STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 26, 1976

ATTORNEY GENERAL OPINION NO. 76- 109

Mr. Robert M. Corbett
Department of Health and
  Environment
Forbes Air Force Base
Building 740
Topeka, Kansas 66620

RE: Public Health--Improvement Districts--Application
            of Act regulating areas surrounding certain water
            impoundments to improvement districts

Synopsis: K.S.A. 1975 Supp. 65-185 empowers the Secretary of
            Health and Environment to establish "sanitation
            zones" and regulate the same in areas surrounding
            certain water impoundments except as excluded by
            statute. The exclusion from the operation of
            K.S.A. 1975 Supp. 65-185 provided for areas within
            incorporated cities does not apply as to improvement
            districts organized pursuant to K.S.A. 19-2753,
            et seq.

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Dear Mr. Corbett:

     You have requested our opinion as to the application of
K.S.A. 1975 Supp. 65-185, et seq. to improvement districts
organized and established pursuant to K.S.A. 19-2753, et seq.,
where the improvement district asserts its status as an
incorporated third class city and thereby claims exemption
from regulation under K.S.A. 1975 Supp. 65-185, et seq.

     The provisions of K.S.A. 1975 Supp. 65-185, et seq. evince
a legislative intent to provide certain control, for purposes of
public health, over areas surrounding certain water impoundments.

K.S.A. 1975 Supp. 65-187 imposes on the Secretary of Health and Environment, inter alia, the duty of "...designating and establishing 'sanitation zones'..." to be regulated in accordance with the purposes and provisions of the act. The term "sanitation zone" is defined in K.S.A. 1975 Supp. 65-185(a) to exclude "...any area within any incorporated city...". The question has been raised as to whether or not an "improvement district", established pursuant to K.S.A. 19-2753, et seq., can claim the legal status of an incorporated city and thus, avoid the operation of the provisions of K.S.A. 1975 Supp. 65-185, et seq. For reasons hereinafter set out, the answer is no.

The legislature has established, by the provisions of K.S.A. 19-2753, et seq., a procedure governing the creation of improvement districts, their structure, organization, powers and liabilities. It is instructive to note that K.S.A. 19-2754 specifically provides that "no lands shall be included within said district which lie within the limits of any incorporated city".

Apart and distinct from the above are constitutional and statutory provisions controlling the creation of municipalities. Article 12, §5(a) of the Constitution of the State of Kansas provides, in pertinent part:

> "The legislature shall provide by general law, applicable to all cities, for the incorporation of cities..."

K.S.A. 15-115 provides:

> "It is the purpose of this act to provide by general law for the incorporation of all cities, as required by section 5 of article 12, of the state constitution."
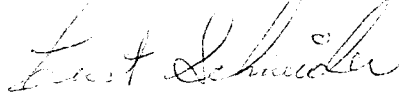
The remainder of the act, K.S.A. 15-116-126, provides the procedure to be followed in the incorporation of a municipality.

The conclusion to be drawn from a reading of the above is that the legislature has provided for a procedure designed to allow for the creation of improvement districts as a separate and distinct entity in no way related to a municipality. The creation of a municipality can be accomplished only in accordance with the statutory provisions, enacted pursuant to Article 12, §5 of the State Constitution, set out for that purpose. Any

attempt by an improvement district to classify itself as an incorporated city must necessarily fail. For the above reasons, it is our opinion that an improvement district is within the ambit of the provisions of K.S.A. 1975 Supp. 65-185 and subject to regulations by the Secretary of Health and Environment.

Very truly yours,

CURT T. SCHNEIDER
Attorney General

CTS/MBR/cgm