



STATE OF KANSAS

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March 24, 1982

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ATTORNEY GENERAL OPINION NO. 82-72

Thomas A. Adrian
Adrian & Epp
Suite 300, Old Mill Plaza
Newton, Kansas 67114

Re: Waters and Watercourses -- Groundwater Management
Districts -- Elections; Retention of Eligible
Voter Affidavits

Synopsis: Annual elections in a groundwater management district are governed by the provisions of K.S.A. 82a-1026. Nothing contained therein requires the district to make or maintain a current list of the district's eligible voters. Accordingly, any such records which a district maintains for its own convenience are not subject to the Open Public Records Act, K.S.A. 45-201 et seq., and therefore do not have to be made available for inspection by the public. Cited herein: K.S.A. 45-201, 82a-1021, 82a-1025, 82a-1026.

* * *

Dear Mr. Adrian:

As counsel for Groundwater Management District No. 2 (Equus Beds), you request the opinion of this office on a question concerning the maintainance of election records by the district. Specifically, you inquire whether affidavits which eligible voters are required to complete and which are subsequently maintained by the district must be opened for an individual's inspection under state or federal statutes.

The act which creates and governs groundwater management districts in Kansas, K.S.A. 82a-1020 et seq., contains two statutes dealing with the conduct of elections. The first, K.S.A. 82a-1025, governs the initial election held to approve the creation of a district, in which "all eligible voters of

the district shall be entitled to vote." The second, K.S.A. 82a-1026, deals with the election of the district's board of directors, and states, in pertinent part:

"(a) Within not more than ninety (90) days after the recording of the certificate of incorporation, a meeting open to all eligible voters of the district shall be held by the steering committee for the election of the initial board of directors of the district. A notice of the meeting shall be given by the steering committee at least ten (10) days prior to the date thereof by one publication in a newspaper of general circulation in each of the counties of which the groundwater management district is a part. Each eligible voter of the district shall be entitled to vote for as many candidates as the number of directors that are to be elected, but may not cast more than one vote for any one candidate. The candidates receiving the greatest number of votes cast shall respectively be declared elected.

"(b) In not more than twelve (12) months after the initial meeting, and annually thereafter, a meeting shall be held for the election of directors whose terms expire, to report on the financial condition and activities of the district and to adopt a budget covering the anticipated expenses of the district for the ensuing year."

From the above, we can find nothing which requires the district to maintain a list of those persons who are eligible to vote under K.S.A. 82a-1021. The same conclusion was reached in a recent opinion of this office, No. 82-37, which also stated:

"[T]here 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."

In light of the foregoing, it would be our opinion that the affidavits which the district requires those wishing to vote to complete are not contemplated by statute, however laudatory their effect or the district's intent in requiring them. As a result, the affidavits do not fall under the Kansas Open Records Act, K.S.A. 45-201 et seq. Specifically, K.S.A. 45-201(a) states:

"All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the district court concerning proceedings pursuant to the juvenile code which shall be open unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen." (Emphasis added.)

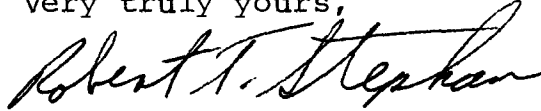
As specified in the underscored language above, there must be a law requiring records to be "kept and maintained" for them to become "official public records." This interpretation was applied in Atchison, T. & S.F. Rly. Co. v. Commission on Civil Rights, 215 Kan. 911, 919 (1974), where the Kansas Supreme Court concluded the foregoing statute applies "only to public records which are required by law to be kept and maintained." (Emphasis added.) Numerous prior opinions of this office have reached this same result. Attorney General Opinion Nos. 78-314, 76-369, 76-66.

In conclusion, annual elections in a groundwater management district are governed by the provisions of K.S.A. 82a-1026. Nothing contained therein requires the district to make or maintain a current list of the district's eligible voters. Accordingly, any such records which a district maintains for

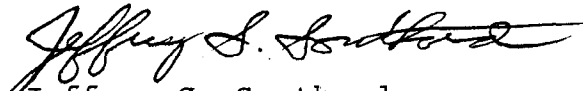
Thomas A. Adrian
Page Four

its own convenience are not subject to the Open Public Records Act, K.S.A. 45-201 et seq., and therefore do not have to be made available for inspection by the public.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle