

FILE

Subject

Waters-Drainage  
Elections



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STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
*Attorney General*

March 12, 1974

Opinion No. 74- 88 /

Mr. Robert Reeder  
Attorney at Law  
Reeder Building  
Troy, Kansas

Dear Mr. Reeder:

As counsel for the Elwood-Gladden Drainage District in Doniphan County, you inquire concerning the qualifications for electors established by K.S.A. 24-410, which states thus:

"'Qualified elector' means 'any qualified elector of the district and any person eighteen (18) years of age or over owning land within the district, although not a resident therein, or owning tangible personal property within the district and having residence within such district.'"

In Opinion No. 74-7, we summarized this description thus:

"Under K.S.A. 24-410 as amended, the term 'qualified elector' includes any person who is registered to vote, any person eighteen years of age or older who owns land within the district but who is not a resident therein, and any person eighteen years of age or older who is a resident of the district and who owns tangible personal property within the district."

You question whether "any person eighteen (18) years of age or over owning land within the district, although not a resident therein" must nonetheless reside within the state. K.S.A. 24-101a states in pertinent part thus:

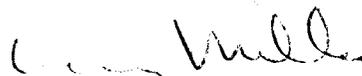
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"That whenever it is required under any law of this state relating to drainage . . . that persons shall be taxpayers or resident taxpayers or taxpayers and residents within such district in order to vote at any election provided for under said drainage law . . . , the terms 'resident taxpayers,' 'taxpayers residing within the boundaries of any district or territory,' 'freeholders and actual residents of the district' and 'taxpayers and residents within such district' shall be construed to mean 'any taxpayers of said district or territory residing in the state of Kansas and owning land in the drainage district or territory . . . .'"

The term "owning land within the district" is further defined in K.S.A. 24-410 to mean the "record owner of the fee of any real estate in the district . . . ," without regard to the owner's residence in or out of the state.

In amending K.S.A. 24-410, the Legislature did not incorporate any of the phrases enumerated in K.S.A. 24-101a, to which established meaning had been given. In view of that failure, together with the failure to incorporate any other reference to residence in the definition of "owning land within the district" and the express grant of the right to vote to owners of land in the district "although not a resident therein," it is our view that persons "owning land within the district" may vote in a drainage district election held under K.S.A. 24-410, notwithstanding they are not residents of the state of Kansas.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm