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ATTORNEY GENERAL OPINION NO. 82- 220

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

Re: Waters and Watercourses -- Groundwater Management
Districts -- Budget Law Inapplicable

Synopsis: A groundwater management district organized pursuant to K.S.A. 82a-1020 et seq., is empowered to raise funds only through user charges and assessments. As an annual assessment is imposed on all landowners on a per acre basis, without regard to assessed valuation, it is not a tax in the sense intended by the Kansas Budget Law, K.S.A. 79-2925 et seq., nor is such a district a "municipality" for the purposes of that law. Accordingly, the Kansas Budget Law is inapplicable to such districts. However, as K.S.A. 82a-1030(b) requires the district to operate with a budget, expenditures must equal income, given the common-law definition of "budget" as requiring the two figures to balance. Cited herein: K.S.A. 10-1101, K.S.A. 1981 Supp. 12-105a, K.S.A. 68-2101, 79-2927, 79-2929, 79-2930, 79-5001, 82a-1021, 82a-1028, 82a-1030.

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Dear Mr. Smith:

As counsel for Southwest Kansas Groundwater Management District No. 3 (District), you request our opinion on whether the District is subject to the Budget Law, K.S.A. 79-2925 et seq.

The act which creates and governs a groundwater management district (GMD) in Kansas, K.S.A. 82a-1020 et seq., contains two statutes dealing with the funding of the district. One,

K.S.A. 82a-1032, authorizes special assessments to be made upon specific tracts benefitted by works of improvement undertaken by the district. The second, K.S.A. 82a-1030, states [at subsection (a)]:

"In order to finance the operations of the district, the board may assess an annual water user charge against every person who withdraws groundwater from within the boundaries of the district of not to exceed thirty cents (30¢) for each acre-foot (325,851 gallons) of ground water withdrawn within the district. The board may also make an annual assessment against each landowner of not to exceed five cents (5¢) for each acre of land owned within the boundaries of the district. Special assessments may also be levied, as provided hereafter, against land specially benefitted by a capital improvement without regard to the limits prescribed above."

Nowhere in the act is there authority for a GMD to levy ad valorem taxes. Rather, the section setting forth the powers of a district (K.S.A. 82a-1028) limits it [at subsection (h)] to the funding methods set forth above. In this respect, a GMD is different from other units of government such as cities, counties and school districts.

In the present situation, it is our understanding that the district has, pursuant to the procedure set forth at K.S.A. 82a-1030(b), adopted a budget for 1983 which is funded through an annual assessment of 4 1/2 cents per acre. Using an assessment base of 4,703,944 acres, this rate will yield \$211,677. While the district's boundaries have not changed over the last two years, we note that the assessment base has decreased by over 35,000 acres. This is attributable to another exceptional feature of the statutes governing GMDs, namely the ability of a landowner to "opt out" of the district in return for surrendering the right to vote in district matters. K.S.A. 82a-1021(e). Alternatively, a landowner may have certain tracts excluded while leaving others within the district, if certain conditions are met. K.S.A. 82a-1021(e).

Concern has been expressed because the amount of expenditures set forth in the 1983 budget totals only \$246,130, while the amount of income and reserves total \$289,453. Thus, the district has an "unbalanced" budget, which will result in a surplus of more than \$40,000 at the end of the fiscal (and budget) year. However, the Budget Law, K.S.A. 79-2925 et seq., requires expenditures to be balanced with revenues. Specifically, K.S.A. 79-2927 states:

"The governing body of each taxing subdivision or municipality shall meet not later than the first day of August of each year, and shall respectively make in writing on forms furnished by the director of accounts and reports a budget properly itemized and classified by funds and showing all amounts of money to be raised by taxation and from all other sources for the ensuing budget year. The budget shall show in parallel columns all amounts and items included and to be expended for the ensuing budget year and the amount appropriated for corresponding or other items during the current budget year and all amounts expended for corresponding or other items during the preceding budget year. In the preparation of budgets for all taxing subdivisions or municipalities, there shall not be included any item for sundry or miscellaneous purposes in excess of ten percent (10%) of the total amount of any such budget.

"The budget shall show in parallel columns the amount of revenue actually received from taxation and from sources other than direct taxation, with the amount from each source separately stated for the preceding budget year and the amount actually received plus the amount estimated to be received from taxation and from sources other than direct taxation with the amount for each source separately stated for the current budget year and also the amount estimated to be received from taxes and from other sources during the ensuing budget year, with the amount estimated to be received from each source separately stated. The budget of expenditures for each fund shall balance with the budget of revenues for such fund" (Emphasis added.)

In light of this language, the district has been requested to either resubmit its budget with increased expenditures or to lower the annual assessment so that estimated expenditures balance with estimated available revenues. You accordingly request our opinion as to the applicability of the Budget Law to GMDs.

As to whether a GMD is a taxing subdivision, it first should be noted that the relevant statutes, as cited hereinabove, do not authorize the making of any levy upon real property, but rather refer to assessments, either annual or special.

The distinction between an assessment and a tax has been recognized by Kansas courts, as in the case of McCall v. Goode, 168 Kan. 361 (1949), where at 363 the Court said:

"It is well understood an assessment against property by reason of benefits to be derived from an improvement is not in the constitutional sense a tax. Although it has been said assessments for local improvements form an important part of the system of taxation such assessments differ from general taxes. An assessment, as distinguished from other kinds of taxation, is that special and local imposition upon the property in the immediate vicinity of municipal improvements, which is necessary to pay for the improvement, and is laid with reference to the special benefit which the property is supposed to have derived therefrom." (Citations omitted.)

See also State Highway Commission v. City of Topeka, 193 Kan. 335, 337-338 (1964), 14 McQuillin, Municipal Corporations, §38.01, 3rd ed. (1970).

The McCall case is of particular interest to your inquiry, in that it involves a factual situation much like that presented here. There, a drainage district which imposed assessments rather than levying ad valorem taxes was held not subject to the Budget Law, which had been enacted subsequent to the enactment of the drainage district act at issue. As the drainage district was funded with assessments and not tax levies, the court found that the Budget Law had not been violated and that the drainage district act had not been repealed by implication. The holding of this decision is equally applicable to GMDs, which are similarly funded.

Having concluded that a GMD is not a taxing subdivision under the terms of K.S.A. 79-2927, it remains to determine whether it is a "municipality." Although this term is not defined in the Budget Law, numerous different meanings are provided in other Kansas statutes. See, e.g., K.S.A. 1981 Supp. 12-105a, K.S.A. 68-2101, 79-5001. However, for our purposes the definition of the most relevance is found in the Cash Basis Law at K.S.A. 10-1101(a). As noted by the court in State ex rel., v. Republic County Comm'rs, 148 Kan. 376, 381 (1938), both the Cash Basis Law and Budget Law were enacted during the 1933 session of the legislature and have a common purpose. In the former act, "municipality" is defined at subsection (a) to mean any

"county, township, city, municipal university, school district, community junior college, drainage district, and any other similar political subdivision or taxing district of the state."

Two things may be said regarding the above definition. First, it does not list GMDs among the entities covered, leaving them covered, if at all, by the catch-all language "any other similar political subdivision." Under the rule of statutory construction known as ejusdem generis, such entities must be of the same type as those specifically mentioned. Bumpus v. United States, 325 F.2d 264 (10th Cir. 1963). Second, as noted earlier, the statutes governing a GMD contain certain features which render GMDs dissimilar to other units of government in Kansas. In addition to levying only assessments and user fees, and allowing landowners to withdraw from fiscal liability, the procedure followed by a GMD in approving a budget [K.S.A. 82a-1030(b)] is different from that prescribed for other entities subject to the Budget Law (at K.S.A. 79-2929 and 79-2930). In view of these differences, in our opinion it cannot be said that a GMD is a similar political subdivision to those listed at K.S.A. 10-1101(a). Accordingly, as the district is neither a municipality nor a taxing subdivision, it is not subject to the provisions of the Budget Law.

However, it is nonetheless provided [at K.S.A. 82a-1030(b)] that the district adopt a "budget" prior to the beginning of each fiscal year. As the term is not defined by statute, nor by any decision of a Kansas appellate court, it remains to examine other authority to determine what duties, if any, this language places on GMDs. Both general authorities and case law from other jurisdictions agree that a "budget," whatever else it may mean, refers to a method whereby revenues and expenditures may be balanced. At page 176 of Black's Law Dictionary, 5th ed. (1979), for example, the term is defined as being a "balance sheet" where estimated receipts and expenditures are set forth. That the figures on such a balance sheet must at bottom be equal has been held in a number of cases, of which the following are representative: Carter County v. Williams, 28 Tenn.App. 352, 190 S.W.2d 311 (1945), Graves v. Purcell, 337 Mo. 574, 85 S.W.2d 543 (1935), Appalachian Power Co. v. City of Huntington, 115 W. Va. 588, 177 S.E. 431 (1931). In short, to refer to an "unbalanced" budget for a governmental unit is to make a contradiction in terms.

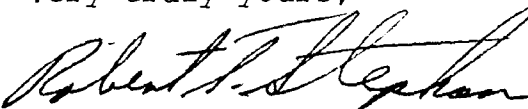
As noted above, the district's budget is currently in such a contradictory state. Accordingly, the district board must either lower the estimated income by reducing the annual assessment, or increase expenditures through the addition of

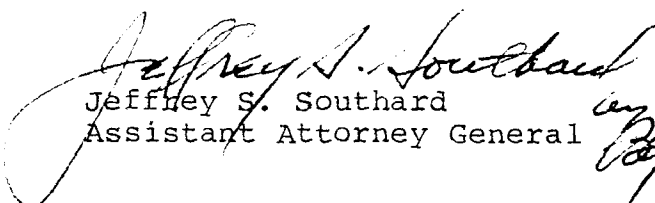
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an additional line item (i.e., Reserve for Contingencies) which equals the surplus. While both options would involve republication and an additional hearing, the former would also require that notice of the revised annual assessment amount be given to the treasurer of each county contained within the district. Either, however, would give the needed result of a balanced budget.

In conclusion, a groundwater management district organized pursuant to K.S.A. 82a-1020 et seq., is empowered to raise funds only through user charges and assessments. As an annual assessment is imposed on all landowners on a per acre basis, without regard to assessed valuation, it is not a tax in the sense intended by the Kansas Budget Law, K.S.A. 79-2925 et seq., nor is such a district a "municipality" for the purposes of that law. Accordingly, the Kansas Budget Law is inapplicable to such districts. However, as K.S.A. 82a-1030(b) requires the district to operate with a budget, expenditures must equal income, given the common-law definition of "budget" as requiring the two figures to balance.

Very truly yours,


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RTS:BJJ:JSS:hle