



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 12, 1982

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

ATTORNEY GENERAL OPINION NO. 82- 37

Paul D. Handy
Finney County Attorney
County Courthouse
Garden City, Kansas 67846

Re: Waters and Watercourses -- Groundwater Management
Districts -- Petition for Dissolution

Synopsis: Nothing in the statutes pertaining to groundwater management districts (K.S.A. 82a-1020 et seq.) either expressly or impliedly requires that a district's board of directors or officers or officers maintain a current list of the district's eligible voters. However, when a petition for dissolution of a district is presented to the secretary of the district's board pursuant to K.S.A. 82a-1034, in order that the board's secretary can discharge his or her duty to determine the sufficiency of such petition (i.e., determine that each person signing the petition is an eligible voter of the district and the number thereof equals twenty percent of the district's eligible voters), it is the board's duty to prepare or cause to be prepared a list of those persons who are eligible voters of the district as of the time the petition is filed. Cited herein: K.S.A. 25-3601, 25-3602, 45-201, K.S.A. 1981 Supp. 75-1117, K.S.A. 82a-1020, 82a-1021, 82a-1025, K.S.A. 1981 Supp. 82a-1028, 82a-1030, K.S.A. 82a-1034.

* * *

Dear Mr. Handy:

You have requested our opinion concerning the procedure for dissolving a groundwater management district. Your inquiry is prompted by a similar request made of you by several per-

Paul D. Handy
Page Two

sons who own land included within the boundaries of Southwest Kansas Groundwater Management District No. 3. You advised these landowners that the procedures for the dissolution of a groundwater management district were specified by K.S.A. 82a-1034, and that one of the methods provided therein was an election on the question of dissolution following the presentation of petitions, signed by not less than twenty percent of the district's eligible voters, to the secretary of the district's board of directors.

These landowners then circulated petitions among the district's eligible voters for the purpose of calling an election on the question of the district's dissolution. You indicate that these landowners claim to have over 200 such petitions and, in order to determine whether the number of eligible voters who signed the petition is equal to twenty percent of the district's eligible voters, they requested a list of the district's eligible voters from the district's board of directors. However, as you noted in your letter, "[t]he District declined to provide the group with a voting list, contending they do not maintain such a list, and could not, without a great deal of difficulty, provide one." Accordingly, your specific question to us is whether the district's board of directors must provide a list of the district's eligible voters when requested by an eligible voter of the district.

Regrettably, our answer cannot be framed as simply as your question. There is no case law precisely on point, and the statutes governing the creation, operation and management of groundwater management districts are of little assistance. However, having reviewed these statutes, several observations can be made.

First, there is nothing in the statutes (K.S.A. 82a-1020 et seq.) concerning groundwater management districts which expressly requires the board of directors or officers of a district to keep and maintain a list of the district's eligible voters. Second, there is nothing in these statutes, in our judgment, which supports a conclusion that there is an implied duty to keep and maintain such list in the normal course of the district's operations. We are persuaded to this position by the fact that, in each instance where the statutes provide for notice to be given eligible voters as to meetings, hearings or elections, publication notice only is required. Nowhere do these statutes provide for actual notice, which would necessitate maintaining a current list of eligible voters. Moreover, we have found no requirement that the identity and qualifications of a person as an eligible voter be determined prior to such person voting on any matter submitted to a district's eligible voters, and in each instance where a meeting or election of eligible voters is prescribed, the statutes are silent as to any quorum requirement, specifying only that a "majority of the votes cast" is all that is necessary to approve any proposition.

Thus, from our reading of these statutes, there is nothing implying the necessity for a district's board or officers to keep and maintain on a regular basis a list of the district's eligible voters. However, this is not to suggest that there is no occasion for the preparation of such a list. In addition to the provisions of K.S.A. 82a-1034 regarding a petition for dissolution of the district, K.S.A. 1981 Supp. 82-1030(d) provides for a petition of the district's eligible voters in opposition to the board's proposal to issue no-fund warrants to defray operating expenses of the district, until revenues are available from the district's user charges and assessments. Although in neither case do the statutes specify the particulars of determining the sufficiency of such petition, we believe the presentation of any such petition to the board necessitates the preparation of a list of the district's eligible voters.

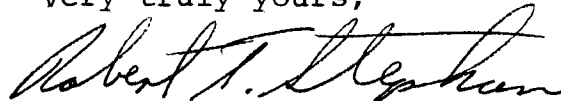
In our judgment, when a petition for dissolution of the district is presented to the secretary of the district's board, pursuant to K.S.A. 82a-1034, the secretary has an implicit duty to determine the sufficiency of such petition. This requires a determination that each person signing the petition is an eligible voter of the district and that the number thereof equals twenty percent of the district's eligible voters. Obviously, these duties cannot be performed unless the secretary has available a list of the district's eligible voters. Thus, it is our opinion that, at the time a petition for dissolution of a groundwater management district is presented to the secretary of the district's board, the board must prepare or cause to be prepared a list of the district's eligible voters.

Before concluding, several additional observations are appropriate. First, we note the conspicuous absence of any statutory direction as to the procedures for preparing, circulating, filing and determining the sufficiency of these petitions. At first blush it would appear that the provisions of K.S.A. 25-3601 et seq. would be applicable, since a groundwater management district is, in our judgment, a "municipality" within the contemplation of K.S.A. 25-3601. [See K.S.A. 82a-1025(b), K.S.A. 1981 Supp. 82a-1028(b) and 75-1117 and McQuillin, Municipal Corporations, §2.07a (3rd Ed., 1971).] However, it is clear from a reading of K.S.A. 25-3602 that these statutory provisions have application only to petitions by registered electors for a question submitted election under the general election laws. Thus, in the absence of legislative guidance, we believe that the sufficiency of a petition for dissolution must be determined as of the time the petition is filed with the secretary of the board. Accordingly, the list of the district's eligible voters also must be prepared as of that time, i.e., the list must reflect those persons or entities who are eligible voters as of the time the petition is filed.


We also recognize that the absence of any expressed or implied statutory requirement that a groundwater management district's board of directors keep and maintain a current list of the district's eligible voters reflects a legislative policy which creates uncertainty for those eligible voters petitioning for the district's dissolution. However, the statutes are not totally void of guidance as to the number of signatures required on the petition. We note that K.S.A. 82a-1030 authorizes a district's board to impose a user charge on each water user in the district and to make an annual assessment against lands within the district. While neither the landowners nor the water users are necessarily the equivalent of the district's eligible voters (see definition of "eligible voter" in K.S.A. 82a-1021), we suggest that the number of persons in each of these groups provides an indication as to the potential number of eligible voters in the district. Records of persons paying water user charges and landowners paying annual assessments should be maintained in the district's office for purposes of the district's annual audit (K.S.A. 1981 Supp. 82a-1030) and, consequently, are available for public inspection pursuant to K.S.A. 45-201. Moreover, since a district's charges and assessments made in each county of the district are certified to and collected by the county clerk of each such county, such information also should be available in each such county clerk's office.

In summary, it is our opinion that nothing in the statutes pertaining to groundwater management districts (K.S.A. 82a-1020 et seq.) either expressly or impliedly requires that a district's board of directors or officers maintain a current list of the district's eligible voters. However, when a petition for dissolution of a district is presented to the secretary of the district's board pursuant to K.S.A. 82a-1034, in order that the board's secretary can discharge his or her duty to determine the sufficiency of such petition (i.e., determine that each person signing the petition is an eligible voter of the district and the number thereof equals twenty percent of the district's eligible voters), it is the board's duty to prepare or cause to be prepared a list of those persons who are eligible voters of the district as of the time the petition is filed.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



W. Robert Alderson
First Deputy Attorney General