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ATTORNEY GENERAL OPINION NO. 81- 279

Mr. William D. Bright
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116 South Pearl
Paola, Kansas 66071

Re: Counties and County Officers -- Public Improvements -- Powers of Improvement Districts

Synopsis: An improvement district created pursuant to K.S.A. 19-2753 et seq. does not possess the power to require district inhabitants to connect their private sewers to the district's sewage system.

Reasonable use charges imposed by an improvement district which become delinquent may be certified to the county clerk for placement on the tax rolls, but there is no statutory authority which permits such certification of other charges imposed by the district. Cited herein: K.S.A. 19-2753, K.S.A. 1980 Supp. 19-2765, K.S.A. 19-2765a, 19-2765b, 19-2778.

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Dear Mr. Bright:

In your capacity as attorney for the Hillsdale Improvement District, Miami County, Kansas, you have asked for an opinion regarding the district's powers in conjunction with a sewer system and disposal works currently under construction. You ask whether owners of premises within the district requiring sewage facilities may be compelled to connect their private sewers to the district's system, or if not, what steps may the district take to stop the use of private septic tanks

and privies within the area. In addition, you ask whether the board of directors of the district may certify delinquent sewer hook-up charges, inspection charges and monthly use charges to the county clerk to be placed on the tax roll for collection.

The Hillsdale Improvement District was created by the Miami County Board of County Commissioners pursuant to K.S.A. 19-2753 et seq. K.S.A. 1980 Supp. 19-2765 outlines the powers of such districts. Although this section permits the levy of 5 mills on property within the district plus a levy of assessments and special taxes, no specific statute grants authority to the district to require landowners to hook up to sewer and water systems of the district. Were an improvement district to be viewed as a municipal corporation, it might be endowed with implied powers broad enough to require such action. However, such districts lack the power to confer general benefits within the boundaries of the district. See, generally, Aurora v. Aurora Sanitary District, 149 P.2d 662 (Colo. 1944). Indeed, such districts are not viewed as having sufficient attributes of a municipality to constitute municipal corporations [see McQuillin Municipal Corporations, §2.07b (3rd Ed. 1971], and the Kansas Attorney General has so concluded. VII Kan. Att'y Gen. Op. 284 (1971) and Attorney General Opinion No. 79-129. However, K.S.A. 19-2756 designates such a district as a "body politic and corporate" having perpetual succession. Since this language indicates that an improvement district is either a municipal corporation or a quasi-municipal corporation [see McQuillin, Municipal Corporations §2.07a (3rd Ed. 1971)], and we have concluded that such districts do not have the legal status of a municipality, we can only conclude that they must be viewed as quasi-municipal entities.

In Kansas, the established rule regarding powers of quasi-municipal corporations is that, as creatures of statute, such entities have only those powers which are expressly authorized by statute or clearly implied therefrom. State v. Kansas City, 60 Kan. 518 (1899); State ex rel., Griffith v. Board of Trustees, 114 Kan. 485 (1923); Kaw Valley Drainage District v. Kansas City, 119 Kan. 368 (1925). Nothing in the statutes authorizing the establishment of improvement districts necessarily implies the power to compel use of the improvements provided by the district. Therefore, we must conclude that the district, itself, lacks the statutory authority to require use of the improvements made available by the district. We note the curious result, however, that district inhabitants are assessed a tax whether they utilize the service or not, a result even more economically imposing when additional special taxes or assessments are levied.

You also inquire as to the procedure for the district to follow in seeking discontinued use of septic tanks. In furtherance of public health, the board of county commissioners may enact local legislation within the county to limit or regulate the use of such facilities pursuant to county home rule power, K.S.A. 1980 Supp. 19-101a. Hence, we would advise the district's board of directors to request the board of county commissioners to exercise its power in the interest of the district.

You also ask whether the district's board of directors may certify delinquent sewer hook-up charges, inspection charges and monthly use charges to the county clerk for placement on the tax rolls. K.S.A. 19-2765b states in pertinent part:

> "In the event any person, firm or corporation using said sewage disposal system neglects, fails or refuses to pay the charges so fixed . . . said charges shall be certified by the board of directors of said district to the county clerk of the county in which said improvement district is located to be placed on the tax roll for collection . . . and shall become a lien upon the real property so served." (Emphasis added.)

When this section is read by itself, we cannot determine which particular charges may be certified to the county clerk. Thus, we turn to the rules of statutory construction for assistance. The primary rule is that the intent of the legislature is to be ascertained from the statute, and to accomplish this end, all parts of an act are to be construed in pari materia. Brown v. Keill, 224 Kan. 195, 200 (1978). K.S.A. 19-2765a and 19-2765b were enacted in 1955 as sections 2 and 3, respectively, of an act which also amended in section 1 the then existing version of K.S.A. 1980 Supp. 19-2765. (L. 1955, ch. 163.) The latter statute enumerates the powers of an improvement district, and in the 1955 act a new power was added in the Tenth paragraph

> "to establish by resolution of the board of directors reasonable rates on charges for the use of the sewage disposal system of said district and provide for the manner of the making and collection of the same. Sewage disposal system for the purposes of this act shall include the system of sewers and the sewage disposal plant of the district." (Emphasis added.)

The foregoing clearly confers the power to establish charges for the use of the sewage system. Moreover, the second section of the 1955 act (K.S.A. 19-2765a) concerns the disposition of "[t]he revenue derived from the charges for the use of the sewage disposal system." (Emphasis added.) Thus, within this context, it is apparent that the legislature's reference to "the charges so fixed" in K.S.A. 19-2765b (the third and final substantive section in the 1955 act) must be regarded as a reference to the use charges established pursuant to the above-quoted provisions of K.S.A. 1980 Supp. 19-2765. Use charges and connection fees are different types of charges. In City of Leeds v. Avram, 14 So. 2d 728 (Alabama 1943), the court distinguished the two in considering whether the owner of property occupied by a tenant was liable for charges for use of the sewer system. The court stated:

> "The distinction is clear between a service charge [for use] and the cost of the connection to the system. The former is for the daily use of the system, payable by the one who uses it unless the contrary is clearly expressed. The latter occurs but one time and that is at the time of the connection: it is in the nature of a permanent fixture and is a feature of the premises." Id. at 730.

Because charges for use are readily distinguishable from connection charges and 19-2765a refers only to charges for use, we must conclude that the legislature intended to include only those charges clearly expressed, i.e., charges for use. We find no express provision for certification of other charges established by the board of directors pursuant to K.S.A. 19-2778, and no such power may be clearly implied. Therefore, the board of directors may not certify charges other than use charges to the county clerk for collection. We would note for the benefit of the district that, if installation charges and inspection fees are authorized, such might be collected prior to installation, or costs for such services might be included in the district's overhead and thus made part of the rate base.

Thus, in our opinion: (1) an improvement district lacks the power to require district inhabitants to connect to the district's sewage system; (2) the district's board of directors may request the board of county commissioners to enact a resolution which would prevent the use of privies and private septic tanks within the district; and (3) use charges established by the board of directors which become delinquent may

be certified to the county clerk to be placed on the tax rolls for collection, but there is no statutory authority which permits certification of other charges to the clerk for collection.

Very truly yours,

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