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ATTORNEY GENERAL OPINION NO. 87- 159

Richard Basore, Chairman
Eagle Drainage District
Fourth Financial Center, Suite 522
100 North Broadway
Wichita, Kansas 67202

Re: Drainage and Levees--Drainage in One or More
Counties; Acts Prior to 1963--Levy Upon Lands for
Repairs and Improvements

Drainage and Levees--General Provisions--Special
Emergency Fund

Synopsis: K.S.A. 24-136 provides for a special emergency
fund, from which the board of directors of a
drainage district can pay for most maintenance and
repair work required in the operation of the
drainage district. Cited herein: K.S.A. 24-133;
24-136; 24-627; 24-634.

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Dear Mr. Basore:

As Chairman of Eagle Drainage District, you request our
opinion as to the legalities involved in the Eagle Drainage
District levying assessments for ongoing maintenance and
general expenses used to keep the drainage district property
in proper condition. You inform us that a Sedgwick County
Assistant Counselor wrote an opinion which concluded that
K.S.A. 24-634 can be used only to levy for expenses then
needed and not for indefinite ongoing maintenance expenses.

At this time we respectfully decline to address the question of whether K.S.A. 24-634 prohibits assessments to be made in order to provide funds to pay for such maintenance costs. Another statute under the same Act, however, specifically provides for such a fund. K.S.A. 24-136.

K.S.A. 24-136, contained in the general provisions of chapter 24, applies to all drainage districts. (See K.S.A. 24-627 which provides that "none of the provisions of [that] act shall be construed as repealing or in any wise [sic] modifying the provisions of any other act relating to the subject of draining, reclaiming, or protecting swamp, overflowed, or submerged lands. . . .") K.S.A. 24-136 allows the governing body of the district to establish a special emergency fund.

"The governing body of any drainage district may establish a special emergency fund to pay the costs and expenses resulting from an emergency within the district. An emergency within the district exists by reason of current injuries to persons or property, or imminent danger thereof, from floods or other injurious action of water in any watercourse within the district. In case of an emergency, the governing body of the district may build new dikes and levees, and repair, expand and strengthen old ones, dig ditches, build jetties, or make any other changes, alterations and additions in existing improvements. The governing body also may build any other new structure or other improvement it deems necessary to solve the problems created by the emergency. Such fund need not be budgeted for expenditure during any year, but the amount thereof shall be stated in the published budget of expenditures of the district. In addition to any levy authorized or limited by law, the governing body may levy annually a special emergency tax on the assessed value of all tangible taxable property within the drainage district. The governing body may transfer, during an emergency, any surplus money from the drainage district general fund to the special emergency fund." (Emphasis added.)

An emergency is defined as an unforeseen occurrence or condition, or a pressing necessity. Blacks Law Dictionary 469 (5th ed. 1979). Most maintenance work that is needed within a drainage district fits within that definition. Under K.S.A. 24-136, the board of directors may, in addition to any levy authorized or limited by law, annually levy a special emergency tax. The board does not need to budget for special expenditures in advance, but shall state the amount in the published budget.

Moneys so collected may be used to prevent any impending or threatened harm to persons or the drainage district property caused by floods or other injurious action of any watercourse within the district. The board of directors may engage in any of the activities listed in the statute to solve the problems which arise in connection with such threatened danger. Among those permissible activities are the power to repair and "make any other changes, alterations and additions in existing improvements."

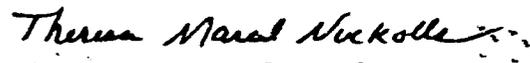
It is not necessary that an emergency already exist before these funds can be used. It is enough that an emergency can be averted or prevented by the use of these funds.

K.S.A. 24-133 additionally allows for the issuance of no-fund warrants in order to pay for extra expenses resulting from any emergency in the district. The fact that the legislature created two such provisions evidences its awareness of the importance of maintaining and repairing the improvements made to drainage district property in order to keep those improvements in good working order.

Thus, K.S.A. 24-136 may be used to create a special emergency fund for Eagle Drainage District. Those funds can be used in accordance with the statute to pay for costs and expenses resulting from imminent danger from floods or other injurious action of water.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Theresa Marcel Nuckolls
Assistant Attorney General