



STATE OF KANSAS

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January 12, 1989

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ATTORNEY GENERAL OPINION NO. 89- 3

The Honorable Eugene Shore
State Representative, 124th District
Route 2
Johnson, Kansas 67855-9804

Re: Waters and Watercourses -- Groundwater Management
Districts -- "Eligible Voter"

Synopsis: A landowner in a groundwater management district is entitled to vote in district elections, unless the landowner agrees to allow the lessee of the land to vote. A person who leases land from several landowners in a district, however, cannot cast a vote for each parcel of land that is under a lease. Cited herein: K.S.A. 82a-1020; 82a-1021.

* * *

Dear Representative Shore:

As State Representative, you have requested our opinion concerning the definition of "eligible voter" contained in the groundwater management districts act, K.S.A. 82a-1020 et seq. K.S.A. 82a-1021(e) provides as follows:

"'Eligible voter' means any person who is a landowner or a water user as defined in this act except as hereafter qualified. Every natural person of the age of eighteen (18) years or upward shall be an eligible voter of a district under this act if (1) he or she is a landowner who owns, of record, any land, or any interest

in land, comprising forty (40) or more contiguous acres located within the boundaries of the district and not within the corporate limits of any municipality, or (2) he or she withdraws or uses groundwater from within the boundaries of the district in an amount of one acre-foot or more per year.

. . .

"Each tract of land of forty (40) or more contiguous acres and each quantity of water withdrawn or used in an amount of one acre-foot or more per year shall be represented by but a single eligible voter. If the land is held by lease, under an estate for years, under contract, or otherwise, the fee owner shall be the one entitled to vote, unless the parties in interest agree otherwise. If the land is held jointly or in common, the majority in interest shall determine which natural person or corporation shall be entitled to vote. Each qualified voter shall be entitled to cast only one vote. A person duly authorized to act in a representative capacity for estates, trusts, municipalities, public corporations or private corporations may also cast one vote for each estate, trust, municipality, or public or private corporations so represented. Nothing herein shall be construed to authorize proxy voting."
(Emphasis added).

Specifically, your question is as follows:

"If a fee owner and a lessee agree to allow the lessee to vote in a Groundwater Management District election, is the lessee voting as a representative of the fee owner or does the lessee step into the shoes of the fee owner and become the eligible voter?"

The situation behind your question is as follows. A groundwater management district in your area has taken the

position that a lessee can vote in a representative capacity and can do so for more than one fee owner. For example, a person leases land from a number of different landowners. Each landowner (who owns a tract of land of 40 or more contiguous acres) is an eligible voter, as defined in K.S.A. 82a-1021(e). Therefore, it is the district's position that, since the lessee is the representative of the owner, the lessee may cast a vote for each landowner who has agreed to allow the lessee to vote. You question whether this practice is contrary to the prohibition against proxy voting and the statutory provision that "[e]ach qualified voter shall be entitled to cast only one vote."

For reasons set forth below, we conclude that a person who leases land from several landowners in a groundwater management district may cast only one vote in a district election. A lessee, then, should make an agreement with only one of the landowners to become the qualified voter.

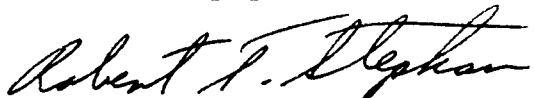
The statutory definition of "eligible voter" does not specifically address the situation in which one person leases land from more than one landowner. Therefore, a close reading of the statute is necessary. K.S.A. 82a-1021(e) provides that if the land in the district is under a lease, the fee owner is entitled to vote unless the owner/lessor and lessee agree that the lessee shall vote. Such an agreement does not constitute a proxy. A proxy is an agent representing and acting for a principal. To the contrary, in this situation by agreement the lessee becomes the voter, and may vote according to his or her desires, and not pursuant to the landowner's direction. The statute then provides: "Each qualified voter shall be entitled to cast only one vote." Thus, we believe that once a lessee makes an agreement with a landowner, he or she becomes the qualified voter, and can only cast one vote.

A lessee by agreement becomes a qualified voter, and is not the landowner's representative. The next provision in K.S.A. 82a-1020(e) supports this conclusion: "[a] person duly authorized to act in a representative capacity . . . may also cast one vote for each [entity] so represented." We think it is significant that the term "represent" is used in regard to estates, trusts, municipalities, public corporations and private corporations which own land. In addition, the statute provides that as to these entities a person who represents more than one may cast a vote for each. A fundamental rule of construing and interpreting statutes is that, when the language used in the statute is plain and unambiguous, the intent as expressed by the words used should be followed and

that it is not proper to look beyond the language "in search of some other legislative purpose or [to extend] the meaning beyond the plain terms" of the statute. State v. V.F.W. Post No. 3722, 215 Kan. 693, 695 (1974); Hunter v. Haun, 210 Kan. 11, Syl. ¶ 1 (1972). If the legislature had intended that lessees could vote for more than one landowner as a representative, it would have so provided.

In summary, a landowner in a groundwater management district is entitled to vote in district elections, unless the landowner agrees to allow the lessee of the land to vote. A person who leases land from several landowners in a district, however, cannot cast a vote for each parcel of land that is under a lease.

Very truly yours,


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