



STATE OF KANSAS

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January 19, 1981

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ATTORNEY GENERAL OPINION NO. 81-20

Bruce W. Barefield
Corman & Barefield
205 W. Second Street
Minneapolis, Kansas 67467

Re: Drainage and Levies--Watershed Districts--Corporate Powers; Installment Contracts for Sale of Realty

Synopsis: A watershed district organized pursuant to K.S.A. 24-1201 et seq. is a body corporate and politic, and has among its enumerated powers the ability to sell land and execute the necessary contracts therefor. Insofar as a sale of land on contract advances the purposes of the district and is otherwise properly made, such a sale is binding on the successors to the present board and does not violate either the Cash Basis Law (K.S.A. 10-1101 et seq.) or any other Kansas statutes. Cited herein: K.S.A. 10-1101, 24-1201, K.S.A. 1980 Supp. 19-211, 24-1209.

* * *

Dear Mr. Barefield:

As attorney for Watershed District No. 46 (Salt Creek), you request the opinion of this office concerning the ability of the district to sell on contract a portion of the land it now owns. You inform us that the district currently holds title to certain tracts which it no longer needs for water conservation and control purposes, and wishes to sell them in order to better allocate district resources. In view of the current high interest rates on mortgages, however, the district believes that sales made on contract would be more feasible, and accordingly wishes to know whether it may enter into such agreements.

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A watershed district such as Salt Creek is given certain powers by the Watershed District Act, specifically at K.S.A. 1980 Supp. 24-1209. Among these is the power to "purchase, hold, sell and convey land and personal property and to execute such contracts as may, by its board of directors, be deemed necessary or convenient to enable it to properly carry out the purpose for which organized." (K.S.A. 1980 Supp. 24-1209, Third.) Clearly, then, the district has the power to dispose of its assets, including land, when the district's business will be advanced thereby. Similarly, it has the power to enter into contracts, with reference to the legitimate field of its operations, the length of which is not limited by this statute. See Verdigris River Drainage Dist. v. State Highway Comm., 155 Kan. 323, 330 (1942). Therefore, there would appear to be no obvious impediment to a sale of land by the district.

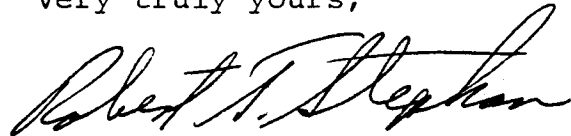
Additionally, you further inquire whether the use of such sales on contract presents the issue of whether the current nine-member board of directors may obligate future boards to honor the terms of such agreements. A possible obstacle in this regard is the Cash-Basis Law (K.S.A. 10-1101 et seq.), which requires "municipalities," as that term is defined at K.S.A. 10-1101(a), to limit their debts and obligations to a cash-on-hand basis. While a watershed district is included within the law's scope (being a taxing district of the state), it is our opinion that it is inapplicable here, in that no "indebtedness" on the part of the district is being created. Rather, it would be the buyer of the property who is taking on the obligation to pay. As we find nothing in the statutes which would limit the power of the directors to enter into long-term contracts which do not create indebtedness, the fact that future boards would be bound by the terms of a multi-year sale of land on contract does not affect the validity of the transaction or the current board's power to do so.

In general, as a matter of both common law and Kansas case authority, it is well settled that the board of directors of a municipal corporation may bind its successors by the contracts it makes. 56 Am.Jur.2d Municipal Corporations, §154, p. 207; Federal Savings and Loan Ins. Corp. v. Strangers' Rest Baptist Church, 156 Kan. 205, 212-13 (1942). In the Strangers' Rest case, the court noted that while changes in the membership of a board are inevitable (omnes homines mortales sunt), the board itself continues to exist and is bound by the lawful obligations earlier entered into. Additionally, case law reasons for finding that the board could not so act do not apply here. See Fisk v. Bd. of Managers, 134 Kan. 394, Syl. ¶1 (1931) (contrary to public policy), Edwards County Comm'rs v. Simmons, 159 Kan. 41, 54 (1944) (matters incidental to the board's administration). As there is no statutory limit on the power of the watershed board to sell the land outright (see, contra, K.S.A. 1980 Supp. 19-211, regarding county commissioners), we find no reason to conclude that the board cannot effect a more gradual transfer through a sale on contract, with the sale binding on the successors of the present directors.

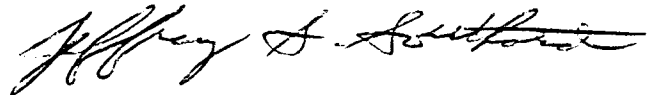
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In conclusion, a watershed district organized pursuant to K.S.A. 24-1201 et seq. is a body corporate and politic, and has among its enumerated powers the ability to sell land and execute the necessary contracts therefor. Insofar as a sale of land on contract advances the purposes of the district and is otherwise properly made, such a sale is binding on the successors to the present board and does not violate either the Cash Basis Law (K.S.A. 10-1101 et seq.) nor any other Kansas statutes.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:phf