



STATE OF KANSAS

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October 9, 1985

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ATTORNEY GENERAL OPINION NO. 85-136

Frederick J. Works
Immel & Immel
P.O. Box 766
Iola, Kansas 66749

Re: Waters and Watercourses -- Water Districts -- Rural
Water Districts -- Definitions; Participating Member

Synopsis: A person is eligible to serve on the board of directors of a rural water district if he or she is a "participating member" in the district, with this term including persons who own land within the district and who have subscribed to one or more benefit units. While a person purchasing land on contract holds an equitable interest in that land, he or she does not have fee simple title. Due to the nature of the right involved (i.e. the right to vote), and the silence of the statutes as to whether this right may be shared, the right to vote in district matters should be exercised by the holder of fee simple title. Cited herein: K.S.A. 60-1102; 82a-612; 82a-614; 82a-618; 82a-622; 82a-626; 82a-1021; L. 1978, ch. 230.

* * *

Dear Mr. Works:

As an associate in the law firm of Immel and Immel, which represents the City of Elsmore, you request our opinion on a question involving the board of directors of a rural water district. Specifically, you inquire whether a person who is purchasing land on contract (which land is located within the

district) and who has subscribed to a benefit unit of the district is eligible to serve on the board of directors. The district in question is Rural Water District No. 2, and is located in Neosho and Allen counties.

The controlling statutes in this area are found at K.S.A. 82a-612 et seq., which is a 1957 act providing for the establishment and operation of rural water districts. The governing body of such a district is the board of directors, who are selected pursuant to K.S.A. 82a-618 from among the participating members of the district at the annual meeting. K.S.A. 82a-626. The term "participating member" is defined at K.S.A. 82a-612 to mean "an individual, firm, partnership, association or corporation which owns land located within a district and which has subscribed to one or more benefit units of such district." In your case, there is no question that the individual has subscribed to a benefit unit and is current in his payments. This last requirement regarding payments is found in the district's section of the by-laws which defines "participating member," and is not at issue here.

Rather, the sole question presented for our opinion is whether an individual who meets all of the other requirements for a participating member may be denied a seat on the board of directors because he is purchasing land on contract, instead of being a holder of fee simple title. We initially note that K.S.A. 82a-612 et seq. does not contain the language found in another, related act which answers this question. K.S.A. 82a-1021(e), which is contained in the Groundwater Management District Act, expressly states that "eligible voter" refers to the fee owner, although a buyer on contract may, upon agreement of the parties, be designated as the party entitled to vote. However, as this act was not enacted at the same time as the rural water district act and relates to a different subject matter, K.S.A. 82a-1021 is not in pari materia with K.S.A. 82a-612, and therefore is not controlling, although it does indicate how the legislature has addressed this question in a similar set of statutes.

Our research has indicated that in at least one area of Kansas law the courts have construed the term "owner" to include purchasers on contract. Prior to its amendment in 1978 by L. 1978, ch. 230, §3, the mechanics' lien law, K.S.A. 60-1102, provided that notice of the filing of a lien statement must be given to the "owner" of the property subject to the lien, with the statute silent as whether owners of equitable interests

were included in the category of owners. In holding that they were so included, the court in a number of cases declined to give a "narrow construction" to the word "owner" so as to limit it to the holder of the fee title. Toler v. Satterwhaite, 200 Kan. 103 (1967), Schwaller Lumber Co. Inc. v. Watson, 211 Kan. 141 (1973), Sutherland Lumber Co. v. Due, 212 Kan. 658 (1973). Essentially, the court in these decisions found that since the equitable owners could be subject to and liable for any lien created, they had a right to notice. While there could only be one debt, payment could be sought for a variety of parties.

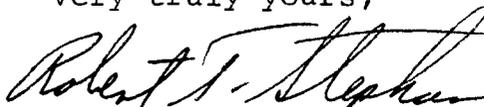
However, two factors lead us to conclude that this line of cases should not be applied here. First, the act indicates that, for purposes of both formation of the district (K.S.A. 82a-614) and attachment of adjoining land (82a-622), the tax rolls of the county "shall be prima facie evidence of title and of the name and address of the owners of land." While purchasers on a contract for deed may be obligated by the terms of that contract to pay into escrow the real property taxes which are due, they are not normally listed on the tax rolls, and so would not be owners of land under these statutes.

Second, in the present situation the "thing" at issue is the right to vote, rather than potential liability for a debt. While a buyer on contract may contribute all or part of the cost of the benefit unit or units which have been subscribed by a particular parcel of land, he or she cannot share in the one vote to which the landowner is entitled. The right to cast a vote in the district's affairs cannot be split, nor should it be multiplied. If the latter were the case, a fee owner who sold a number of small parcels on contract could be joined in casting his or her vote by each of the contract purchasers who had subscribed to a benefit unit. If the former were allowed, would the vote be shared equally, or on the basis of the degree to which the contract for deed had been performed? Clearly, this is an area which needs to be addressed by the legislature, perhaps on the basis of the procedure already in place for groundwater management districts as noted above.

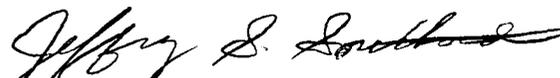
In conclusion, a person is eligible to serve on the board of directors of a rural water district if he or she is a "participating member" in the district, with this term including persons who own land within the district and who have subscribed to one or more benefit units. While a person

purchasing land on contract holds an equitable interest in that land, he or she does not have fee simple title. Due to the nature of the right involved (i.e. the right to vote), and the silence of the statutes as to whether this right may be shared, the right to vote in district matters should be exercised by the holder of fee simple title.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw