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May 30, 1985

ATTORNEY GENERAL OPINION NO. 85- 59

Van Smith  
Hilton Plaza  
1135 College Drive  
Suite #L2  
Garden City, Kansas 67846

Re: Waters and Watercourses--Groundwater Management  
Districts--Definitions; Eligible Voter

Synopsis: K.S.A. 82a-1021(e) defines those persons who are eligible to vote in elections of a groundwater management district, with the fee owner of land authorized to designate his tenant to cast the owner's vote in district elections. The subsection also permits estates, trusts and corporations to designate representatives to cast the votes of such entities. However, a person employed by a corporation to manage land owned in fee by a third person could not cast a vote in a district election, as such person would not be either a tenant or the representative of an estate, trust or corporation which itself owned land. Cited herein: K.S.A. 82a-1021(e).

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Dear Mr. Smith:

As attorney for Southwest Kansas Groundwater Management District No. 3, you request our opinion on a question concerning the

definition of eligible voter contained at K.S.A. 82a-1021(e). This statute, which is contained in the Groundwater Management District Act, K.S.A. 82a-1020 et seq., sets forth a number of classes of persons who may be eligible to cast votes in district elections. Your specific situation involves persons employed to manage land owned by other persons. You inquire whether such "land manager" are eligible to vote in district elections.

The relevant sections of K.S.A. 82a-1021(e) state as follows:

"(e) 'Eligible voter' means any person who is a landowner or a water user as defined in this act except as hereafter qualified. Every natural person of the age of eighteen (18) years or upward shall be an eligible voter of a district under this act if (1) he or she is a landowner who owns, of record, any land, or any interest in land, comprising forty (40) or more contiguous acres located within the boundaries of the district and not within the corporate limits of any municipality, or (2) he or she withdraws or uses groundwater from within the boundaries of the district in an amount of one acre-foot or more per year.

"Except as is hereafter qualified, every public or private corporation shall be an eligible voter of a district under this act either (1) if it is a landowner who owns of record any land, or any interest in land, comprised of forty (40) or more contiguous acres located within the boundaries of the district and not within the corporate limits of any municipality, or (2) if it is a corporation that withdraws groundwater from within the district in an amount of one acre-foot or more per year.

"Each tract of land of forty (40) or more contiguous acres and each quantity of water withdrawn or used in an amount of one acre-foot or more per year shall be represented by but a single eligible voter. If the land is held by lease, under an estate for years, under contract, or otherwise, the fee owner shall be the one entitled to vote, unless the parties in interest agree otherwise. If the land is held jointly or in common, the majority in

interest shall determine which natural person or corporation shall be entitled to vote. Each qualified voter shall be entitled to cast only one vote. A person duly authorized to act in a representative capacity for estates, trusts, municipalities, public corporations or private corporations may also cast one vote for each estate, trust, municipality, or public or private corporations so represented. Noting herein shall be construed to authorize proxy voting." (Emphasis added.)

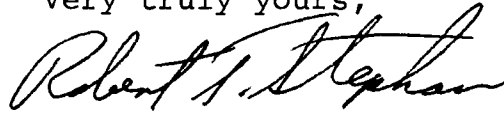
From the plain language of the above, it appears that landowners themselves, both as natural persons or as corporations, are entitled to vote in district elections. If land is leased, the fee owner rather than the tenant is entitled to vote, although the statute leaves open the possibility that a tenant may be allowed to vote by permission of the owner. Finally, if land is held by an estate, trust, municipality or corporation, a "duly authorized" representative may be appointed to cast the entity's vote. However, the statute makes it clear that in the absence of one of these specific situations, proxy voting is not authorized.

Given this wording, which is clear and unambiguous, it is our opinion that a land manager would be able to cast a vote in a district election only where he or she had been appointed by an estate, trust or corporation which itself held title to land in the district or which was a water user. If land in the district is owned by a natural person, only that person may cast his or her vote, unless one of the special circumstances (lease, estate for years, contract for sale) cited in the subsection is present. A land manager who is not himself a tenant and who is employed by a bank or other corporation to manage land owned by a natural person cannot qualify as an authorized representative, for he or she would then be in the position of acting as the natural person's proxy, which the subsection specifically prohibits. While the land manager could arrange that any tenant who may actually work or occupy the land could cast the property's vote, the manager could not himself do so.

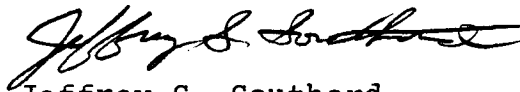
In conclusion, K.S.A. 82a-1021(e) defines those persons who are eligible to vote in elections of a groundwater management district, with the fee owner of land authorized to designate his tenant to cast the owner's vote in district elections. The subsection also permits estates, trusts and corporations to designate representatives to cast the votes of such entities. However, a person employed by a corporation to manage land owned in fee by a third person could not cast a vote in a district

election, as such person would not be either a tenant or the representative of an estate, trust or corporation which itself owned land.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Deputy Attorney General

RTS:JSS:jm