

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

April 27, 1977

ATTORNEY GENERAL OPINION NO. 77-139

Mr. Thomas J. Butler, Jr.
City Attorney
Herington, Kansas 67449

Re: Cities--Improvements--Protest

Synopsis: A municipal corporation or other political subdivision is not a "resident owner" who is legally entitled to sign a protest petition against an improvement under K.S.A. 12-602.

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Dear Mr. Butler:

Under K.S.A. 12-602, whenever the city governing body shall deem it necessary to improve a street or avenue, it may provide by resolution for the work to be done. After publication of the resolution, the work may not be undertaken if a timely petition is filed signed by "a majority of the resident owners of real property liable to taxation for any such improvement" You inquire what constitutes a "resident owner" of real property within the meaning of this statute.

In *Horejsi v. City of Holyrood*, 171 Kan. 190, 231 P.2d 215 (1951), the court held that a board of education was not a resident property owner in proceedings to pave a street along schoolhouse grounds. In *Osborne County v. City of Osborne*, 104 Kan. 671, 180 Pac. 233 (1919), the court held that a county was not a resident of the county seat in a case involving a paving project in front of the courthouse square. In these cases, as well as in *Baker v. City of Leoti*, 179 Kan. 122, 292 P.2d 720 (1956),

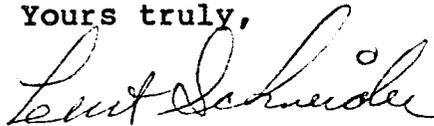
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the court cited K.S.A. 77-201, *Twenty-Third*, a statutory rule governing the determination of residence, which states thus:

"The term 'residence' shall be construed to mean the place adopted by a person as his place of habitation, and to which, whenever he is absent, he has the intention of returning"

Clearly, the court has treated the term "resident owner" of property as including only those owners of property who are legally capable of establishing and demonstrating residence by applying this statutory criteria. Thus municipal corporations and political subdivisions do not constitute "resident owners" within the meaning of K.S.A. 12-602.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj