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April 7, 1981

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ATTORNEY GENERAL OPINION NO. 81- 80

Mr. Kenneth W. Wasserman
215 South Santa Fe
P. O. Box 872
Salina, Kansas 67401

Re: Waters and Watercourses -- Rural Water Districts --
Attachment of Additional Land

Synopsis: While it is generally the rule that a municipality may annex only territory which is contiguous or adjacent to it, a rural water district may attach territory which is not so situated. Additionally, the district may employ its powers of eminent domain to obtain easements across property lying between the newly-attached land and the existing boundary for the purpose of laying water lines. Cited herein: K.S.A. 12-520c, K.S.A. 82a-619, 82a-619b, 82a-622, 82a-624.

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Dear Mr. Wasserman:

As attorney for Rural Water District No. 2 in Ottawa County, Kansas, you have requested our opinion on two questions concerning the addition of territory to the district. You first inquire whether the district may add territory which is not contiguous or adjacent to its existing boundaries. If this can be done, you further inquire whether the district may condemn property in the area between the two parts of the district for the purpose of installing water lines to service the new area.

The addition of territory to a rural water district is governed by K.S.A. 82a-622. As you note, while the caption provided this statute by the Revisor of Statutes speaks of the attachment of "adjoining lands," the statute itself does not use such language. Rather, it states:

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"A petition addressed to the county commissioners may be filed with the county clerk, praying for the attachment, to an existing district, of lands outside the district which can be economically served by the facilities of the district. Said petition for attachment shall be filed and supported by signatures of landowners in the same manner prescribed in K.S.A. 82a-614, and shall (1) define by metes and bounds the boundaries of lands owned by the petitioners desired to be attached to the district, and shall state (2) the name of the district to which attachment is desired; (3) that such lands are without an adequate water supply; and (4) that attachment to said district will be conducive to and will promote the public health, convenience and welfare."

Accordingly, the scope of this statute is not necessarily disclosed by its caption, for it is well-established that the heading of a statute forms no part of the statute itself. State v. Logan, 198 Kan. 211 (1967).

It is a general rule that the power of a municipality to annex noncontiguous areas must be clearly expressed. 2 McQuillin, Municipal Corporations §7.20, 3rd rev. ed. (1979). Sometimes this is done by statute, as in the case of K.S.A. 12-520c cited above. Additionally, even in the absence of statutory requirements that annexed territory be contiguous or adjacent to the annexing entity, such requirements are held to exist. 56 Am.Jur.2d Municipal Corporations, §69, p. 126; 62 C.J.S. Municipal Corporations, §46(c)(1)(b), p. 134-35.

In our opinion, however, such general principles do not apply in this case, even though the statutes do not expressly grant rural water districts the power to add non-adjointing lands. In this instance, we believe that the legislative intent is to be derived from an examination of the history of the statute and that this history indicates a desire to allow non-contiguous areas to be attached. While it might be argued that the term "attach" has a plain and simple meaning which precludes looking beyond the wording of the statute [see, e.g. City of Kiowa v. Central Telephone and Utilities Corp., 213 Kan. 169 (1973)], an examination of the meaning of the term indicates that such is not the case. While attach can mean the physical union of two things [Black's Law Dictionary, 5th ed. (1979)], it also has been interpreted (as has the term "annex") to mean the administrative union of two parts into one whole, without there necessarily being contiguity.

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See Elliott Common School Dist. No. 48 v. County Trustees, 76 S.W.2d 786 (Tex. Civ. App. 1934). Accordingly, additional factors must be considered in determining the intent of the legislature in enacting and subsequently amending K.S.A. 82a-622. Arredondo v. Duckwall Stores, Inc., 227 Kan. 842 (1980).

A comparison of the statute as it now reads with the language it initially contained indicates that, as originally passed in 1957, the statute stated that: "Owners of land outside any district, any part of which adjoins the boundary of any district, may petition to become attached to such district." L. 1957, ch. 540, §11. In 1959, the requirement that the land "adjoin" the district was removed, and replaced with that which exists in the statute today, i.e., that the land outside the district can be "economically served" by the district. L. 1959, ch. 415, §3.

We deem it significant that the 1959 amendment deleted the requirement that the outside land adjoin the district. It seems clear that this change was made to permit the inclusion of areas which would benefit by inclusion in existing districts, even though there might be intervening territory which, for whatever reason, was not included. In order to hold that a rural water district can attach only land which would preserve it as a compact unit, it would be necessary to read back into the statute the requirement which was removed in 1959. This we are not prepared to do, given Kansas authority which holds that when a statute is amended so as to omit certain language and replace it with new language, the omitted parts cannot be subsequently read back into the statute. Horyna v. Board of County Commissioners, 194 Kan. 445 (1965), Walters v. Greenland Drilling Co., 184 Kan. 157 (1959). Additionally, it has been held that when the wording of a statute is changed by an amendment, it is to be presumed that a change in meaning is intended. Shawnee Township Fire Dist. No. 1 v. Morgan, 221 Kan. 271 (1977).

Therefore, in light of the legislative history of K.S.A. 82a-622 and the acceptable interpretation of the word "attach," as used therein, we believe the foregoing rules of construction compel the conclusion that rural water districts, acting pursuant to this statute, may attach territory which is not contiguous or adjacent to the district.

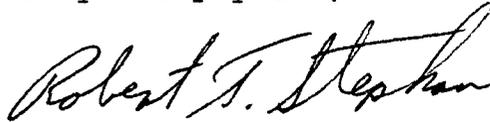
As for your second inquiry, it is clear from K.S.A. 82a-619 that a rural water district does possess the power of eminent domain, and can also obtain the easements necessary for its water pipelines. (K.S.A. 82a-619b) While the statute is silent

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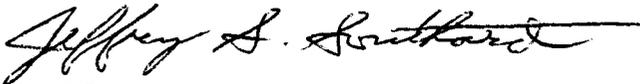
as to whether easements on land outside of the district (i.e., between the two segments) may be obtained by the use of this power, we see no reason why, once the necessary showing of a public purpose has been made, that such a limited taking could not occur. It has been recognized in this state that, when the problem is one of obtaining and transporting water, a municipality must sometimes go beyond its boundaries to achieve the public purpose. Evel v. City of Utica, 103 Kan. 567 (1918). Additionally, as was concluded earlier, the changes made to K.S.A. 82a-622 in 1959 have the effect of allowing a district to be composed of non-contiguous tracts. It would therefore be incongruous to deny the district the ability to service these areas by means of water pipelines on easements obtained through territory not in the district.

In conclusion, while it is generally the rule that a municipality may annex only territory which is contiguous or adjacent to it, it is our opinion that a rural water district may attach territory which is not so situated. Additionally, we believe the district may employ its powers of eminent domain to obtain easements across property lying between the newly-attached land and the existing boundary for the purpose of laying water lines.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle