



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 51

Kenneth F. Kern
Executive Director
State Conservation Commission
109 S.W. 9th St., Room 300
Topeka, Kansas 66612-1299

Re: Drainage and Levees--Watershed Districts; Formation
of Watershed Districts--
Elections; Qualified Voters

Synopsis: The definition of qualified voter found in K.S.A. 24-1202(j) creates two categories of those qualified to vote under the watershed district act, K.S.A. 24-1201 et seq.: First, any person who is a registered voter in the district; and second, any person eighteen years or older who owns land within the district, whether or not a registered voter or a resident of the district. As to the second category of qualified voters (those 18 or over owning land), a landowner is defined by K.S.A. 24-1202(k) as the record owner of the fee. As such, a landowner does not include a spouse whose name is not on the title even though the spouse has an interest in the realty under Kansas marital property statutes. However, there is generally nothing to prevent the record owner from deeding the title to himself and his spouse in some form of co-ownership thereby making the spouse a record owner. Cited herein: K.S.A. 24-1201 et seq.; 24-1202; K.S.A. 1987 Supp. 23-201; K.S.A. 59-505; K.S.A. 1987 Supp. 60-1610.

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Dear Mr. Kern:

As Executive Director of the State Conservation Commission, you assist in the administration of the Kansas watershed district act, K.S.A. 24-1201 et seq. You inquire about the definition of a "qualified voter" for purposes of voting on a new watershed district being proposed in Cherokee county. Specifically you question whether the definition of "qualified voter" found in K.S.A. 24-1202(j) creates two categories of persons qualified to vote or one category with several qualifications. The definition states:

"'[Q]ualified voter' shall mean any qualified elector of the district and any person eighteen (18) years of age or over owning land within the district, although not a resident therein."

Attorney General Opinion No. 77-93 (copy enclosed) rendered under a previous administration answers the first of your questions. Accordingly, there are two categories created by the definition: First any person who is a registered voter of the district; and second, any person, eighteen years or older who owns land within the district, whether or not a registered voter or a resident of the district.

You also inquire whether the definition of a qualified voter in K.S.A. 24-1202(j) presupposes the common law rights to land ownership of a spouse whose name is not on the title. Common law has been codified in K.S.A. 59-505 (half of realty goes to surviving spouse under intestate succession laws; disposition of realty during the marriage requires the written consent of the spouse), K.S.A. 1987 Supp. 23-201 (all property individually held becomes marital property upon filing for divorce), and K.S.A. 1987 Supp. 60-1610 (the division of marital property includes property individually held prior to or during the marriage). Thus your question is whether these statutes control when defining who is an owner of land for purposes of being a qualified voter under the watershed district act. We must look to the act because the meaning of the word "owner" is controlled by the word's context. 63A Am.Jur.2d Property §31 (1984). K.S.A. 24-1202(k) states:

"'[L]andowner' shall mean the record owner of the fee in any real estate in the district or the fee in the surface rights of any real estate in the district, but the owners of an oil and gas lease,

mineral rights of interest, easement or mortgages as such shall not be considered landowners, and school districts, cemetery associations and municipal corporations shall not be considered landowners."
(Emphasis added.)

The above-underscored language defines landowner as a "record owner of the fee" in any real estate or the fee in the surface rights of any real estate in the district. The "fee" in real estate is the total bundle of rights held by the owner with respect to the land. Sullivan v. U.S., 461 F.Supp. 1040, 1044 (D.C. Pa. 1978).

Because the term owner as used in statutes relating to real property is one of general meaning and may be applied to any defined interest in real property, 63 Am.Jur.2d Property §31, we must focus on the term "record owner." In other words, K.S.A. 24-1202(k) limits the word "owner" to the holder of record title. Thus, for purposes of the watershed district act, recognition as an owner of land is restricted to those whose names are on the public record. See "Some legal aspects of the Kansas Watershed District Act," 7 K.L.R. 376, 381 (1959) n. 61a. Accordingly, we opine that the term landowner under the watershed district act does not include those whose names do not appear of record. We note that generally there is nothing to prevent a record owner from deeding the property to himself and his spouse thereby making the spouse a record owner.

In conclusion, the definition of qualified voter found in K.S.A. 24-1202(j) creates two categories of those qualified to vote under the watershed district act, K.S.A. 24-1201 et seq.: First, any person who is a registered voter in the district; and second, any person eighteen years or older who owns land within the district, whether or not a registered voter or a resident of the district. As to the second category of qualified voters (those 18 or over owning land), a landowner is defined in K.S.A. 24-1202(k) as the record owner of the fee. As such, a record owner does not include a spouse whose name is not on the title even though the spouse has an unvested equitable interest in the realty under Kansas marital property statutes. There is, however, generally nothing to prevent the record owner from deeding the title to

both himself and his spouse in some form of co-ownership
thereby making the spouse a record owner.

Very truly yours,



ROBERT T. STEPHAN
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