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ATTORNEY GENERAL OPINION NO. 87-122

Dennis G. Hall
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The Harrison Building
3320 Harrison Street
Topeka, Kansas 66611

Re: Drainage and Levees -- Watershed Districts;
Formation of Watershed Districts; General Powers
and Duties of District -- Transfer or Sale of
Watershed District Property

Synopsis: The sale or transfer of watershed district property to a governmental entity for recreational purposes is permissible under relevant watershed district statutes, K.S.A. 24-1209 Third and 24-1201a. No specific procedures exist for the sale of watershed district property. Accordingly, Cross Creek Watershed Joint District No. 42 may transfer or sell real estate to a governmental entity at little or no cost, provided general requirements concerning any sale of municipally-owned property are observed. Cited herein: K.S.A. 24-1201a; 24-1209 Third.

Dear Mr. Hall:

As legal counsel for Cross Creek Watershed Joint District No. 42 of Pottawatomie, Jackson and Shawnee counties, you request our opinion on a question concerning the transfer or sale of real estate. Specifically, you ask whether the watershed district can transfer real estate it owns to another governmental entity at no cost, or sell it at less than fair market value, provided the district's use thereof for flood

control is unaffected. You inform us that the sites will be used for public recreational purposes. However, the district will enforce restrictions on the properties pertaining to operation maintenance and use in order to maintain flood control.

K.S.A. 24-1209 Third states that each watershed district has the power:

"To purchase, hold, sell and convey land and personal property and to execute such contracts as may, by its board of directors, be deemed necessary or convenient to enable it to properly carry out the purpose for which it was organized." (Emphasis added).

K.S.A. 24-1201a states that watershed districts are to be created:

"[F]or the purpose of alleviating [erosion, floodwater or sediment damages] and furthering the conservation, development, utilization and disposal of water and thereby preserving and protecting the state's land and water resources. . . ." (Emphasis added).

Thus, a watershed district has the statutory power to sell and convey land, and to enter into contracts which the board of directors deem necessary or convenient, if such action will enable the district to properly carry out the purpose for which it was organized. K.S.A. 24-1201a provides that watershed districts are created for the purpose, among other things, of furthering the utilization of water.

You inform us that the board of directors of the watershed district believes the properties in question are no longer needed to promote flood control. Accordingly, sale or transfer of the real estate to another governmental entity for recreational purposes will result in greater utilization of the district's water resources. Since this is a permissible purpose for selling or transferring watershed property, it is our opinion that the district has the statutory power to take such action.

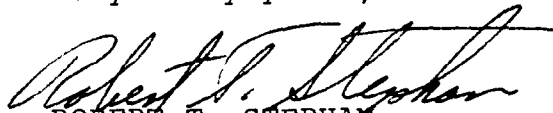
In 1981, this office was asked whether specific procedures must be followed in the sale of watershed property. Attorney General Opinion No. 81-240 stated:

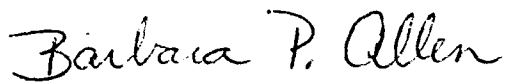
"An examination of the statutes concerning watershed districts indicates that no restrictions exist on the manner in which such sales are to be conducted, although general requirements concerning any sale of municipally-owned property should be observed, i.e., it must be an arms-length transaction and be made in a reasonable manner." (p. 7) (Emphasis added).

Thus, we opined that no special restrictions exist on the manner in which watershed property is sold. We concur with Attorney General Opinion No. 81-240, and conclude that a watershed district may sell property to a governmental entity as long as general requirements concerning any sale of municipally-owned property are observed.

In summary, the sale or transfer of watershed district property to a governmental entity for recreational purposes is permissible under relevant watershed district statutes, K.S.A. 24-1209 Third and K.S.A. 24-1201a. No specific procedures exist for the sale of watershed district property. Accordingly, Cross Creek Watershed Joint District No. 42 may transfer or sell real estate to a governmental entity at little or no cost, provided general requirements concerning any sale of municipally-owned property are observed.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Barbara P. Allen
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