



STATE OF KANSAS

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August 19, 1982

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CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 82- 178

Dwaine Waite
Route 2, Box 250
Winfield, Kansas 67156

Re: Drainage and Levies--Watershed Districts--
Meetings of Directors; Proxy Voting

Synopsis: In that a watershed district organized pursuant to K.S.A. 24-2101 et seq., is a quasi-municipal corporation, a quorum may be established, and any votes taken by the board of directors, only with those directors who are present, thus precluding the use of voting by proxy. Cited herein: K.S.A. 24-1201, 24-1209, 24-1210.

* * *

Dear Mr. Waite:

As Secretary of the Middle Walnut Joint Watershed District No. 60, you request our opinion on behalf of the board of directors regarding proxy voting. Specifically, you inquire whether such voting is permitted in the absence of any by-law or rule of the district on the subject. You inform us that directors have on occasion attempted to vote for an absent member who has authorized the practice by letter.

The Watershed District Act, K.S.A. 24-1201 et seq., was enacted "for the purpose of alleviating (water) damages and furthering the conservation, development, utilization, and disposal of water and thereby protecting the state's land and water resources." To further those purposes, the act provides for the establishment of watershed districts which are considered bodies politic and corporate. K.S.A. 24-1209. The corporate powers and duties

of such districts, as set out therein, include the power to sue and be sued; to execute contracts; to acquire, purchase, hold, sell and convey land and personal property; to construct, improve, maintain and operate works of improvement; to employ professional services; to levy taxes and assessments; and to issue bonds and incur indebtedness within the limits of the Act. K.S.A. 24-1210 grants the board of directors the power to act as the governing body of the watershed district carrying out the provisions of the act.

In general, improvement districts such as Middle Walnut Creek Joint Watershed District are classified as either a municipal or a quasi-municipal corporation. McQuillin, Municipal Corporations, §2.07a (3rd Ed. 1971). Some states consider a watershed district as a municipal corporation. Levy v. Coon Creek Watershed District, 153 N.W.2d 209, 221 (Minn. 1967). In reviewing the validity of a watershed district improvement project, the Supreme Court of Minnesota held that "municipal corporation" in its broadest sense applies to watershed districts. However, two opinions of this office (Attorney General Opinion Nos. 81-279 and 80-147) have stated that a watershed district has the character of a quasi-municipal corporation. [McQuillin, Municipal Corporations, §§2.23, 2.29 (3rd Ed. 1921).] As a creature of statute, a quasi-municipal corporation has only those powers 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).

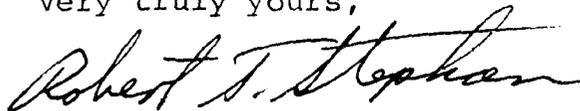
As the act nowhere authorizes the use of voting by proxy at meetings of the board of directors, judicial authority may be consulted in determining whether the power to do so has been implied for municipal or quasi-municipal corporations. A general rule of corporate law precludes the use of voting by proxy at board meetings. 19 Am.Jur.2d Corporations, §1131. This is grounded in the duty of the directors to exercise deliberative control of the business of the corporation, thereby requiring their physical presence. The same has been held for municipal corporations, where a quorum necessary to conduct business can only be made up of directors or officials actually present. 62 C.J.S. Municipal Corporations, §399(a) (1949). While this office has previously issued opinions concerning the propriety of meetings conducted entirely by means of telephone conference calls (Nos. 80-159, 80-173), an official whose vote is cast by proxy is totally without input into the course of the meeting, as well as being without the benefit of the general discussion.

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In our opinion, the directors of a watershed district are elected for the purpose of expressing their views on matters of importance to the district, thereby representing those voters who selected them. The presence of a director allows him or her to assist in the decision-making process by offering comments, listening to the statements of other directors and the public, and examining material prepared for the meeting by district employees. In light of the above, and in the absence of any express statutory authority, we are not prepared to conclude that the use of proxy voting is necessary to effectuate the express authority of the board of directors to conduct meetings.

In conclusion, a watershed district organized pursuant to K.S.A. 24-1201 et seq. is governed by a board of directors elected by eligible voters of the district at the annual meeting. The directors exercise the powers granted to the district at regular meetings held quarterly as well as at special meetings. At such meetings, the business of the district is discussed and acted upon, with a majority of the directors necessary for a quorum. In that a watershed district is a quasi-municipal corporation, a quorum may be established, and any votes taken, only with those directors who are present, thus precluding the use of voting by proxy.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:jm