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ATTORNEY GENERAL OPINION NO. 80- 209

Mr. Larry Winn III
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Re: Cities and Municipalties--General Improvement and Assessment Law--Levy of Assessments

Synopsis: The General Improvement and Assessment Law, K.S.A. 12-6a01 et seq., requires that the governing body of a city assess property in an improvement district by imposing substantially equal burdens or shares of the cost upon property similarly benefited.

The sufficiency of petitions (for any improvement), filed pursuant to K.S.A. 12-6a04(2), is to be determined as of the time the petitions are signed, and not at some later date. Cited herein: K.S.A. 12-6a01, 12-6a04(2), 12-6a06, and 12-6a10.

* * *

Dear Mr. Winn:

You request our interpretation of the General Improvement and Assessment Law, K.S.A. 12-6a01, et seq. Specifically, you pose the following question:

> "Is the City [of Leawood], in considering and passing the assessment ordinance for an improvement district, bound to consider property which was the subject of an improvement district petition in its state of development or platting at the time of the petition, or may the City consider the property as it exists and is platted at the time of the passage of the assessment ordinance."

The above question arose in connection with the creation of a specific "street" improvement district by the City of Leawood, and the following background information has been provided:

> "By way of background, the City of Leawood did, pursuant to K.S.A. 12-6a04, create an improvement district on the petition of more than a majority of owners of property within the proposed district. The petitions of several owners included large tracts of property which had at the time of the filing of the petition not yet been platted. Work within the improvement district then commenced and was completed within approximately 18 months from the date of the creation of the district. In the interim period prior to the actual assessment hearing and passage of the assessment ordinance, property within the boundaries of the improvement district was in fact platted. The effect of the platting was to remove from assessment public streets and rights of way. The original petitions had specifically requested that public streets and rights of way be excluded from assessment."

The assessment method, as set out in resolutions concerning the advisability of the improvement and authorizing the same (which resolutions were enacted pursuant to K.S.A. 12-6a04(2) and K.S.A. 12-6a06), provides that all property in the district shall be assessed on an equal per square foot basis, except that property dedicated to public rights-of-way shall not be liable for such assessment. It is, consequently, undisputed that, if the original assessment method is followed, the effect of the platting will be to shift that portion of the assessment equivalent to the area within the newly dedicated public streets to all of the remaining property in the district, including the newly platted lots within the area. Therefore, as we understand the question presented, you are asking whether the City must, in enacting the assessment ordinance prescribed by K.S.A. 12-6a10, deviate from

the original assessment method because of the platting and dedication of public streets which occurred after the improvements were authorized.

Our research has failed to locate any case wherein this specific question has been addressed. However, numerous cases have enumerated the grounds upon which an assessment, which assessment is levied pursuant to the General Improvement and Assessment Law, may be challenged. It has been held that an assessment is not invalid unless, under the assessment method applied, the burden imposed is entirely disproportionate to the benefits received. Board of Education v. City of Topeka, 214 Kan. 811, 819 (1974). Further, the governing body of a city is obligated to assess property in an improvement district by imposing substantially equal burdens or shares of the cost upon property similarly benefited, and a radical departure from this principle justifies injunctive relief. Davies v. City of Lawrence, 218 Kan. 551, 559 (1976). Although the law does not require that a special assessment correspond exactly with the benefits received, it has been said that if the burden imposed is entirely disproportionate to the benefits received, courts will, under their equity powers, grant relief. Bell v. City of Topeka, 220 Kan. 405, 419 (1976).

Applying the above-stated rules to the question which has been posed, it is our opinion that the City of Leawood should deviate from the original assessment method if, for some extraordinary reason, the "shift" in the assessment burden caused by the platting and dedication of public streets results in a radical departure from the requirement that substantially equal burdens must be imposed on property similarly benefited. Whether such a departure exists will necessarily depend on the facts of each individual case, and, since we have not been apprised of any statistical information regarding the shift which has occurred in the subject district, we cannot provide a definitive answer in this case.

Finally, it should be noted that the subsequent platting and dedication of public streets within an improvement district, after an improvement has been authorized, has no effect upon the sufficiency of petitions filed pursuant to K.S.A. 12-6a04. The sufficiency of such petitions is to be determined as of the time the petitions are signed, Rostine v. City of Hutchinson, 191 Kan. 523, 527 (1963), and not at some later date.

Very truly yours,

Robert T. Stephan

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RTS:BJS:TRH:jm