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ATTORNEY GENERAL OPINION NO. 87- 134

Ed Slusher, President
Salt Creek Watershed Joint District No. 104
P.O. Box "K"
Lyndon, Kansas

Re: Drainage and Levees -- Watershed Districts;
Taxation and Bonded Indebtedness -- No-Fund
Warrants

Taxation -- Miscellaneous Provisions -- No-Fund
Warrants for Emergencies

Synopsis: A watershed district issuing no-fund warrants under K.S.A. 24-1219, as amended, must make a tax levy at the first tax levying period after such warrants are issued sufficient to pay such warrants and interest. A watershed district may apply to the board of tax appeals for authority to issue no-fund warrants under K.S.A. 79-2939 only if the district incurs unanticipated expenses which could not have been foreseen at the time the district's budget for the current budget year was being prepared. Cited herein: K.S.A. 24-1219, as amended by L. 1987, ch. 122, § 8; 79-2939.

Dear Mr. Slusher:

As President of Salt Creek Waterhsed Joint District No. 104, you ask our opinion on several questions relating to the raising of funds for start-up and general expenses in the early period of the district's existence.

You first ask whether it is necessary that no-fund warrants issued pursuant to K.S.A. 24-1219, as amended by L. 1987, ch. 122, § 8, be paid during the first tax levying period. K.S.A. 24-1219, as amended, gives the watershed district board the authority to:

"[I]ssue no-fund warrants to pay for initial organizational, engineering, legal and administrative expenses of the district except that the amount so issued shall not exceed the product of two mills times the assessed valuation of the taxable tangible property within the district, Whenever warrants have been issued under this section, the board shall make a tax levy at the first tax levying period, after such warrants are issued, sufficient to pay such warrants and interest. (Emphasis added).

In our opinion, the above-emphasized language indicates legislative intent that a watershed district's first tax levy subsequent to the issuance of no-fund warrants under this statute be sufficient to pay such warrants and interest. The legislature's use of the word "shall," rather than "may," reinforces our conclusion that this statutory provision is mandatory in nature.

In addition, K.S.A. 24-1219, as amended, gives the board authority, following incorporation of the district by the secretary of state, to levy an annual tax of not to exceed two mills against all of the taxable, tangible property of the district, to create a general fund for the payment of general expenses of the district. If this mill levy is not sufficient, the board may increase the levy up to four mills by adopting a resolution declaring such an increase to be necessary.

While you inform us that increasing the mill levy above two mills is not an action the board wishes to take, these statutory provisions nevertheless give the board authority to raise additional revenue which could be used to cover general expenses.

You next inquire whether watershed districts have the authority to issue no-fund warrants under K.S.A. 79-2939. That statute provides in relevant part:

"Whenever there is an unforeseen occurrence which causes an expense in any fund of any municipality or other taxing district which could not have been anticipated at the time the budget for the current budget year was prepared, and by reason of such unforeseen occurrence the governing body of any such municipality or taxing district is of the opinion that it will be impossible to pay for such unforeseen expense and pay for the imperative functions of the fund without incurring indebtedness in excess of the adopted budget of expenditures for the current budget year, the governing body may make application to the board of tax appeals for authority to issue no-fund warrants to pay for such unforeseen expense." (Emphasis added).

The provisions of K.S.A. 79-2939 are applicable to a municipality or other taxing district only in the event that there is an unforeseen occurrence which causes a taxing district to incur an expense which could not have been anticipated at the time the budget for the current budget year was being prepared. Only under these conditions does the statute authorize the governing body to make application to the board of tax appeals for authority to issue no-fund warrants.

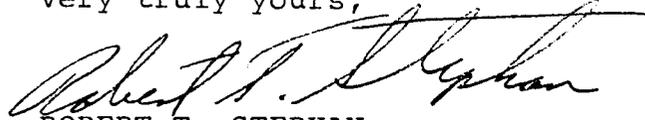
In our opinion, K.S.A. 79-2939 does not apply to the situation about which you inquire. You inform us that the district is anticipating the occurrence of start-up and general expenses. Since K.S.A. 79-2939 is applicable only when a taxing district incurs unanticipated expenses, we do not believe the governing body of the district may at the present time apply for authority to issue no-fund warrants under this statute.

We believe your third question is answered in previous portions of this opinion. In our opinion, K.S.A. 79-2939 cannot be relied upon to raise funds for start-up and general expenses of a watershed district, since these expenses can be anticipated at the time the budget for the current budget year is prepared. Revenue necessary to fund said expenses must be raised through the issuance of no-fund warrants under K.S.A. 24-1219, as amended, or through the board's authority to assess an annual mill levy against all of

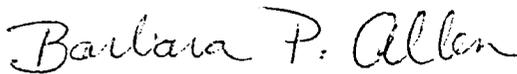
the taxable, tangible property of the district under that same statute.

In summary, a watershed district issuing no-fund warrants under K.S.A. 24-1219, as amended, must make a tax levy at the first tax levying period after such warrants are issued sufficient to pay such warrants and interest. A watershed district may apply to the board of tax appeals for authority to issue no-fund warrants under K.S.A. 79-2939 only if the district incurs unanticipated expenses which could not have been foreseen at the time the district's budget for the current budget year was being prepared.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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