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ATTORNEY GENERAL OPINION NO. 82-71

Patrick J. Hurley
Secretary of Administration
State Capitol, Room 263-E
Topeka, Kansas 66612

Re: Federal Jurisdiction -- Surplus Property of Federal Agencies -- Eligibility to Receive Property

Synopsis: Water districts (K.S.A. 19-3501 et seq.), watershed districts (K.S.A. 24-1201 et seq.) and irrigation districts (K.S.A. 42-357 et seq.) are public agencies within the contemplation of 40 U.S.C. §484. As such, they are eligible to receive surplus federal property made available to the state of Kansas under that statute, and distributed under the supervision of the Secretary of Administration pursuant to K.S.A. 27-311. Cited herein: K.S.A. 1981 Supp. 2-1319, K.S.A. 19-3501, 19-3502, 24-1201, 24-1209, 27-201, 27-311, 42-357, 42-365, 42-372, 42-377, 42-388a, 42-388g, K.S.A. 1981 Supp. 79-3602, 40 U.S.C. §484.

* * *

Dear Secretary Hurley:

You have requested our opinion on the eligibility of Kansas water districts, watershed districts and irrigation districts to receive federal property transferred to your surplus property section pursuant to 40 U.S.C. §484. Subsection (j) of this statute authorizes the Administrator of General Services to transfer, without cost, surplus property to the state agency designated under state law as the agency responsible for the distribution of all property transferred in accordance with paragraphs (2) and (3) of that section. We note that, pursuant to K.S.A. 27-311, the Secretary of Administration is responsible for administering the Kansas statutes

pertaining to the receipt and distribution of federal surplus property, and is required to appoint a surplus property officer to perform the functions relating thereto.

The eligibility of agencies and institutions to receive surplus federal property is prescribed in 40 U.S.C. §484(j)(3), providing that such property may be donated by the designated state agency

"(A) to any public agency for use in carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; or

"(B) to nonprofit educational or public health institutions or organizations, such as medical institutions, hospitals, clinics, health centers, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, child care centers, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, museums attended by the public, and libraries serving free all residents of a community district, State, or region, which are exempt from taxation under section 501 of Title 26, for purposes of education or public health (including research for any such purpose)."

Paragraph (5) of that same subsection defines the term "public agency" as

"any State, political subdivision thereof (including any unit of local government or economic development district), or any department, agency, instrumentality thereof (including instrumentalities created by compact or other agreement between States or political subdivisions), or any Indian tribe, band, group, pueblo, or community located on a State reservation."

Therefore, in order to determine whether a water district, watershed district or irrigation district is eligible as a "public agency" to receive surplus property pursuant to 40 U.S.C. §484, it is first necessary to determine whether each such entity is a political subdivision of the state.

Initially, we note that the definition in 40 U.S.C. §484(j)(5) of "public agency" quoted above provides no indication that a "political subdivision of the state" is to be considered in any narrow or restrictive context. Accordingly, we believe it appropriate to consider such term in a general sense, i.e., as a reference to a subordinate governmental entity which exists for the purpose of discharging some function of local government within a prescribed territory and which has a governing body possessed of prescribed powers of self-government. (See McClanahan v. Cochise College, 25 Ariz. App. 13, 540 P.2d 744, and Commander v. Board of Com'rs of Buras Levee Dist., 202 La. 325, 11 So.2d 605.)

We are also persuaded to this conclusion by the fact that there is a dearth of definitive case law in Kansas pertinent to this issue, although, in Schulenberg v. City of Reading, 196 Kan. 43 (1966), the Court compared the attributes of a particular sewer district with those of a sewer district considered in Bishop v. Sewer District No. 1, 184 Kan. 376 (1959), noting that the latter, "[i]n a legal sense, . . . was a political subdivision or quasi-municipality." Id. at 52. Such conclusion was predicated on the fact that the sewer district in the Bishop case had corporate existence and "[i]t had the right to sue and be sued, enter into contracts, adopt budgets, levy taxes and special assessments, establish, operate and maintain a sewer system, create indebtedness and issue bonds to pay for the services authorized." Id. at 51, 52. However, there is nothing in Schulenberg to suggest that each of the foregoing enumerated powers is essential to a finding that a particular governmental entity is a political subdivision.

Finally, we think a broad definition of "political subdivision" is appropriate here, because of the numerous, differing definitions of this term throughout the Kansas statutes. In reviewing these various statutes, though, we have noted that the most commonly referenced attribute of a statutorily-defined political subdivision is the power to levy or cause to be levied taxes upon tangible property. See, e.g., K.S.A. 1981 Supp. 2-1319 (control and eradication of noxious weeds), K.S.A. 27-201 (payments by federal government in lieu of taxes) and K.S.A. 1981 Supp. 79-3602(n) (retailers' sales tax).

With these principles in mind, we have reviewed the statutes providing for each of the entities noted in your request.

Water districts are established pursuant to K.S.A. 19-3501 et seq. K.S.A. 19-3502 authorizes the establishment and sets forth the powers of water districts, stating:

"Each of such water districts shall be [a] quasi-municipal body corporate with the power of eminent domain, which shall be exercised in the manner provided in K.S.A. 26-501 to 26-517, inclusive; such districts shall have power to enter into contracts; to sue and be sued; to establish, construct, purchase, operate and maintain a water supply and distribution system; to fix water rates; and to issue revenue bonds in the manner hereinafter provided to pay for the establishment, construction, purchase and operation of a water supply and distribution system or systems."

Watershed districts are established pursuant to K.S.A. 24-1201 et seq. K.S.A. 24-1209 sets forth the general powers and duties of watershed districts and establishes them as a body politic and corporate, giving them numerous powers. Pertinent among these are the right to sue and be sued, the authority to levy taxes and assessments, to issue bonds, to incur indebtedness, to exercise the right of eminent domain, to enter into contracts and to construct, improve, maintain and operate works of improvement, including such facilities and appurtenances as are necessary for the conservation of soil, prevention of floods, disposal of water and the conservation, development and utilization of water for domestic, municipal, agricultural, industrial and recreational purposes.

The establishment of irrigation districts is authorized by K.S.A. 42-357, which states:

"The board of county commissioners of any county in the state of Kansas where irrigation is now or may hereafter be used in the aid of agriculture is hereby authorized and empowered to cause to be erected into convenient districts to be called irrigation districts, such tracts of contiguous territory as may be conveniently irrigated from any given source of supply."

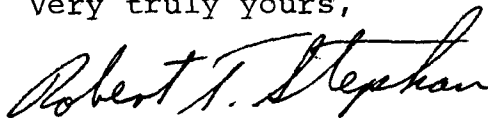
Pursuant to K.S.A. 42-365, irrigation districts have the power to issue bonds of said district and to levy a tax upon all the real estate dependent for irrigation upon the irrigation works. K.S.A. 42-372 provides irrigation districts with the power to contract for the construction of irrigation works, and K.S.A. 42-377 gives irrigation districts the power to levy a tax where necessary to pay current expenses and interest on the bonds of said district. K.S.A. 42-388a sets forth additional powers of irrigation districts and authorizes them to "borrow money and issue bonds for the purpose of constructing, maintaining and operating dams, reservoirs,

sluices, ditches and canals, to divert, convey, store and deliver water to be used by any persons for the purpose of irrigating land in such district." Furthermore, it authorizes the district to construct, maintain and operate such works for the purpose of conveying, storing and delivering water. Finally, K.S.A. 42-388g gives irrigation districts the right of eminent domain.

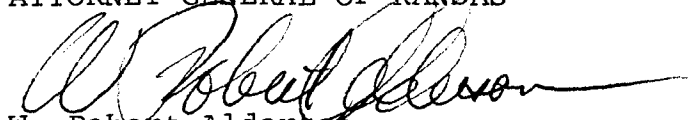
The foregoing summary of our review of the pertinent statutory attributes of each of the entities referenced by your inquiry (i.e., water districts, watershed districts and irrigation districts) compels the conclusion that each such entity must be regarded as a political subdivision of the state. Clearly, each of them is a subordinate governmental entity which exists for the purpose of discharging functions of local government within a prescribed territory, and which has a governing body possessed of prescribed powers of self-government. Moreover, the powers possessed by each such entity are substantially the same as many of the attributes of political subdivisions identified by the Court in Schulenberg, supra, and notably each of these governmental units possesses the power to levy taxes.

Therefore, it is our opinion that water districts, watershed districts and irrigation districts are public agencies within the contemplation of 40 U.S.C. §484. As such, they are eligible to receive surplus federal property made available to the State of Kansas under that statute and distributed under the supervision of the Secretary of Administration pursuant to K.S.A. 27-311.

Very truly yours,



ROBERT T. STEPHAN
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