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October 5, 1987

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ATTORNEY GENERAL OPINION NO. 87- 146

Thomas J. Sloan
Administrative Assistant
Kansas Senate
Office of the President
State Capitol, Room 359-E
Topeka, Kansas 66612

Re: Waters and Watercourses -- Water Districts; Rural
Water Districts -- Sale or Disposition of Rural
Water District Property

Synopsis: K.S.A. 82a-619 expressly grants rural water districts the power to acquire real and personal property. A rural water district's power to sell property is implied from this express grant of power to acquire and hold property. No specific procedures exist for the sale of rural water district property. Accordingly, Douglas County Rural Water District No. 1 may sell or dispose of real or personal property as long as general requirements concerning any sale of municipally-owned property are observed. Cited herein: K.S.A. 82a-619.

Dear Mr. Sloan:

As Chairman of the Board of Directors of Douglas County Rural Water District No. 1, you request our opinion on the powers of said district. Specifically, you ask whether a rural water district may dispose of land, buildings, equipment and other assets which the board of directors determine to be no longer necessary for the successful operation of the district.

K.S.A. 82a-619 sets forth the powers of rural water districts. The statute provides at subsection (a):

"Every district incorporated under this act shall have perpetual succession, subject to dissolution or consolidation pursuant to law and shall have the power: (1) to exercise eminent domain within the boundaries of such district; (2) to sue and be sued; (3) to contract; (4) to hold real and personal property acquired by will, gift, purchase, or otherwise, as authorized by law; and (5) to construct, install, maintain and operate such ponds, reservoirs, pipelines, wells, check dams, pumping installations or other facilities for the storage, transportation or utilization of water and such appurtenant structures and equipment necessary to carry out the purposes of its organization." (Emphasis added).

Thus, a rural water district has the express statutory power to purchase real and personal property. The legal issue you raise is whether a rural water district's power to sell property is implied from this express grant of power to acquire property. To answer this question, it is helpful to examine authority which offers guidance on statutory construction. 82 C.J.S. Statutes § 327 (1953) provides:

"[N]ecessary implications and intendments from the language employed in a statute may be resorted to to ascertain the legislative intent where the statute is not explicit, but they can never be permitted to contradict the expressed intent of the statute or to defeat its purpose. That which is implied in a statute is as much a part of it as that which is expressed. A statutory grant of a power or right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete." (Emphasis added).

In our opinion, a rural water district's power to dispose of property is implied in K.S.A. 82a-619. Only by allowing the

board the power to dispose of property is its power to purchase made effectual and complete. If the power to dispose of district property did not exist, a rural water district could be forced to hold property which it could not use. We do not believe such an inefficient use of public property was the intent of the legislature. Accordingly, we conclude that the omission of an express grant of power to dispose of property in K.S.A. 82a-619 is not determinative; such power is granted by implication. See 82 C.J.S. Statutes § 326 (1953).

We note also that water supply districts, which serve a similar purpose to rural water districts, are expressly given the power in K.S.A. 19-3547(6) to determine the manner of acquiring, holding and disposing of real and personal property of the district. We see no logical reason why the legislature would have intended to prohibit rural water districts from disposing of property, while allowing water supply districts to dispose of property. Thus, we believe that the omission of an express grant of power to dispose of property in K.S.A. 82a-619 was an oversight. Accordingly, it is our opinion that a rural water district's power to sell or dispose of property is implied from its express grant of power to acquire property.

Given our conclusion that a rural water district has the authority to sell or dispose of property, you next ask whether there are any special procedures which must be followed for such sale or disposition. In 1981, this office was asked whether specific procedures must be followed in the sale of watershed district 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).

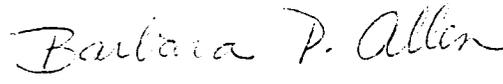
Thus, we opined that no special restrictions exist on the manner in which watershed property is sold. See also Attorney General Opinion No. 87-122. We concur with the conclusions reached in Attorney General Opinions No. 81-240

and 87-122, and believe similar reasoning can be applied to the sale of rural water district property. Thus, we conclude that a rural water district may sell or dispose of real or personal property as long as general requirements concerning any sale of municipally-owned property are observed.

In summary, K.S.A. 82a-619 expressly grants rural water districts the power to acquire real and personal property. A rural water district's power to sell property is implied from this express grant of power to acquire and hold property. No specific procedures exist for the sale of rural water district property. Accordingly, Douglas County Rural Water District No. 1 may sell or dispose of real or personal property as long as 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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