



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 10, 1978

ATTORNEY GENERAL OPINION NO. 78- 219

Mr. Thomas J. Brown, Jr.
Chief Deputy County Attorney
Leavenworth County Courthouse
Leavenworth, Kansas 66048

Re: Drainage Districts--Board of Directors--Composition

Synopsis: The composition of the board of directors of a drainage district incorporated pursuant to K.S.A. 24-458 *et seq.* is governed by the provisions of that 1911 act, and not by the provisions of the Drainage Act of 1905, and 1959 amendments to K.S.A. 24-409 and -411 thereof.

* * *

Dear Mr. Brown:

You inquire concerning the composition of the board of directors of the Fall River Drainage District. The district was incorporated by the Leavenworth County board of county commissioners in August, 1958, upon a petition which was presented to it pursuant to K.S.A. 24-458. That section, a 1911 amendment to the Drainage Act of 1905, K.S.A. 24-401 *et seq.* provided specially for the incorporation of drainage districts in which

"the owners of three-fifths of the acreage of such body of lands are nonresidents and there shall not be five taxpayers resident within the territory including such lands"

K.S.A. 24-459 provided that the directors of any drainage district incorporated under K.S.A. 24-458 shall be three in number, but

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need not be residents therein, a variance from the board composition required by K.S.A. 24-409, of the 1905 act, which required, with exceptions not pertinent here, that the directors be "freeholders and actual residents of the district."

In 1959, K.S.A. 24-409 and -411 were amended. The latter section was amended by the addition of the following language:

"Notwithstanding the foregoing provisions of this section, or of any other provisions of the act of which this section is a part, whenever there are less than five (5) actual residents who are freeholders of any such drainage district, the directors shall not be elected, but shall be appointed by the board of county commissioners of the county in which such district is located, or if such district is located in more than one county, then such directors shall be appointed by the board of county commissioners of the counties in which the district is located, acting jointly. Whenever the terms of office of directors of any such drainage district shall expire or shall have expired, and the board or boards of county commissioners . . . shall determine that less than five (5) persons who are freeholders of such district are residents therein, they shall proceed to make the appointment of directors, and the persons so appointed shall hold office for a term of three (3) years and each take, subscribe, and file in the office of county clerk their official oaths." [Emphasis supplied.]

In addition, K.S.A. 24-409 was amended by the addition of the following proviso:

"That in districts in which the directors are appointed by the board of county commissioners . . . said directors shall be freeholders of such drainage district, and may reside anywhere in the county or counties in which the district is located."

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In short, the 1905 act requires a board of three resident freeholders. The 1977 act, specifically supplemental to the 1905 act, provided that when there were fewer than five resident taxpayers in the district, the board shall consist of three landowners who need not be residents thereof. In 1959, in further amendments to the 1905 act, also specifically applicable to districts with fewer than five resident freeholders, the board of county commissioners was authorized to appoint as directors of the district freeholders of the district who reside anywhere in the county or counties in which the district is located.

You advise that at the present time, only one of the 16 freeholders of the district is a resident thereof, and only two others are residents of Leavenworth County, in which the district is located. The present board consists of one resident freeholder of the district and two freeholders who are residents of Douglas County.

The question which is raised is whether the 1959 amendments to K.S.A. 24-409 and -411 are applicable to this district, which was incorporated under K.S.A. 24-458 and -459. The latter two sections were enacted in 1911. Section 3 of that 1911 act is now found at K.S.A. 24-460, stating thus:

"That in all respects, except as hereinbefore provided, the provisions of the act to which this is supplemental shall apply to and govern the proceedings of the drainage districts organized under this act, which drainage districts shall possess and may exercise all of the powers conferred upon drainage districts organized under said chapter 215."

The 1959 amendments are stated to apply "[n]otwithstanding the foregoing provisions of this section [then G.S. 1949 24-411] or of any other provisions of the act of which this section is a part," i.e., the 1905 act. The question then becomes whether the "act of which this section is a part" includes the 1911 enactment, which is stated to be "supplemental" to that act.

In 1A Sutherland, *Statutory Construction*, § 22.24, the writer states thus:

"Supplementary acts are not amendments within the constitutional limitation that no act shall be amended by mere reference

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to its title. A supplementary or supplemental act, or a supplement, for the purpose of compliance with this limitation is an act not purporting to amend but which makes an addition to a prior statute without impairing any existing provision thereof. 'It is that which supplies a deficiency, adds to, or completes, or extends that which is already in existence without changing or modifying the original.' It need not state that it is supplementary." [Footnotes omitted.]

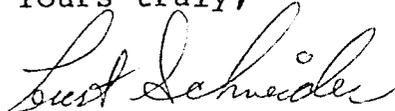
Thus, the 1911 act, ch. 173, L. 1911, is not an amendment of the 1905 drainage act. Indeed, its title specifically describes it thus:

"AN ACT in relation to the organization of drainage districts and supplemental to chapter 215 of the Laws of 1905."

The 1911 act is an independent act, which does not change or alter any of the provisions of the 1905 act, but which provides a separate, independent mode of drainage districts which, as it directs, are otherwise to be governed by the 1905 act in all respects.

The Kansas Supreme Court has consistently admonished that repeals by implication are not favored in Kansas. See, e.g., *Stephens v. Ballou*, 27 Kan. 594 (1881) and *Atchison, Topeka and Santa Fe Railway Co. v. Board of Education*, 123 Kan. 378 (1927). Thus, the 1959 amendments cited above should not be deemed to repeal by implication the 1911 enactment unless no reasonable and alternative construction is available. In my judgment, the 1959 amendments to K.S.A. 24-409 and -411 apply to districts organized under the 1905 drainage act, as amended, and not to districts organized under a supplemental, but independent act, K.S.A. 24-458 et seq. Thus, the board of directors as now constituted complies with the act, and the 1959 amendments do not restrict membership on the board of directors to residents of Leavenworth County.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: John C. Gage