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ATTORNEY GENERAL OPINION NO. 89- 23

Thomas J. Burgardt
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Groundwater Management District No. 3
212 W. Pine St.
P.O. Box 1016
Garden City, Kansas 67846

RE: Waters and Water Courses -- Groundwater Management Districts -- District Powers; Annual Assessment Per Acre Against Landowners; Extension or Reduction of District Territory by Chief Engineer; Disposition of Funds

Synopsis: Reduction of territory within a groundwater management district (GMD) pursuant to K.S.A. 82a-1033 does not require that funds from previous GMD assessments be returned to the county wherein the excluded territory is located. It is our opinion that funds properly collected prior to reduction of GMD boundaries must be remitted to the GMD treasurer and credited to the general fund of the GMD. Cited herein: K.S.A. 79-1804; 82a-1020; 82a-1021; 82a-1028(h); 82a-1030; 82a-1033; 82a-1034.

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Dear Mr. Burgardt:

As legal counsel for Groundwater Management District No. 3, you request our opinion on the disposition of funds collected pursuant to an annual assessment upon property subsequently

excluded from the district. You inform us that the 1988 assessment was submitted to the county treasurer and collected along with the 1988 real estate taxes upon the same lands. After this assessment, the chief engineer reduced the boundaries of the groundwater management district, thereby excluding territories within the boundaries of Hodgeman county. There is now some question concerning whether the district or the county is entitled to these funds.

K.S.A. 82a-1020 et seq. provide for the creation of groundwater management districts (GMD). K.S.A. 82a-1028(h) and K.S.A. 82a-1030(a) permit the GMD to make an annual assessment "against each landowner of not to exceed five cents (\$.05) for each acre of land owned within the boundaries of the district." (Emphasis added). K.S.A. 82a-1021(e) provides a mechanism whereby "any landowner who is not a water user may have his or her land excluded from any district assessments," however, "[a]ll notices of inclusion or exclusion of land shall be submitted to the board not later than January 1 of the effective year." (Note that K.S.A. 82a-1032 and K.S.A. 82a-1030(a) provide authority to impose a special benefit assessment against lands which differs from the annual assessment. See also Attorney General Opinion No. 77-225.) Thus, GMDs possess authority to make annual assessments on lands within their boundaries at the time of the assessment. We must assume that the lands later excluded from the GMD were properly included at the time of the assessment. The issue thereby becomes disposition of funds properly collected pursuant to a valid annual assessment by a GMD.

K.S.A. 82a-1030(c) discusses disposition of moneys collected pursuant to assessments:

"(c) Both the user charges assessed for groundwater withdrawn and the assessments against lands within the district shall be certified to the proper county clerks and collected the same as other taxes in accordance with K.S.A. 79-1801, and acts amendatory thereof or supplemental thereto, and the amount thereof shall attach to the real property involved as a lien in accordance with K.S.A. 19-1804, and acts amendatory thereof or supplemental thereto. All moneys so collected shall be remitted by the county treasurer to the treasurer of the

groundwater management district who shall deposit them to the credit of the general fund of the district. The accounts of each groundwater management district shall be audited annually by a public accountant or certified public accountant. (Emphasis added).

K.S.A. 79-1804 provides that all taxes become due on the first day of November of each year. Thus, if lands are within the GMD at the time of assessment, that assessment becomes a lien upon the property pursuant to K.S.A. 79-1804. Subsequent exclusion from the GMD does not appear to affect the tax obligation of a properly included landowner.

K.S.A. 82a-1033 sets forth the procedures whereby the territory within a GMD may be extended or reduced. This statute does not discuss disposition of funds from assessments on lands subsequently excluded. K.S.A. 82a-1034(c) discusses disposition of funds of a GMD when that GMD has been dissolved:

"(c) Any funds or other assets of a groundwater management district which has been dissolved under the provisions of this act shall be apportioned and paid to the general fund of any county located within or partially within the district in the proportion which the assessed valuation of the property in the district located within the county bears to the total assessed valuation of the district, based on equalized assessed valuations for the preceding year. The treasurer of the district, upon notification of receipt of the certificate of dissolution, shall immediately pay the amounts due each county located within the district to the treasurer of the county." (Emphasis added).

Thus, a county with lands previously within a dissolved GMD could claim a portion of GMD funds pursuant to K.S.A. 82a-1034(c). However, in the situation presented the GMD has not been dissolved, rather, its boundaries have been changed.

A change in the boundaries of a taxing district may impact upon disposition of funds raised pursuant to a tax. (See Attorney General Opinions No. 86-30 and 86-98.) However, statutory authority determines to which entity the funds should be distributed and the entity to whom the funds are paid is given statutory authority to receive and expend the particular funds. See e.g. K.S.A. 79-1807, 12-503a, 18-211, and 18-212. K.S.A. 82a-1020 et seq. do not provide authority to transfer funds of an existing GMD to a county wherein excluded GMD property is located.

Unless dissolved pursuant to K.S.A. 82a-1034, a GMD continues to exist after its territory is reduced. Pursuant to K.S.A. 82a-1021, assessed lands properly within the GMD at the time of assessment are subject to that debt. K.S.A. 82a-1033, does not require that GMD funds previously assessed and collected be returned to the county wherein the excluded territory lies. It is therefore our opinion that assessments properly made and collected prior to reduction of GMD territory must be remitted to the treasurer of the groundwater management district and credited to the general fund of the GMD.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Theresa Marcel Nuckolls
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