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ATTORNEY GENERAL OPINION NO. 88- 20

Thomas L. Toepfer
Attorney for Wet Walnut Creek
Watershed Joint District No. 58
114 West 11th Street
P.O. Box 417
Hays, Kansas 67601

Re: Drainage and Levees--Watershed Districts; Governing
Body--Election of Directors at Annual Meeting;
Report of Financial Condition and Activities

Synopsis: In preparing the annual report prescribed by K.S.A.
1987 Supp. 24-1211, the board of directors of a
watershed district must separately evaluate each of
the district's projects in regard to the public
interest and make a determination relative
thereto. Additionally, in determining whether a
project is in the public interest, the board is to
consider the interest of all persons in the
district. Cited herein: K.S.A. 24-1201; K.S.A.
1987 Supp. 24-1211.

* * *

Dear Mr. Toepfer:

You have requested our interpretation of K.S.A. 1987 Supp.
24-1211. Specifically you ask whether, in preparing the
annual report prescribed by the aforesaid statute, the board
of directors of a watershed district is to evaluate each of
the district's proposed projects separately, or whether the
board is to determine whether the general plan of the district
is in the public interest. Additionally, you ask whether the

"public interest" is defined as including only those members of the public living on or near the various proposed projects, or whether it includes all persons within the jurisdiction of the watershed district.

K.S.A. 1987 Supp. 24-1211 provides as follows:

"In not less than 12 months, nor more than 13 months after the recording of the certificates of incorporation, and annually thereafter, a meeting shall be held for the election of directors whose terms expire and also to render a report on the financial condition and activities of the district including the estimated construction date of all proposed projects to be initiated within the next five years and the board's determination as to whether each of these projects is still cost effective and in the current public interest." (Emphasis added.)

As the underscored portion of the above-quoted statutory excerpt indicates, the board of directors of a watershed district must separately evaluate each of the district's projects in regard to the public interest and make a determination relative thereto. A determination that the district's general plan is in the public interest would be superficial and inadequate under the statute.

In regard to your second question, i.e. the meaning of the term "public interest," it should first be noted that the statute was amended in 1987 to require an evaluation of the public interest. See L. 1987, ch. 122, §3. The subject amendment was part of a bill which resulted from discussions between the State Conservation Commission and the Division of Water Resources prior to the 1987 legislative session. (See March 25, 1987, Minutes of Senate Committee on Energy and Natural Resources.) As to the purpose of the amendment to K.S.A. 1987 Supp. 24-1211, Leland E. Rolfs, attorney for the Division of Water Resources testified as follows during senate committee hearings:

"K.S.A. 24-1211 has been amended to provide that at the annual meeting of the Board, the report shall include,

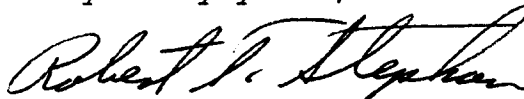
"the financial condition and activities

of the district, including the estimated construction date of all projects to be initiated within the next five years and the board's determination as to whether each of these projects is still cost effective and in the current public interest.

"This information will be of benefit to the state in budgeting for cost-share assistance and staffing for project reviews. This will also provide notice to everyone, including landowners in the watershed district, which projects will be built next and an annual review format to ensure project still needs to be built." (Emphasis added.) (See March 25, 1987, Minutes of the Senate Energy and Natural Resources Committee.)

The underscored portion of the above-quoted testimony indicates that a project must be evaluated in relation to the district as a whole, and that the term public interest is not restricted to members of the public living on or near the various proposed projects. Accordingly, it is our opinion that in determining whether a project is in the public interest, the board of directors of a watershed district is to consider the interest of all persons in the district.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General