



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 70

Van Smith
Suite 423, Warren Building
301 North Main
Garden City, Kansas 67846

Re: State Boards, Commissions and Authorities -- Kansas
Water Authority -- Membership; Groundwater Manage-
ment District Representative

Synopsis: K.S.A. 1981 Supp. 74-2622 provides that one of
the members of the Kansas Water Authority be a
board member of a western Kansas groundwater
management district. Such a representative is
appointed by the governor from a list of three
names submitted by the presidents of groundwater
management district boards nos. 1, 3 and 4. Upon
the individual's removal from his respective board,
whether by resignation or defeat at an annual elec-
tion, the individual's position on the authority
also is vacated and the nomination process must
be repeated to fill the vacancy. Cited herein:
K.S.A. 13-2102, 14-205, 14-1305, 14-1504, 15-209,
15-1405, 15-1604, K.S.A. 1981 Supp. 74-2622.

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Dear Mr. Smith:

As counsel for Groundwater Management District No. 1, you
request our opinion on a question concerning membership on
the Kansas Water Authority. Specifically, you inquire under
what circumstances the position held by a board member of a
western Kansas groundwater management district (GMD) may be
vacated.

The Kansas Water Authority was established in 1981 by Chapter
302 of the session laws. Provisions for the appointment of
members to the authority are found at K.S.A. 1981 Supp. 74-2622,
which in pertinent part states:

"(a) There is hereby established within and as a part of the Kansas water office the Kansas water authority which shall be composed of 16 members of whom 11 shall be appointed as follows: (1) Eight members shall be appointed by the governor for a term of four years.

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"Of the members appointed under this provision one shall be a representative of large municipal water users, one shall be representative of small municipal water users, one shall be a board member of a western Kansas groundwater management district, one shall be a board member of a central Kansas groundwater management district, one shall be a member of the Kansas association of conservation districts, one shall be representative of industrial water users, one shall be a member of the state association of watershed districts, and one shall be representative of the general public.

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"The member who is representative of a western Kansas groundwater management district shall be appointed from three nominations submitted by the presidents of the groundwater management district boards No. 1, 3 and 4.

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"All such nominations shall be submitted to the governor not later than 60 days after the effective date of this act. In any case where the governor cannot make an appointment from the original nominations, the nominating authority shall be so advised and, within 30 days thereafter, shall submit three new nominations

"(b) In the case of a vacancy in the appointed membership of the Kansas water authority, such vacancy shall be filled for the unexpired term by appointment in like manner as the original appointment was made. Appointed members of the authority attending regular or special meetings thereof shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto." (Emphasis added.)

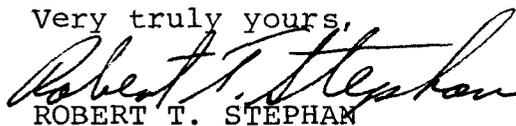
Given the above procedures for the appointment of a member of the authority from a list of three western Kansas GMD board members, you ask whether a vacancy is created when the individual so selected ceases to be a local board member.

In our opinion, such is the case, for the subsection is clear that the member representing the western Kansas GMDs "shall be a board member" of one of the three districts located there. This wording creates an on-going condition for membership on the authority, with the position automatically vacated when the condition ceases to be met. The situation is analagous to that created by various Kansas statutes which require a public official to reside in the municipality which he or she serves. For example, K.S.A. 13-2102 requires all appointed officers in a first-class city to be residents of the city prior to their appointment. Should such an officer move his or her residence from the city, the office is automatically vacated. (K.S.A. 13-2104.)

Similar provisions exist for elective and appointive officers in second and third-class cities (K.S.A. 14-205, 14-1305, 14-1504, 15-209, 15-1405, and 15-1604) and, until the repeal of K.S.A. 19-2608 in 1976, for counties. Prior opinions of this office have construed such statutes as imposing a continuing duty to reside in the governmental unit as a prerequisite for holding office (Attorney General Opinion Nos. 79-267, 76-7, 76-207) and we find no reason that the same legal principles would not apply here. In addition, decisions of Kansas courts have found that such qualifications are continuing, and are not merely a prerequisite for selection to the position. See, e.g., State ex rel. v. Stice, 186 Kan. 69 (1960). Accordingly, should an individual cease to be a member of a GMD board, the individual would automatically vacate his or her position on the authority.

In conclusion, K.S.A. 1981 Supp. 74-2622 provides that one of the members of the Kansas Water Authority be a board member of a western Kansas groundwater management district. Such a representative is appointed by the governor from a list of three names submitted by the presidents of groundwater management district boards nos. 1, 3 and 4. Upon the individual's removal from his respective board, whether by resignation or defeat at an annual election, the individual's position on the authority also is vacated and the nomination process must be repeated to fill the vacancy.

Very truly yours,


ROBERT T. STEPHAN

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Jeffrey S. Southard

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