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July 18, 1986

ATTORNEY GENERAL OPINION NO. 86- 103

The Honorable Martha Jenkins
State Representative, Forty-Second District
Route #1, Box 47
Leavenworth, Kansas 66048

Re: Townships and Township Officers--Water Supply;
Joint Water District; City of Lansing and Delaware
Township--Nature of the Joint Board

Synopsis: The joint water district is separate and distinct from other categories of water districts. As a municipality, yearly auditing of the board's accounts is required. Bonding of the board is not prescribed by statute. While liability insurance is not required, its purchase is optional. Cited herein: K.S.A. 40-3101; K.S.A. 1985 Supp. 40-3106; K.S.A. 75-1117; 75-1122; 75-6101; 75-6111; 80-1616; 80-1617; 80-1618, as enacted by L. 1984, ch. 108; 82a-617; 82a-621.

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Dear Representative Jenkins:

As State Representative for the Forty-Second District, you have requested our opinion concerning the joint water district created by Delaware Township and the city of Lansing pursuant to K.S.A. 80-1616. Specifically, you have inquired whether the joint water district fits the criteria of a rural water district or any other form of water service entity. You have further requested our opinion regarding state requirements for auditing, bonding and insuring the joint water district board.

In response to your query regarding the nature of the joint board, the governing body of the joint water district, it is our opinion that the legislature intended to create an entity separate and distinct from other types of governing bodies. K.S.A. 80-1616 et seq. originated as 1984 Senate Bill No. 862, and was passed as amended as L. 1984, ch. 108. 1984 Senate Bill No. 862, in its original form, did not specifically refer to the city of Lansing or Delaware Township. Reference to those governing bodies was substituted for a more general description of any city of the second class and any township. Originally, no provisions were made for meetings, duties and powers of the joint water district board. In short, as proposed, the statute would only have granted authority for creating a joint board. Apparently in recognition that the board had no inherent and specified duties and powers, the House Committee on Energy and Natural Resources added sections 2 and 3 to 1984 Senate Bill No. 862, which eventually became K.S.A. 80-1617 and 80-1618, respectively.

On its face, K.S.A. 80-1616 indicates a legislative intent that the joint water district not be associated with a township or municipal governing body. K.S.A. 80-1616(a) states in relevant part:

"Such board shall be independent of the township and city."

Further, the joint water district is not a rural water district. While many provisions of the statutes governing rural water districts parallel those governing the joint district, conceptually the two entities are distinct. This distinction is best illustrated by the different qualifications for board members of the respective entities. Board members of the joint water district must be residents of the joint district. K.S.A. 80-1616(b). In contrast, a board member of a rural water district must be a property owner, subscribe to and purchase benefit units, and be elected by property owners. K.S.A. 1984 82a-617. Benefit units are purchased by a landowner desiring to participate in the benefits of improvements. K.S.A. 82a-621. No such ownership provisions appear in the statutes relating to the joint water district.

As the joint water district was not intended to be categorized as a rural water district, and its governing body is independent of the city of Lansing and Delaware Township, it is our opinion that the legislature intended to create a

separate and distinct entity, a joint water district. Any clarification of the duties and powers of the joint water district must therefore come from the legislature.

You have further requested our opinion regarding statutory requirements for auditing, bonding and insuring the joint water district. You have correctly pointed out that the statutes creating the joint water district are silent on these matters.

Regarding statutory auditing requirements, we are of the opinion that the joint water district is a municipality as defined by K.S.A. 75-1117. Such municipalities are subject to the auditing requirements of K.S.A. 75-1122. Subsection (a) of K.S.A. 75-1122 states that a municipality having revenue bonds outstanding in excess of \$275,000 shall have its accounts audited at least once a year by a licensed municipal accountant or a certified public accountant. In reviewing the agreement made between the joint water district of the city of Lansing and Delaware Township, it appears that the \$275,000 test is met, as outstanding revenue bonds exceed \$275,000. The joint water district may request assistance from the division of accounts and reports for the first time audit, and thus be exempt for a limited time from the requirement of an audit by a licensed municipal accountant or a certified public accountant. K.S.A. 75-1122(b).

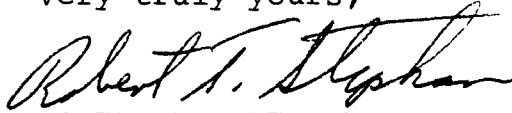
Regarding your question of bonding the joint water board, we find no statutory requirement or authority for imposing such a duty on the board or its members. Regardless of the desirability of a bonding requirement, the compulsion must originate with the legislature.

Insuring the joint water district against liability is not a requirement for such district. The Kansas Tort Claims Act, K.S.A. 75-6101 et seq. provides for liability of municipalities unless such liability is limited by the act. K.S.A. 75-6111 provides that a governmental entity may obtain insurance to provide for defense and liability. However, obtaining liability insurance is optional for the governmental entity. In addition to the provisions of the Kansas Tort Claims Act, the Kansas Automobile Reparations Act, K.S.A. 40-3101 et seq., exempts from mandatory liability insurance any vehicles owned by any political subdivision of any state. K.S.A. 1985 Supp. 40-3106.

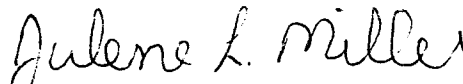
In conclusion, the joint water district is a separate and distinct category of water district. Yearly auditing of the

board's accounts are to be conducted. The board is not required to be bonded, and liability insurance is not mandatory."

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm