



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 30, 1982

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CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 82- 218

Mr. John K. Bork  
Jefferson County Attorney  
Jefferson County Courthouse  
Oskaloosa, Kansas 66066

Re: Counties and County Officers -- Public Improvements  
-- Improvement District Elections

Synopsis: Where an improvement district has been formed by petition of nonresident owners of property in the district, then K.S.A. 19-2757 requires as a condition precedent to an election of directors of an improvement district that the county election officer certify that one hundred (100) or more qualified electors reside in said improvement district. If the county election officer cannot make such certification then the interim directors appointed by the board of county commissioners shall continue in such capacity. Cited herein: K.S.A. 19-2757, 19-2760.

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Dear Mr. Bork:

You have requested an opinion from this office regarding whether an improvement district may conduct an election pursuant to K.S.A. 19-2757, even though there are not one hundred qualified electors which reside in such improvement district. You state that the improvement district was incorporated in 1970 and no election for improvement district officers has been held in such district. K.S.A. 19-2757 provides in pertinent part as follows:

"That it shall be the duty of the board of county commissioners incorporating any improvement district under the provisions of this act to cause an entry to be made upon its records

showing all of its declarations, findings, decisions and orders made pursuant to the preceding sections, which entry shall define the limits of the improvement district to be so incorporated in conformity to the description contained in the petition, and such entry shall, if the petition requesting the incorporation of the district was signed by residents of the district, fix the time and place of holding the first election to choose such officers of such improvement district as are hereinafter required to be elected, and designate five (5) taxpayers residing within such district, three (3) to act as judges and two (2) to act as clerks of such election; and if the petition requesting the incorporation of the district was signed by the owners of the property within the district not residents thereof, such entry shall contain the names of three (3) persons, selected by the board of county commissioners from a list of five (5) nominees presented by unanimous consent of all of the owners of all of the real property within the district, to serve as interim directors of such improvement district until directors are elected at an election held on the first Tuesday in March next following the first January in which the county election officer shall certify that the qualified electors residing in such district number one hundred (100) or more. Upon the receipt of such certification from the county election officer, the board of county commissioners shall fix the time and place for the holding of the election and designate judges and clerks therefor in the manner hereinbefore provided." (Emphasis added.)

A careful reading of K.S.A. 19-2757 indicates that an improvement district's first election of officers may occur in one of two ways. First, if the petition requesting that the board of county commissioners incorporate such district was signed by residents of the district then the board of county commissioners is required, inter alia, to fix the time and place of the first election of officers. Second, if the petition requesting that the board of county commissioners incorporate such improvement district was signed by property owners who are not residents of the proposed improvement district, then an election of officers may not be held until the county's election officer certifies that at least one hundred qualified electors reside in such improvement district. We note that the petition requesting that Lakeside

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Improvement District be incorporated was signed by owners of property within the district not residents thereof. Hence, according to K.S.A. 19-2757, the first election of the improvement district officers may not be conducted unless and until the county's election officer certifies that at least one hundred qualified electors reside within the subject improvement district.

You state in your opinion request that K.S.A. 19-2760 appears to require periodic elections irrespective of the number of qualified electors residing in the subject improvement district. K.S.A. 19-2760 states in relevant part:

"An election shall be held in each improvement district on the Tuesday following the first Monday in November of 1978 and of each even-numbered year thereafter for the purpose of electing three (3) directors of such district, except that the first election following the establishment of such district shall be held at a time fixed by the board of county commissioners of the county in which the district is located."

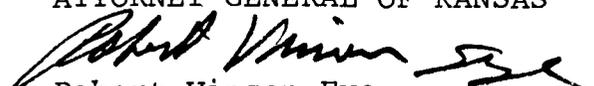
The presence of K.S.A. 19-2760 does not necessarily repeal the requirements set forth in K.S.A. 19-2757. K.S.A. 19-2757 and 19-2760 are in pari materia and must be construed together with the intent of reconciling inconsistencies and bringing them into workable harmony if reasonably possible. Smith v. Kansas Turnpike Authority, 182 Kan. 158 at 161 (1958). We believe the requirement of K.S.A. 19-2760 that an election be held every two years presupposes that the improvement district has already satisfied all conditions precedent according to K.S.A. 19-2757. Hence, 19-2760 only applies after the initial election of officers as required by 19-2757 has been accomplished.

In conclusion, where an improvement district has been formed by petition of nonresident owners of property in the district, K.S.A. 19-2757 requires, as a condition precedent to an election of directors of such district, that the county election officer certify that one hundred (100) or more qualified electors reside in said improvement district. If the county election officer cannot make such certification, then the interim directors appointed by the board of county commissioners shall continue in such capacity.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye  
Assistant Attorney General