



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 41

Phillip L. Harris  
City Attorney  
City Hall  
8500 Santa Fe Drive  
Overland Park, Kansas 66212

Re: Cities and Municipalities--General Improvement  
and Assessment Law--Special Assessments; Work  
or Improvements Authorized

Synopsis: A storm drainage improvement, owned and maintained  
by private individuals pursuant to a contract with  
a city, does not constitute a "municipal work or  
improvement," within the meaning and intent of  
K.S.A. 12-6a01 et seq. Cited herein: K.S.A.  
12-6a01, 12-6a02.

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Dear Mr. Harris:

You request our interpretation of the General Improvement and  
Assessment Law, K.S.A. 12-6a01 et seq. Specifically, you inquire  
as to whether the following described improvement would qualify  
as a "public improvement" within the meaning and intent of K.S.A.  
12-6a01 et seq.:

"A condominium complex located within  
the City proposes to petition the City  
for a storm drainage improvement district  
to be financed 100% by the district itself.  
The improvement would eventually become a

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part of a more extensive City storm drainage facility. It is proposed that no permanent easements would be obtained by the City for the improvement and that, upon completion, the improvement would be privately owned and maintained by the condominium ownership and the City would be indemnified by the private ownership."

As you have noted, the General Improvement and Assessment Law authorizes the governing body of any city to make "municipal works or improvements which confer a special benefit upon property within a definable area of the city," and to levy and collect special assessments upon property in the area deemed to be benefited by the improvement. K.S.A. 12-6a02. In responding to your question, it becomes necessary to consider whether a privately-owned and maintained storm drainage improvement, which will eventually be a link in a city storm drainage system, constitutes a "municipal work or improvement" for purposes of the General Improvement and Assessment Law.

In an opinion dated December 7, 1966, former Attorney General Kent Frizzell considered an analogous question concerning the proposed formation of an improvement district pursuant to K.S.A. 12-6a01 et seq. In said opinion, it was stated that the city of Shawnee proposed to form an improvement district to extend gas mains to a newly annexed area of the city, and that the gas mains would be part of an existing system owned by the Gas Service Company, a private corporation. In opining that an extension of a privately owned utility system did not constitute a "municipal work or improvement," as said term is used in K.S.A. 12-6a02, General Frizzell stated as follows:

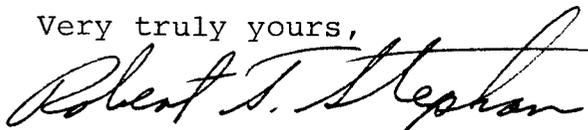
"If the city were to construct the main extensions under chapter 12, article 6a, it would simply be improving the property of such private enterprises since it would be impossible to separate the main extensions from the existing utility system . . . It would be a joining of two properties owned by different parties together to make one property, the parts owned by each being necessary to the successful operation of the whole, and each owner having his say as to the terms and conditions upon which the whole shall be operated." (Emphasis added.) Vol. V, Opinions of the Attorney General, page 76.

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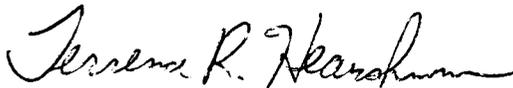
Additional support for the conclusion that a privately-owned and maintained storm drainage improvement does not constitute a "municipal work or improvement" is found in Great Lakes Pipe Line Co. v. City of Grand Forks, 142 N.W.2d 126 (N.D. Sup. Ct., 1966). In said case, the plaintiff corporation contended that its water and sewer lines, connected to the city system pursuant to a written contract with the city, were not "municipal sewers, water mains or improvements," as said terms were used in a statute permitting detachment of territory. The court agreed with the plaintiff company, stating that the private service lines were not "within the definition of municipal sewers, water mains, or improvements contemplated by Section 40-51-04, N.D.C.C." Id. at 137.

In accordance with the authorities cited above, it is our opinion that a storm drainage improvement, owned and maintained by private individuals pursuant to a contract with a city, does not constitute a "municipal work or improvement," within the meaning and intent of K.S.A. 12-6a01 et seq.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm