, we note that while the provisions of K.S.A. 1979 Supp. 19-2762 provide that only persons who are taxpayers and residents of the district, and who are qualified electors under the constitution, are eligible to vote at district elections, said statute imposes no restrictions as to those persons who are eligible to seek and hold the office of director of an improvement district. The statute merely provides:

"Any person desiring to be a candidate for director in any election, shall file with the county election officer of the county wherein the district is located, by 12:00 o'clock noon of the Tuesday preceding by eight (8) weeks the date set for holding such election, his or her name and shall file a statement that he or she desires it to be placed on the ballot as a candidate in such election."

It must be borne in mind that the right to vote and the right to seek public office are not synonymous; they are of a different nature and involve different state interests. Sununu v. Stark, 383 F.Supp. 1287 (D.C. New Hampshire, 1974), affirmed 420 U.S. 958, 95 S.Ct. 1346, 43 L.Ed2d 435 (1975).

Thus, in response to your specific inquiry, it is our judgment that, under the law as currently written, a person who is not a resident of the district may seek and hold the office of director of the district.

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With respect to your second question, we note that the terms of office of persons elected as directors of an improvement district are provided for in K.S.A. 1979 Supp. 19-2760. Said statute provides:

"An election shall be held in each improvement district on the Tuesday following the first Monday in November of 1978 and of each even-numbered year thereafter for the purpose of electing three (3) directors of such district, except that the first election following the establishment of such district shall be held at a time fixed by the board of county commissioners of the county in which the district is located. The directors of an improvement district shall serve for terms of two (2) years, except that directors elected prior to the Tuesday following the first Monday in November, 1978, and directors elected at the first election following the establishment of the district shall serve until their successors are elected."
(Emphasis added.)

Pursuant to this statute, directors of improvement districts serve for a term of two (2) years from and after the date upon which they are elected, which is the Tuesday following the first Monday in November of each even-numbered year, except that directors who were elected prior to the Tuesday following the first Monday in November, 1978, should have served until their successors were elected in November, 1978. Directors elected at the first election following the establishment of a district, which first election is held at a time fixed by the board of county commissioners, serve until their successors are elected at the election held on the Tuesday following the first Monday in November of each even-numbered year. Thus, in any improvement district where the directors thereof were elected for the first time after November, 1978, said directors will serve until the Tuesday following the first Monday in November, 1980, at which time, their successors will be elected. Those persons will serve until their successors are elected in November, 1982. Thus, simply stated, the directors of an improvement district established under K.S.A. 19-2753 et seq. take office and commence carrying on the duties of their office from the date they are elected and are issued a certificate of election pursuant to K.S.A 19-2759.

Next, you seek our opinion in regard to whether funds belonging to the improvement district are to be in the possession of the district's treasurer or the county treasurer.

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K.S.A. 19-2763 provides that the directors of an improvement district are to meet and select from their number a president, secretary and treasurer. The same statute provides, in part:

"The treasurer of the district shall give a bond in such sum as shall be fixed and such sureties as shall be approved by the board of county commissioners, conditioned that he will pay over to the county treasurer of the county wherein the district is situated all funds that may come into his hands as such district treasurer.

. . . .

"The county treasurer shall pay out of the funds in his hands belonging to any district all written orders signed by the president, countersigned by the treasurer, attested by the secretary and authenticated by the seal of such district"
(Emphasis added.)

These provisions clearly indicate that funds of an improvement district are to be placed in the possession of the county treasurer, and paid out by said county treasurer upon receipt of duly executed orders of the district officers.

Your final inquiry is whether the directors of an improvement district may levy a special assessment for general maintenance of roads, ditches and parks within the district.

You explain such action is being contemplated because the funds derived from imposition of the five mill tax levy authorized by K.S.A. 1979 Supp. 19-2765, Sixth, will fall far short of providing the amount necessary for such maintenance.

Improvement districts organized under the provisions of K.S.A. 19-2753 et seq. are given the power, inter alia:

"Sixth, to annually levy and collect a general tax not exceeding five (5) mills on all taxable tangible property within the district, to create a general fund . . . [or] annually levy and collect a general tax not exceeding six (6) mills on all taxable tangible property within the district to create a general fund, but no levy in excess of five (5) mills may be made unless the board of directors of such improvement district has published a resolution

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authorizing a levy in excess of five (5) mills once each week for three (3) consecutive weeks in a newspaper of general circulation within the district. If within thirty (30) days after the last publication of such resolution, a petition protesting such levy, signed by qualified electors of the improvement district equal in number to not less than ten percent (10%) of the electors voting at the last improvement district election for directors, if filed with the county clerk of the county in which such improvement district is located, no levy in excess of five (5) mills may be made. If no petition protesting the levy in excess of five (5) mills is filed within the prescribed time, the improvement district may, annually thereafter, levy such general tax not exceeding six (6) mills.

"Seventh, to levy assessments and special taxes, if deemed expedient by the directors, upon all the real estate in the district that may be benefited by special works and improvements which will be conducive to the public health, convenience, or welfare." (Emphasis added.) K.S.A. 1979 Supp. 19-2765, Sixth, Seventh.

Thus, under the sixth clause of K.S.A. 1979 Supp. 19-2765, a general tax may be levied annually "to create a general fund," while under the seventh clause, special taxes may be levied to pay the costs of "special works and improvements."

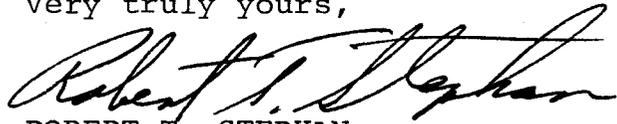
We are constrained to conclude the legislature did not intend that the cost of ordinary maintenance and repair of improvement district property is to be paid with proceeds derived from the imposition of special taxes. Such maintenance and repair, in our judgment, are to be funded by the proceeds of the general property tax authorized in K.S.A. 1979 Supp. 19-2765, Sixth, which proceeds are used to create a general fund. Ordinary maintenance and repair of improvement district property are usual, current expenses, and such expenses are to be paid from the general fund. See: Smith v. Haney, 73 Kan. 506, 509 (1906).

The provisions of K.S.A. 1979 Supp. 19-2786i clearly indicate that another improvement district in the state was faced with the same problem as your district. The legislature authorized that district to levy a general tax of not to exceed twenty-five mills upon all

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the taxable tangible property within such improvement district "for the purpose of maintaining the roads in such improvement district and otherwise improving and maintaining such improvement district." (Emphasis added.) Such legislation would not have been required if the legislature had intended to permit improvement districts to levy special assessments for the purpose of maintenance. Therefore, in our judgment, an improvement district established under the provisions of K.S.A. 19-2753 et seq. may not levy a special assessment for the purpose of maintaining the roads, ditches and parks within the improvement district.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm