STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 9, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80- 100

Tim R. Karstetter
McPherson County Attorney
P.O. Box 1103
McPherson, Kansas 67460

Re: Irrigation--Districts--Qualification of Voters at District Elections

Synopsis: In order to be entitled to vote at irrigation district elections, K.S.A. 1979 Supp. 42-706(h) requires inter alia that persons be "qualified electors." This has the effect of requiring such persons to be residents of the irrigation district. Thus, in accordance with these statutory provisions, "absentee" ballots cast at an irrigation district election by persons who are owners of irrigable land in the district, but who are non-residents of Kansas, should not be counted. Cited herein: K.S.A. 17-5901, K.S.A. 1979 Supp. 25-1119, 25-1122d, K.S.A. 25-2302, K.S.A. 1979 Supp. 42-701, 42-706, L. 1979, ch. 155, Kan. Const., Art. 5, §1.

* * *

Dear Mr. Karstetter:

You have asked our opinion concerning a recent election of directors in the Kanopolis Irrigation District, which includes portions of McPherson and Ellsworth Counties. In that election, fifteen ballots were received from persons who reside outside the State of Kansas, but who own irrigable land situated in the irrigation district. The county election officer of McPherson County has formally challenged these ballots, and you have requested our opinion as to the requisite qualifications of persons voting at irrigation district elections.

As you have noted, the principal statute bearing upon this question is K.S.A. 1979 Supp. 42-706, which provides for the election of members of an irrigation district's board of directors, which is the district's governing body. As provided in subsection (a) thereof, the board of directors consists of three

members, "who shall hold their offices for a period of three (3) years, and each shall serve until his or her successor has been elected and qualified." By virtue of provisions of subsections (b) and (c), after the initial election of directors, the election of directors is on a staggered basis, with one director being elected each year.

Qualifications of persons who may vote for directors are specified by 42-706(h), as follows:

> "Until such time as assessments are made in the district pursuant to K.S.A. 42-715, those persons entitled to vote shall be "qualified owners of land" within the irrigation district, as such term is defined in K.S.A. 1979 Supp. 42-701, and amendments thereto, and who are otherwise qualified electors.
>
> "After lands have been assessed in the district pursuant to K.S.A. 42-715, those persons entitled to vote shall be "qualified owners of land" within the irrigation district as such term is defined in K.S.A. 1979 Supp. 42-701, and amendments thereto, which has been assessed pursuant to K.S.A. 42-715, and amendments thereto, and who are otherwise qualified electors. For voting purposes, any person entitled to vote under this subsection who owns land in more than one voting area shall vote in the voting area which includes the greatest portion of his or her land." (Emphasis added.)

The foregoing provisions were added to the statute in 1979 (L. 1979, ch. 155, §2), and the emphasized portions thereof have particular relevance to your inquiry because it is clear from these provisions that, in order to vote at an irrigation district election, a person must be both a "qualified owner" of land in the district and an otherwise "qualified elector."

As described in K.S.A. 1979 Supp. 42-701, "[q]ualified owners of irrigable land shall be understood and construed to mean, taxpayers of said proposed district owning irrigable land or some interest therein, in said proposed district." This office had occasion to interpret this definition in a letter opinion dated March 27, 1969. There, Attorney General Frizzell determined that the key word in the definition is "taxpayers." Accordingly, he concluded that "a 'qualified owner' is simply any person owning a presently taxable interest in land within a proposed district,

as reflected on the county tax roles [sic]." We concur with this analysis.

With respect to the requirement that such taxpayer-landowner be "an otherwise qualified elector," we agree with your observation that the constitutional provisions regarding suffrage are relevant. In Article 5, Section 1 of the Kansas Constitution, it is provided: "Every citizen of the United States who has attained the age of eighteen years and who resides in the voting area in which he or she seeks to vote shall be deemed a qualified elector."

Thus, in order to vote at an irrigation district election of directors, by virtue of K.S.A. 1979 Supp. 42-706(h), a person must be: (1) a United States citizen; (2) eighteen years of age; (3) a resident of the irrigation district; and (4) an owner of a presently taxable interest in irrigable land included in the district. It would appear, therefore, that the fifteen ballots in question should not be counted since, as you have related, the persons casting these ballots are non-residents of Kansas and fail to meet the residency portions of the foregoing requirements.

Furthermore, we note the following language in subsection (d) of 42-706 regarding absentee voting at irrigation district elections:

> "All elections shall be conducted in accordance with the general election laws of the state except as otherwise provided in this act. Absentee voting as provided in article 11 of chapter 25 of the Kansas Statutes Annotated shall be provided for by the county election officers and boards of directors for those persons entitled to vote under subsection (h). The forms for the ballot envelope declaration as provided in K.S.A. 1979 Supp. 25-1120 and the applications for absentee ballots as provided in K.S.A. 1979 Supp. 25-1122d shall be modified to establish that such person is a qualified owner of irrigable land within the district." (Emphasis added.)

All but the first sentence of the foregoing quoted language was added by amendment in 1979 in conjunction with the addition of subsection (h) to 42-706. It is apparent from these provisions that the fifteen "absentee" ballots in question should not have been provided to the persons casting them. Since such persons are not qualified electors, they are not entitled to receive absentee ballots under the general election laws applicable to absentee voting. Subsection (a) of K.S.A. 1979 Supp. 25-1119 provides in pertinent part:

> "It shall be lawful for any registered elector of this state who is to be absent from the county in which the elector resides, . . . upon the day of any primary, general or question submitted election, and who is actually so absent during all of the time that polls are open on such day, to vote an absentee ballot on all offices . . . and questions submitted on which such elector would otherwise be entitled to vote."

Non-residents of Kansas cannot satisfy the requirements for obtaining absentee ballots under the general election laws, as provided above, since they cannot be "registered electors." Registration is available only to a person that is "otherwise legally qualified" (see K.S.A. 25-2302), and as previously noted, this entails residency in the appropriate "voting area." Kan. Const., Art. 5, §1.

Such determination is enhanced by the provisions of K.S.A. 1979 Supp. 25-1122d, which sets forth the application form for obtaining an absentee ballot. Even though 42-706(d) requires that such application be modified to establish that the applicant is a "qualified owner of irrigable land," the application form in 25-1122d also requires the applicant to affirm that he or she is a "qualified elector."

All of the statutory provisions discussed above indicate that, in order to be entitled to vote in irrigation district elections, a person must be a resident of the district; this compels the conclusion that the fifteen "absentee" ballots in question should not be counted. However, we believe it appropriate to note that there are other statutory provisions which tend toward a contrary conclusion, resulting in some ambiguity as to the statutory requirements for voter eligibility.

Most of the confusion stems from the 1979 amendments made to the irrigation district statutes. As a necessary consequence of the addition of subsection (h) to 42-706, the legislature deleted from what is now subsection (e) the requirement that the district's voter lists were to include "all holders of title or evidences of title . . . for land located in said irrigation district, who are residents of the state, and are otherwise qualified electors." (Emphasis added.) Under the emphasized portion of the foregoing provisions, voters were not required to be residents of the irrigation district; they were required only to be residents of the state and to be otherwise qualified electors, i.e., U.S. citizens and eighteen years of age. In lieu of the above-quoted phrase the 1979 Legislature inserted a requirement that the lists of voters include "all persons entitled to vote as provided in subsection (h)," which does not include a specific statement as to residence, merely a requirement that the person seeking to vote be a qualified elector. Of course, as previously noted, being a qualified elector in this instance entails residency in the irrigation district.

Notwithstanding these changes, however, confusion is generated by other provisions in 42-706 and elsewhere that are remnants of the prior qualifications that did not require residency in the district. For example, prior to amendment in 1979, the introductory sentence of 42-706(a) read in part as follows:

> "The officers of such district shall be a board of directors consisting of three (3) members who shall be owners of land within the district and residents of a county in which the district or a portion thereof is located, or county adjoining a county in which said irrigation district or a portion thereof is located . . . ." (Emphasis added.)

The emphasized portion of this excerpt was deleted in 1979 and replaced by the phrase "persons entitled to vote as provided in subsection (h)," which as noted has the effect inter alia of imposing the requirement of residency within the district. However, that requirement is contradictory of the language that follows this amendment, since such language permits residency outside the district.

In subsection (b), there is another curious consequence of the addition of subsection (h). There, authority to establish polling places "outside the corporate boundaries of the district" remains, even though persons residing outside the district cannot vote by virtue of subsection (h).

Also of note in this connection is the amendment effected simultaneously in K.S.A. 42-701 by section 1 of this law (L. 1979, ch. 155). Following the language in this statute defining "qualified owner of irrigable land" (previously quoted herein) there are provisions construing such term in specific instances, e.g., joint tenancy and tenancy in common. Added to this in 1979 was the following: "A corporation incorporated under the provisions of K.S.A. 17-5901, shall be a qualified owner of irrigable land under the provisions of this act." When this amendment is considered in light of 42-706(h), the question arises as to whether a farm corporation organized under 17-5901 is entitled to vote at an irrigation district election. Such corporation may be a "qualified owner of land," but it certainly should be observed that these farm corporations would not appear to satisfy the requirements of 42-706(h) that voters in irrigation district elections also be "qualified electors."

The foregoing inconsistencies and ambiguities resulting from the 1979 amendments to the irrigation district statutes have been recounted for two purposes: (1) to relate our understanding why these statutes have caused you and the county election officer of McPherson County some degree of confusion; and (2) to demonstrate the necessity of resolving your inquiry by ascertaining the underlying legislative intent. With respect to the latter, one of the most recent statements regarding the duty to interpret a statute in accordance with legislative intent is found in Southeast Kansas Landowners' Ass'n v. Kansas Turnpike Auth., 224 Kan. 357 (1978), as follows:

> "The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. Easom v. Farmers Insurance Co., 221 Kan. 415, Syl. 2, 560 P.2d 117 (1977); Thomas County Taxpayers Ass'n v. Finney, 223 Kan. 434, 573 P.2d 1973 (1978); Brinkmeyer v. City of Wichita, 223 Kan. 293, 573 P.2d 1044 (1978).
>
> "In determining legislative intent, courts are not limited to a mere consideration of the language employed, but may properly look to the historical

background of the enactment, the circumstances attending its passage, the purposes to be accomplished, and the effect the statute may have under the various constructions suggested. State, ex rel., v. City of Overland Park, 215 Kan. 700, Syl. 10, 527 P.2d 1340 (1974); State v. Luginbill, 223 Kan. 15, 574 P.2d 140 (1977).

"In construing a statute, the legislative intention is to be determined from a general consideration of the whole act. Effect must be given, if possible, to the entire statute and every part thereof. To this end it is the duty of the court, so far as practicable, to reconcile the different provisions so as to make them consistent, harmonious and sensible. Harris v. Shanahan, 192 Kan. 629, 635, 390 P.2d 772 (1964); Rogers v. Shanahan, 221 Kan. 221, 228. 565 P.2d 1384 (1976)." Id. at 367, 368.

Having considered the statutory provisions bearing upon your inquiry in light of these judicial rules of construction, it is our opinion that, notwithstanding the inconsistencies and ambiguities noted above, the 1979 amendments to 42-706 evince a clear intent to preclude persons who are not residents of an irrigation district from voting in the district's elections. Such purpose has been manifested by requiring that persons so entitled to vote must be "qualified electors." Thus, in our judgment, the fifteen "absentee" ballots received from persons not residing in the State of Kansas should not be counted. They have been cast by persons who are not qualified electors and, as a consequence, are not entitled to vote at an irrigation district election by virtue of K.S.A. 1979 Supp. 42-706(h).

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

W. Robert Alderson
First Deputy Attorney General

RTS:WRA:phf