



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 90- 32

The Honorable R. D. Miller
Chairman, House Local Government Committee
State Representative, One Hundred Tenth District
State Capitol, Room 183-W
Topeka, Kansas 66612

Re: Drainage and Levees--Drainage Districts Within
Counties or Cities; Drainage Act of 1905 and
Amendments--Organization of Drainage Districts

Synopsis: K.S.A. 24-401 et seq. authorize a drainage
district, organized pursuant to the act, to
prohibit or limit discharges into a drainage ditch
that prevent its maintenance. The drainage
district is authorized by statute to maintain suits
to enforce the reasonable orders of its directors
and thus includes the ability to seek an injunction
to this effect thus obviating the need for 1990
House Bill No. 2623. Cited herein: K.S.A. 24-401
et seq.; 24-407; 24-429; 24-434.

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Dear Representative Miller:

As representative of the one hundred tenth district you
inquire whether current law authorizes a drainage district to
prohibit or limit discharges into district drainage ditches by
an order or an injunction to that effect, obviating the need
for 1990 House Bill No. 2623.

You indicate the drainage district was organized pursuant to
K.S.A. 24-401 et seq. and is currently unable to

maintain a drainage ditch because a landowner refuses to schedule drainage from his commercial fish pond at intervals that would allow the ditch to dry, allowing for bulldozers to clean and maintain the ditch.

A drainage district is a quasi-municipal corporation, created by the legislature and deriving its authority from statute.

State, ex rel., v. Drainage District, 123 Kan. 191

(1927). The powers and authority conferred on the drainage district generally are set out in K.S.A. 24-407. The board of directors of every drainage district incorporated under this article have the power:

"(4) To take charge of and exercise exclusive control of all natural watercourses within the district, and widen, deepen, establish, regulate and maintain the channels thereof, construct and maintain levees along the banks thereof and detention dams and. . . .

. . . .

"(9) To maintain in any court of competent jurisdiction suits to enforce the reasonable orders of its directors, enjoin the placing or maintenance in any natural watercourse of any unauthorized bridge, embankment, pier or other work or structure constituting to any extent whatever an obstruction to the flow of the water, restrain all other wrongful or unauthorized encroachments upon or interference with the channel of the watercourse and to have all obstructions wrongfully placed in the channel of natural watercourses adjudged public nuisances and abated as such.

. . . .

"(16) To do all other acts necessary to carry out and execute the general powers granted under the provisions of K.S.A. 24-401 et seq., and amendments thereto, although not specifically enumerated. . . ." (Emphasis added).

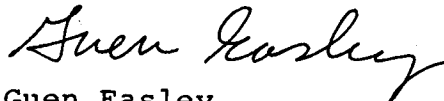
Subsections (4), (9) and (16) authorize the exclusive control of the maintenance of ditches, the issuance of reasonable orders and includes powers not specifically enumerated. Additionally, K.S.A. 24-429 charges the board of directors with the duty to keep the works and improvements (such as ditches) in repair. Liberal construction of the act is mandated to encourage the improvement of watercourses and to protect lands from damage and injury by overflow. K.S.A. 24-434. See generally, Wolf v. Second Drainage District, 179 Kan. 655, 665 (1956) (discussing the act in question); 26 Am.Jur.2d Drains and Drainage Districts §36 (1966).

Given the powers clearly set out in the act and the duty imposed to maintain drainage ditches, it is our opinion K.S.A. 24-401 et seq. authorizes a drainage district, organized pursuant to the act, to prohibit or limit discharges that prevent the maintenance of the ditch as required by K.S.A. 24-429. The drainage district is authorized by statute to maintain suits to enforce the reasonable orders of its directors and thus includes the ability to seek an injunction to this effect, obviating the need for 1990 House Bill 2623.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General