



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 24, 1975

ATTORNEY GENERAL OPINION NO. 75-438

Mr. Robert W. Manske
Woodson County Attorney
Post Office Box 100
Yates Center, Kansas 66783

Re: Counties and County Officers--Public Improvements--
Sewer and Improvement Districts

Synopsis: Creation of an improvement district pursuant to K.S.A. 19-2753, *et seq.*, must be done in strict compliance with statutory requirements.

* * *

Dear Mr. Manske:

You have requested an opinion from this office inquiring whether a county in order to create an improvement district pursuant to K.S.A. 19-2753, *et seq.*, must necessarily comply with the specified procedures set forth in the act. You advise that the board of county commissioners earlier had created a sewer district pursuant to the provisions of K.S.A. 19-2704a, *et seq.* You now ask whether it is a necessity for the board of commissioners to follow the statutory process for creating the improvement district where instead the board could rescind the previous resolution establishing the sewer district and in its place provide for the formation of an improvement district pursuant to K.S.A. 19-2753, *et seq.*, merely by passing a single new resolution.

K.S.A. 19-2753 provides:

"The board of county commissioners of any county shall have the power, upon proper petition being presented for that purpose, to incorporate

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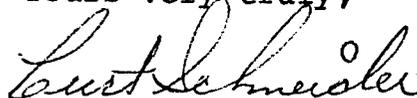
and organize improvement districts, within their respective counties, in the manner provided herein." [Emphasis supplied.]

We find no ambiguities in the language of this statute or in the following procedural statutory requirements. Petitions for such districts must comply precisely with the delineated requirements of K.S.A. 19-2754. And, the requisite notices, hearings, findings and determinations are mandatory inasmuch as such statutory language must be so construed as it is a patent, broad delegation of governmental power (K.S.A. 19-2756) by the board of county commissioners for the benefit of the public [*First National Bank v. Brown*, 117 Kan. 339, 230 P. 1038, 39 ALR 1242 (1924); *See generally*, 2A *Sutherland Statutory Construction*, §57.17].

Further we note that neither the provisions of the sanitary/storm sewer act nor the benefit district act manifest legislative intent to permit the procedural process for creating and organizing one district to be substituted for the other when and where convenient for the board of county commissioners. The compass and objective of these acts reflect a fundamental substantive dissimilarity. The so-called "19-2704a district" was designed singularly to enable board of county commissioners to provide sanitary and storm sewers to certain areas within the county, and the board essentially controls the operation and taxation of the district once created. Contradistinctively, the "19-2753 district" once incorporated and organized is empowered through its own elected officers to exercise the several powers of a body corporate and politic through K.S.A. 19-2765.

The procedural requisites for the creation and organization of the respective districts as noted, *supra*, are clear and distinct and are necessarily non-interchangeable. This coupled with the substantial differences in the districts' nature and structure compels this office to conclude that the statutory procedure for the creation of a benefit district pursuant to K.S.A. 19-2753, *et seq.*, is mandatory and must be complied with accordingly.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:en