



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 97

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Re: State Departments; Public Officers and Employees --
Public Officers and Employees -- Open Public
Meetings; Rural Water Districts

Waters and Watercourses -- Water Districts; Rural
Water Districts -- Applicability of the Kansas Open
Meetings Act

Synopsis: A public body must comply with the provisions of
the Kansas Open Meetings Act if two tests are met:
(1) the body is a legislative or administrative
agency of the state or one of its political or
taxing subdivisions, or is subordinate to such a
body; and (2) the body receives or expends and is
supported in whole or in part by public funds. A
rural water district meets the first test as it is
a political subdivision of the state. The second
test is met if the district receives federal or
state grants or other such public funding. Cited
herein: K.S.A. 24-1201; K.S.A. 1987 Supp.
24-1219; K.S.A. 75-4317; K.S.A. 1987 Supp.
75-4318; K.S.A. 82a-612; K.S.A. 1987 Supp.
82a-613; K.S.A. 82a-614; 82a-616; 82a-619a;
82a-625; 82a-638.

* * *

Dear Mr. Creitz:

As the attorney for Rural Water District No. 2, Allen-Neosho counties, you request our opinion whether the open meetings law is applicable to rural water districts.

The Kansas open meetings act (KOMA), K.S.A. 75-4317 et seq., requires meetings of public bodies to be open to the public. By its terms the KOMA applies to

"all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds. . . ." K.S.A. 1987 Supp. 75-4318(a).

The above language sets forth a two-part test which must be met for a body to be included within the act's provisions: (1) the body is a legislative or administrative agency of the state or one of its political or taxing subdivisions, or is subordinate to such a body; and (2) the body receives or expends and is supported in whole or in part by public funds.

Rural water districts may be established pursuant to K.S.A. 82a-612 et seq. Organization of such districts may be by the board of county commissioners, K.S.A. 1987 Supp. 82a-613, or by petition of the owners of land in the proposed district, K.S.A. 82a-614. Rural water districts are subdivisions of the state as they are created pursuant to state law and are bodies politic and corporate. K.S.A. 82a-616(a). Thus, the first requirement of the KOMA's two-part test is met as rural water districts are political subdivisions of the state.

The question becomes whether rural water districts meet the public funds test of the KOMA. This office has opined that watershed districts, organized pursuant to K.S.A. 24-1201 et seq., are subject to the KOMA as they are taxing subdivisions of the state. Attorney General Opinions No. 82-130 and 85-161. See, K.S.A. 1987 Supp. 24-1219. Clearly, taxation of property constitutes the receipt and use of public funds. Rural water districts, however, do not have authority to tax.

"[N]o district organized under this act shall have any power or authority to levy any taxes whatsoever." K.S.A. 82a-619a(d).

Rural water districts have the power to acquire loans and issue revenue bonds to finance construction of its projects. K.S.A. 82a-619a(c); K.S.A. 82a-625. "Such bonds shall be self-liquidating out of the revenue to be derived by district for its services and facilities." K.S.A. 82a-625. Fees and charges a rural water district receives from landowners in the district for the services provided do not constitute public funds. See K.S.A. 82a-621.

While rural water districts do not receive public funds from taxation, they may receive public funds from other sources. K.S.A. 82a-619a(b) provides that such districts have the power

"(1) To cooperate with and enter into agreements with the secretary of the United States department of agriculture or the secretary's duly authorized representative necessary to carry out the purposes of its organization; and (2) to accept financial or other aid which the secretary of the United States department of agriculture is empowered to give. . . ."

In addition, K.S.A. 82a-638 provided for a program of state grants "to assist in the provision of a water supply to individuals living in sparsely populated rural areas of the state and to small municipalities." (This program expired January 1, 1981). In prior opinions we have stated that the receipt of federal or state grants or other such moneys constitutes the receipt of public funds. See, e.g., Attorney General Opinions No. 87-188; 88-27; 87-143; 79-284; 79-219. Receipt of such public funds would meet the second test of a public body under the KOMA. Whether a particular rural water district "receives or expends and is supported in whole or in part by public funds" must be determined on a case by case basis.

In summary, a public body must comply with the provisions of the Kansas Open Meetings Act if two tests are met: (1) the body is a legislative or administrative agency of the state or one of its political or taxing subdivisions, or is subordinate to such a body; and (2) the body receives or expends and is

supported in whole or in part by public funds. A rural water district meets the first test as it is a political subdivision of the state. The second test is met if the district receives or expends and is supported in whole or in part by federal or state grants or other such public funding.

Very truly yours,



ROBERT T. STEPHAN
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RTS:JLM:RLN:bas