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August 18, 1986

ATTORNEY GENERAL OPINION NO. 86- 117

Mr. Thomas L. Toepfer
111 W. 11th Street
P.O. Box 417
Hays, Kansas 67601

Re: Drainage and Levees--Watershed Districts--Powers
and Duties; Retention of Counsel for Tax Planning
Matters

Synopsis: When acquiring easements by donation from
landowners, the board of directors may employ the
services of an attorney or attorneys to perform
duties relevant to the drafting of the easements.
However, the district may not expend public monies
to reimburse a landowner for reasonable costs
associated in defending claimed deductions for
donated easements. Cited herein: K.S.A. 7-125;
24-1209.

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Dear Mr. Toepfer:

As attorney for Wet Walnut Creek Watershed District No. 58,
you request our opinion concerning the compensation of
attorneys by the district with respect to the acquisition of
easements. Specifically, you ask whether the district may
expend public monies to reimburse a landowner for reasonable
costs associated in defending claimed tax deductions for
donated easements. You inform us that, if the Internal
Revenue Service (IRS) does not allow the landowner to claim
a charitable tax deduction, he is not likely to donate the

easement to the district. The district would then be placed in the position of having to pay for the easement.

K.S.A. 24-1209 (Sixth) provides that a watershed district may employ such professional services and other assistance as is, by its board of directors, deemed essential. It is clear, therefore, that the board of directors may employ the services of one or more attorneys to assist in conducting district business. As the acquisition of easements by gift, purchase, or otherwise, is district business [see K.S.A. 24-1209 (Eighth)] the district may hire one or more attorneys to assist in expediting the acquisition of the easements. These attorneys may prepare all necessary documents and conduct all incidental searches. Attorney General Opinion No. 83-36. They may also compile all relevant information about the transaction for the landowner to use in claiming his charitable tax deduction. Id.

As you note, the district greatly benefits by not having to purchase the easements. Likewise, the landowner benefits from the donation if he can claim a charitable tax deduction. Since it is unlikely that the landowner will continue to donate his easement if no benefit is forthcoming, it is clear that the district's employment of one or more attorneys to perform the above-mentioned services is beneficial to the district. Accordingly, such an expenditure is a permissible use of public money.

However, in Attorney General Opinion No. 83-36 we opined that it would be improper for the district's counsel to provide advice as to tax considerations or to represent landowners directly in proceedings before the IRS. We did not intend to limit the scope of this opinion to only those situations involving the district's own attorney. Instead, it was our opinion then, and it remains our opinion, that its reasoning extends to the compensation of all attorneys, either directly or indirectly, by the district.

It is a fundamental rule of law that a lawyer cannot permit a person who pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services. K.S.A. 7-125, DR 5-107(B). Thus, even if the district pays an attorney to represent a landowner before the IRS, that attorney owes no duty to the district. Since the interests of the individual landowner and those of the district may not always be the same, and since any appropriation of public money must be for a public purpose,

such an expenditure would be impermissible. See In re Page, 60 Kan. 842 (1899).

Therefore, it is our opinion that a watershed district may employ the services of one or more attorneys to perform duties relevant to the drafting of the easements. However, the district may not expend public monies to reimburse a landowner for reasonable costs associated in defending claimed deductions for donated easements.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm