



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 9

Mr. David L. Hiebert
Counsel for Oaklawn Improvement
District
Suite 920, Century Plaza Building
111 W. Douglas
Wichita, Kansas 67202-3292

Re: Counties and County Officers--Public Improvements;
Improvement and Service Districts--Improvement
Districts; Powers; Commodity Program Facility;
Public Park

Synopsis: Improvement districts created pursuant to K.S.A.
19-2753 et seq. have been authorized by K.S.A.
19-2765(a)(4) to ". . . plan and construct or
purchase public works and improvements for public
health, recreation, convenience or welfare within
the limits of the improvement district . . ." and
thus, may take such actions if the governing body
determines that such a necessity exists.
Construction and maintenance of a public commodity
program distribution facility or a public
recreation area may meet the definition of a public
work or improvement in certain situations, and
improvement district funds may be expended for such
purposes if the levy utilized to obtain such funds
does not otherwise limit or prohibit expenditures
for such purposes. Cited herein: K.S.A. 19-2752a;
19-2753; 19-2765.

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Dear Mr. Hiebert:

As attorney for the Oaklawn improvement district, you request our opinion on several issues concerning expenditures by an improvement district organized pursuant to K.S.A. 19-2753 et seq. You inform us that the district has been involved in and contracted to assist with a government commodity program. You state that the commodity program serves individuals within district boundaries; however, it has recently expanded to include distribution to persons outside the improvement district boundaries. You ask whether the district may be a distribution point for such a program, use sewer district revenues to facilitate storage and distribution of commodities, expand existing district facilities to accommodate a commodity program and purchase equipment to facilitate such a program. You additionally ask whether an improvement district may establish and maintain a recreation area dedicated for public use.

You do not indicate whether the commodity program in question is federally or state created or implemented. It is possible that legislative action concerning the commodity program specifically or impliedly speaks to participation in the program by an improvement district. Thus, you may want to consider any statutes creating or establishing procedures for the commodity program in question.

You state that the district in question was originally created as a sewer improvement district. We note that K.S.A. 19-2752a et seq. provides for sewer improvement districts. However, pursuant to information provided by you, it appears that the Oaklawn improvement district was incorporated pursuant to K.S.A. 19-2753 et seq. The powers and duties of improvement districts created pursuant to K.S.A. 19-2753 et seq. are much broader than those of sewer improvement districts created pursuant to 19-2752a et seq. The powers and duties of such an improvement district created pursuant to K.S.A. 19-2753 et seq. are set forth at K.S.A. 19-2765, which provides in pertinent part:

"(a) Every improvement district incorporated under the terms of this act shall have the power to:

. . . .

"(4) Plan and construct or to purchase public works and improvements necessary for public health, recreation, convenience or welfare within the limits of the improvement district. Also to construct or purchase works outside the limits of the district which may be necessary to secure outlets disposal, etc., and permit satisfactory performance of the works within the district." (Emphasis added).

It is quite possible that a commodity program promotes public health, recreation, convenience or welfare within the limits of the improvement district. However, "as you are aware, '[a]n improvement district, once established, is a "body politic and corporate" pursuant to K.S.A. 19-2756 . . . and as such possesses only such power or authority as is expressly conferred by law.' Kansas Attorney General Opinion No. 79-303 p. 2. See also Kansas Attorney General Opinion No. 83-40 and State, ex rel., v. Rural High School District No. 7, 171 Kan. 437 (1951)." Attorney General Opinion No. 83-162. See also Attorney General Opinions No. 89-120, 88-141, 83-56, 83-40 and 81-279. Thus, we must determine if an improvement district created pursuant to K.S.A. 19-2753 et seq. has the specific or implied authority to take the proposed actions.

We will first address the provision of services to residents outside an improvement district. K.S.A. 19-2765(a)(4) permits an improvement district to take certain actions within the improvement district. Individuals within the district finance these works or improvements, and the benefits of improvement district works or improvements generally flow to those residents. See K.S.A. 19-2765(a)(8). However, the provision of works or improvements to improvement district residents does not automatically permit an improvement district to prohibit non-residents from using or benefitting from such improvements or works. See Attorney General Opinion No. 83-40 (improvement district powers do not include the ability to permit only residents to use district roads which have been built or maintained with district funds). Thus, improvements or works established for the benefit of improvement district residents may coincidentally and permissibly benefit non-residents. However, such benefit must, in our opinion, be merely coincidental rather than specifically or primarily intended to benefit non-residents.

The second issue is whether the proposed actions are authorized by K.S.A. 19-2765. We must therefore determine whether a commodity program facility or a recreation area is a public work or improvements. An improvement is generally defined as "a valuable addition made to property (usually real estate) or amelioration in its condition. . . ." Black's Law Dictionary, 682 (5th ed. 1979). K.S.A. 19-2765(a)(4) permits an improvement district to "plan and construct or to purchase public works and improvements necessary for public health, recreation, convenience or welfare. . . ." Whether a commodity distribution facility or recreation area is necessary for the public health, recreation, convenience or welfare of Oaklawn improvement district residents is a fact specific question properly addressed by the governing body of that district. If such a necessity is determined, both a public building and a recreational area fall within the general definition of a public work or improvement. Thus, expenditures for the planning, construction or purchase of such public works or improvements may be permissible pursuant to K.S.A. 19-2765(a)(4). Moreover, as discussed in Attorney General Opinion No. 89-120, there is no indication that the legislature intended to permit the creation or construction of a public improvement, utility or work and then required an improvement district to ignore maintenance of such an improvement, utility or work. Rather, if the construction or purchase of an improvement or work falls within the scope of authority granted to an improvement district, it is our opinion that the same authority permits expenditures for the continued maintenance of such an improvement or work.

Your opinion request alludes to expenditures of "sewer tax moneys" for construction of a commodity facility or recreation area. You do not indicate the statutory source of the taxing authority utilized. However, as you are aware, general taxation laws require that taxes assessed or levied pursuant to specific authority, limiting the expenditure of tax monies thus raised for certain purposes, may only be expended for those purposes. Within the limitations of the tax levy statute authorizing a specific tax, the board for the improvement district may expend those funds for the purposes for which they were raised and within the scope of authority granted to improvement districts.

In summary, it is our opinion that improvement districts created pursuant to K.S.A. 19-2753 et seq. have been authorized by K.S.A. 19-2765(a)(4) to ". . . plan and construct or purchase public works and improvements for public health, recreation, convenience or welfare within the limits

of the improvement district . . ." and thus, may take such actions if the governing body determines that such a necessity exists. Construction and maintenance of a public commodity program distribution facility or a public recreation area may meet the definition of a public work or improvement in certain situations, and improvement district funds may be expended for such purposes if the levy utilized to obtain such funds does not otherwise limit or prohibit expenditures for such purposes.

Very truly yours,



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