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July 29, 1980

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ATTORNEY GENERAL OPINION NO. 80-171

Douglas L. McClure
201 E. Third, P.O. Box 487
St. John, Kansas 67576

Re: Waters and Watercourses--Groundwater Management Districts--
Definition of Landowner

Synopsis: For the purposes of a groundwater management district, a "landowner", as defined by K.S.A. 82a-1021(g), is any person who meets either of the following requirements: (1) is the record owner of any real estate within the boundaries of the district, or (2) has an interest as a contract purchaser of forty or more contiguous acres of land in the district which is not within the corporate limits of any municipality. If a person meets the requirements for a landowner, he is subject to annual assessments levied by the district under K.S.A. 82a-1030(a), even if he is not an eligible voter as that term is defined by K.S.A. 82a-1021(e). Cited herein: K.S.A. 82a-1021(e), 82a-1021(g), 82a-1030, 82a-1031, 82a-1032.

* * *

Dear Mr. McClure:

As attorney for the Big Bend Groundwater Management District No. 5, you request our opinion concerning the definition of the term "landowner" found at K.S.A. 82a-1021(g). This statute is part of that act which deals with the formation, operation and financing of groundwater management districts in Kansas. It is in reference to the financing function that your request is made, for, as will be seen below, it is the landowners in a district who are liable for the assessments and changes which fund the annual budget.

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"Landowner" is defined at 82a-1021(g) as meaning

"the person who is the record owner of any real estate within the boundaries of the district or who has an interest therein as contract purchaser of forty (40) or more contiguous acres in the district not within the corporate limits of any municipality."

Your question concerns the application of the 40 contiguous acres requirement--is it applicable to all owners of land or merely those individuals who are purchasers on contract? In our opinion, it is clear that the latter is the case, and the acreage limit imposed is applicable only to that limited group who do not yet have a fee interest. Otherwise, there would be no reason to use the term "record owner of any real estate." Additionally, the absence of any commas and the use of the word "or" leaves no doubt that the above-quoted sentence is in the disjunctive, i.e. a landowner can fall into either of two classes. See, e.g., City of Toledo v. Lucas County Budget Commission, 33 Ohio St. 2d 62, 294 N.E.2d 661 (1973).

Groundwater management districts are financed through the use of water user charges and/or annual assessments (K.S.A. 82a-1030), general improvement bonds (K.S.A. 82a-1031) and special assessments against land specially benefitted by a district project. K.S.A. 82a-1032. The meaning of the term landowner is of significance as regards the second of these methods, namely the setting of an annual assessment not to exceed five cents per acre which must be paid by each landowner. K.S.A. 82a-1030(a). Based on our conclusion above, it would appear that the owner of any real estate contained within the district's boundaries would be liable for such assessment, which is collected the same as are levies made by other taxing subdivisions. K.S.A. 82a-1030(b).

A complication arises, however, when one considers the way in which such levies are determined. According to K.S.A. 82a-1030(b), annual assessments, along with user fees, are set by the district's board of directors, who are in turn elected by the "eligible voters" of the district. It is the definition of this term, found at K.S.A. 82a-1021(e), which is the source of the problem, for it is therein stated:

"'Eligible voter' means any person who is a landowner or a water user as defined in this act except as hereafter qualified. Every natural person of the age of eighteen (18) years or upward shall be an eligible voter of a district under this act if (1) he or she is a landowner who owns, of record,

any land, or any interest in land, comprising forty (40) or more contiguous acres located within the boundaries of the district and not within the corporate limits of any municipality,
or (2) he or she withdraws or uses groundwater from within the boundaries of the district in an amount of one acre-foot or more per year."
(Emphasis added.)

Unlike the definition of landowner, where a distinction is made between the record owner of any real estate and a contract purchaser of forty or more contiguous acres, here no such distinction is drawn. To be an eligible voter, the statute states that one must be an owner of "any land, or any interest in land, comprising forty (40) or more contiguous acres." In other words, to have a say in district affairs, the statute requires even a fee owner to own a minimum number of acres, which also must be contiguous. The disjunctive form found in the earlier definition is simply not present here. Further support for this conclusion is found in K.S.A. 82a-1021(e), wherein it is stated:

"Each tract of land of forty (40) or more contiguous acres and each quantity of water withdrawn or used in an amount of one acre-foot or more per year shall be represented by but a single eligible voter."

The potential result of these two different definitions would be to leave some landowners in the district subject to assessment, despite their non-use of water and the fact that they were unable to exercise any voice in district policy from the outset, due to their failure to meet the standard for an eligible voter. Such a result raises serious constitutional questions concerning due process and equal protection under the Fourteenth Amendment of the U.S. Constitution. However, we do not need to reach such questions due to the presence of a "saving clause" found in the lengthy definition of eligible voter at K.S.A. 82a-1021(e).

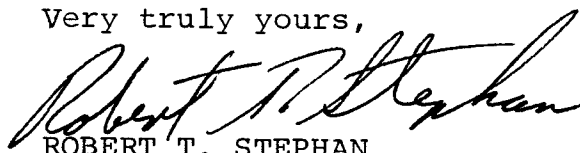
There, it is stated that "[a]ny landowner who is not a water user may have his or her land excluded from any district assessments . . . by serving a written notice of election of exclusion with the steering committee [which organizes the district under K.S.A. 82a-1022] or the board [of directors]." Accordingly, if a landowner does not use enough water from the district to qualify as a "water user" (and so be eligible to vote regardless of his land holdings), he may, if so desired, avoid paying assessments levied by a board of directors for whom he cannot vote. A failure to opt out would leave him liable, for

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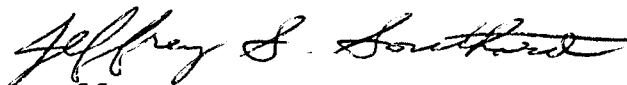
it is his status as a landowner, not as an eligible voter, which subjects him to assessment by the provisions of K.S.A. 82a-1030(a).

In conclusion, for the purposes of a groundwater management district, a "landowner", as defined by K.S.A. 82a-1021(g), is any person who is either: (1) the record owner of any real estate within the boundaries of the district, or (2) a contract purchaser of forty or more contiguous acres of land in the district which is not within the corporate limits of any municipality. If a person meets the requirements for a landowner, he is subject to annual assessments levied by the district under K.S.A. 82a-1030(a), even if he is not an eligible voter as that term is defined by K.S.A. 82a-1021(e).

Very truly yours,



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