



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 28, 1976

ATTORNEY GENERAL OPINION NO. 76- 33

Mr. Robert H. Meyer
Attorney at Law
Mankato, Kansas 66956

Re: Watershed Districts--Dissolution--Petition

Synopsis: A petition which calls for an election for the dissolution of a watershed district organized pursuant to K.S.A. 24-1201 *et seq.*, only conditionally if certain problems recited therein are not solved in "a satisfactory and acceptable manner," and which is not shown to be signed by the statutory proportion of landowners of the district by a verified enumeration thereof by one of such landowners, is legally insufficient, for either of these reasons, to require an election for dissolution pursuant to K.S.A. 24-1228.

* * *

Dear Mr. Meyer:

As counsel for the Buffalo Creek Watershed District No. 39, located in Jewell, Mitchell, Cloud and Republic counties, Kansas, you inquire concerning the sufficiency of a petition filed pursuant to K.S.A. 24-1228.

The watershed district was organized in 1960 pursuant to K.S.A. 24-1201 *et seq.* You advise that the engineering survey has been completed to the point that the District is prepared to adopt its general plan in the near future. Meanwhile, you indicate, some dissatisfaction has arisen, particularly among some property owners in the upper elevations of the District, where most of the detention dams are proposed to be located. As a result, petitions have been circulated for disorganization of the district.

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K.S.A. 24-1228 authorizes the calling of an election for dissolution of a district when it has been organized and incorporated for more than four years and it has not

"adopted a general plan of work and projects to be undertaken by the district, nor constructed or contracted to construct any works of improvement, nor incurred any continuing obligations for maintenance of any works of improvement. . . ."

It further provides that an election shall be called

"if written petitions therefor signed by twenty percent (20%) of the landowners of said district, as shown by a verified enumeration of said landowners by a landowner of said district, are filed with the secretary of said board."

The petition is entitled a "PETITION FOR REQUESTING A VOTE FOR BUFFALO WATERSHED." It recites that certain conditions have changed since 1960, *i.e.*, the need to provide water to Jewell City and the ownership of much land in the district. It goes on to express objections to the location of dam sites, the size of dams and holding areas, and to suggest that "pasture locations and more smaller dams will perform the needed flood water control." It concludes with the following two paragraphs:

"If the present board can not solve the above-mentioned problems in a satisfactory and acceptable manner, we believe the watershed board should provide for an election to permit the present land owners to vote on continuation or discontinuation of the Buffalo watershed.

We, therefore, have signed this petition for the purpose of bringing this issue to the vote of the Buffalo watershed land owners."

You point out that the wording of the petition suggests that it was the intent of the signers to call for an election to dissolve the district only conditionally, *i.e.*, only if the district was unable to "solve the above mentioned problems in a satisfactory and acceptable manner," for according to that paragraph, only then and in that event do the signers ask the board to call an election on

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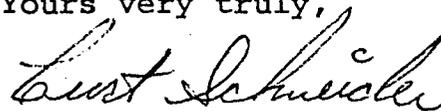
"continuation or discontinuation of the Buffalo watershed." Indeed, that is the express statement of the next-to-last paragraph.

The last two paragraphs may be read in two ways. Taking one view, each is flatly contradictory to the other: the first asks the Board to solve the "above mentioned problems in a satisfactory and acceptable manner," and if it cannot, then to call an election, whereas the second calls for an election unconditionally and immediately. Taking another view, the last sentence may be read as a reiteration of the request for the election made in the preceding paragraph, which, as stated, is expressly conditional and, as it were, precautionary. Obviously, the recitals in the petition must be read together to the extent possible. The latter view described above is, in my judgment, the proper construction to put upon this instrument. Obviously, many persons could reasonably have signed the petition as a request for the board to solve the problems recited in it, without regarding it as a request for an unconditional and immediate election. For a signer to have signed it otherwise would require a disregard of the clear and express language of the next-to-last paragraph.

You also point out that the petitions have been filed without a verified enumeration of the landowners of the district by one of such landowners, showing that the signers constitute 20% or more of all landowners of the district. Had the signers and supporters of the petition contemplated the document as a statutory dissolution petition, unconditional in form, this additional requirement would have to have been satisfied.

In short, I agree fully with you that the petition is legally insufficient and so far defective that it cannot serve as a basis for an election called pursuant to K.S.A. 24-1228. As you point out, another and properly worded petition, unambiguous in its language, may be circulated, signed and properly verified as required by law, to require an election under that statute.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj