

FILE

Subject

*Utilities - Public
Improvements - General*

Copy to

STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

April 26, 1974

Opinion No. 74- 126

David S. Lord
City Attorney of Arkansas City
City Building
Arkansas City, Kansas 67005

Dear Mr. Lord:

K.S.A. 12-6a04 provides for the filing of a petition for any improvement authorized under the general improvement law. It provides further thus:

"Such petitions may be found sufficient if signed by either (i) a majority of the resident owners of record of property liable for assessment under the proposal, or (ii) the resident owners of record of one or more than one-half of the area liable for assessment under the proposal, or (iii) the owners of record (whether resident or not) of more than one-half of the area liable to be assessed under the proposal." [Emphasis supplied.]

You inquire whether the term "resident owners of record" means one who is record owner of the property and resides there within the improvement district, or whether the term includes any person who is a record owner of property within the improvement district and who lives within the city limits, although without the improvement district itself.

In Barham v. City of Chanute, 168 Kan. 489, 213 P.2d 960 (1950), the court was called upon to construe the phrase "resident property owners" as found in K.S.A. 14-705. The court stated thus:

"Appellant argues that persons who own land in the benefit district, who were residents either of the district or of the city of Chanute, were qualified under the statute to sign the petition. We

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concur in that view Certainly there is no reason why one residing within the corporate limits, but who owns land in the benefit district, should not be eligible to sign the petition. There is no specific wording in the statute which excludes him." 168 Kan. at 491-492.

We see no reason why this holding would not apply to the language in question. Following Barham, it is our view that the term "resident owner of record" applies to any person who is record owner of property in the improvement district and who is a resident of the city.

I enclose for your information a copy of Opinion No. 70-12-2, issued on January 28, 1970, by Attorney General Kent Frizzell.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm
Enc.