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May 8, 1985

ATTORNEY GENERAL OPINION NO. 85- 48

Randall J. Pankratz
Adrian & Epp
Suite 300, Old Mill Plaza
Newton, Kansas 67114

Re: Waters and Watercourses -- Groundwater Management
Districts -- Annual Meetings of Eligible Voters;
Affidavits of Eligibility to Vote

Laws, Journals and Public Information -- Records Open
to Public -- Certain Records Not Required to be Open;
Information of a Personal Nature

Waters and Watercourses -- Groundwater Management
Districts -- Board of Directors; Qualifications

Synopsis: A groundwater management district organized pursuant to K.S.A. 82a-1020 et seq., is required, pursuant to K.S.A. 82a-1026, to hold annual meetings for the purpose of electing members of the board of directors. Only persons who are defined as eligible voters by K.S.A. 82a-1021(e) may vote or serve as directors, and the district may if it chooses require voters to complete affidavits attesting to their eligibility. Such affidavits showing that the person is an eligible voter are subject to the Kansas Open Records Act, K.S.A. 1984 Supp. 45-215 et seq., and are not included under any of the provisions of K.S.A. 1984 Supp. 45-221 which allow certain records to be closed.

They should therefore be disclosed, subject to the other provisions of the act. Cited herein: K.S.A. 25-2320; K.S.A. 1984 Supp. 45-216; 45-221; K.S.A. 82a-1021; 82a-1023; 82a-1025; 82a-1026; 82a-1027.

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Dear Mr. Pankratz:

As attorney for the Equus Beds Groundwater Management District No. 2, you request our opinion on two questions concerning the election of persons to the district's board of directors. Specifically, you inquire whether affidavits completed by persons attending the annual meeting which attest that they are eligible to vote are subject to disclosure under the Kansas Open Records Act, K.S.A. 1984 Supp. 45-215 et seq. Further, you also inquire as to the legal qualifications for a person to be elected to the board of directors.

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."

Although nothing in the above statutes or elsewhere in the groundwater management district act requires that persons wishing to vote complete affidavits attesting to their status as eligible voters under K.S.A. 82a-1021(e), we do not believe that a district is precluded from adopting such a practice. In that specific requirements for eligible voters are set forth by K.S.A. 82a-1021(e), a district has a clear interest in seeing that only persons so qualified are permitted to vote. Therefore, the power to require the completion of affidavits by those wishing to vote is implied, and so may be exercised even in the absence of specific statutory authority. City of Wichita v. Wyman, 158 Kan. 709, 711-12 (1944).

A question virtually identical to the first one you present was discussed in a prior opinion of this office, No. 82-72, which also concerned the Equus Beds Groundwater Management District No. 2. There, it was concluded that affidavits completed by eligible voters were not open to the public under the provisions of the open records act in effect at that time. That act, K.S.A. 45-201 et seq., required only records which were required by law to be kept and maintained be made open to the public. This is in clear contrast with the present law, which establishes as the policy of this state that public records shall be open for inspection unless otherwise provided. Further, this policy is to be liberally construed and applied. K.S.A. 1984 Supp. 45-216.

As a result, unless there exists some provision in the open records act or elsewhere in Kansas law which would preclude the disclosure of the information contained on the eligible voter affidavits, they must be disclosed as provided by the act. As earlier noted, nothing in the groundwater management act mentions the making of such affidavits, either as a grant of authority or a prohibition. Therefore, the provisions of the open records act may be consulted. When this is done, in our opinion none of the numerous exceptions to the general policy of openness which are found at K.S.A. 1984 Supp. 45-221(a) apply so as to permit the

affidavits to be withheld. While subparagraph (30) permits the closure of records containing personal information where disclosure would constitute a "clearly unwarranted invasion of personal privacy," we do not believe that the bare fact that a person claims to be an eligible voter and that he or she was present for the annual election constitutes such an invasion. An analogy may be found in the statutes concerning voter registration records, which are required to be open to the public. K.S.A. 25-2320. Here, as there, such records reflect only that a person claims to be an eligible voter, and that he or she voted. Nothing indicates how the individual's vote was cast, and we do not believe that any personal right to privacy exists which is sufficient to overcome the right of the public to know if the election was properly conducted.

Your second question concerns the legal qualifications for a person who wishes to serve as a member of the district's board of directors. While K.S.A. 82a-1027 sets forth various provisions concerning directors, the subject of qualifications is not mentioned directly. However, in the case of a vacancy on the board, the remaining directors are authorized to select a replacement to serve the remainder of the term "from among the eligible voters of the district." K.S.A. 82a-1027(d). This provides a clear indication that the qualifications found in K.S.A. 82a-1021(e) for eligible voters should also be applied to directors.

In addition, at K.S.A. 82a-1023, the petition which is circulated before a district is created to include the statement that "the governing body of the district shall be an elected board of directors composed of _____ eligible voters." Therefore, if a person qualifies as an eligible voter under K.S.A. 82a-1021(e), he or she may serve as a director. For individuals, this would include anyone who owns 40 or more contiguous acres within the district which is not included within the boundaries of a city or who uses or withdraws more than 1 acre-foot of water from within the district in a year. Actual residency within the district, it will be noted, is not required.

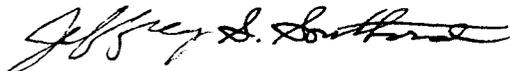
In conclusion, a groundwater management district organized pursuant to K.S.A. 82a-1020 et seq., is required, pursuant to K.S.A. 82a-1026, to hold annual meetings for the purpose of electing members of the board of directors. Only persons who are defined as eligible voters by K.S.A. 82a-1021(e) may vote or serve as directors, and the district may if it chooses require voters to complete affidavits attesting to their eligibility. Such affidavits showing that the person is an eligible

voter are subject to the Kansas Open Records Act, K.S.A. 1984 Supp. 45-215 et seq., and are not included under any of the provisions of K.S.A. 1984 Supp. 45-221 which allow certain records to be closed. They should therefore be disclosed, subject to the other provisions of the act.

Very truly yours,



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