STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 64

Van Smith
Suite 423, Warren Building
301 North Main
Garden City, Kansas 67846

Re: Waters and Watercourses -- Groundwater Management Districts -- Eligible Voters

Synopsis: Pursuant to K.S.A. 82a-1021(e), an eligible voter in groundwater management district elections must either own a specified quantity of land or be a user of a specified amount of groundwater annually. In the case of property which is leased to a tenant, the statute provides that the landowner, and not the tenant, possesses the right to vote for such property, unless provided otherwise by the parties in interest. However, should the tenant meet the standard for a water user, he too would be an eligible voter. Cited herein: K.S.A. 82a-1021(e), 82a-1030.

* * *

Dear Mr. Smith:

As counsel for Groundwater Management District No. 1, you request the opinion of this office on a question concerning eligibility to vote in district elections. Specifically, you inquire whether a landowner and a tenant may both be eligible to vote in the case where the tenant is also a water user.

The term "eligible voter" is defined at K.S.A. 82a-1021(e) to mean

> "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 continguous 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.
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> . . . .
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> "Each tract of land of forty (40) or more contiguous acres and each quantity of water withdrawn or used in an amount of one acre-foot or more per year shall be represented by but a single eligible voter. If the land is held by lease, under an estate for years, under contract, or otherwise, the fee owner shall be the one entitled to vote, unless the parties in interest agree otherwise. If the land is held jointly or in common, the majority in interest shall determine which natural person or corporation shall be entitled to vote. Each qualified voter shall be entitled to cast only one vote. A person duly authorized to act in a representative capacity for estates, trust, municipalities, public corporations or private corporations may also cast one vote for each estate, trust, municipality, or public or private corporations so represented. Nothing herein shall be construed to authorize proxy voting. . . ." (Emphasis added.)

From the above, it is apparent that eligible voters may come from either those individuals who own land in a manner described by the subsection or who use water "in an amount of one acre-foot or more per year." This dual system of qualifications allows individuals who own little or no land to vote, if they are interested parties by virtue of their water use.

Given this initial framework, the subsection further states that each tract of land which meets the minimum requirement (i.e. 40 or more contiguous acres) and each quantity of water used shall be represented by only one eligible voter. For land interests which are less than a fee simple, no right to vote exists apart from that held by the fee owner, unless provided otherwise by agreement between the parties. Accordingly, a tenant would have no right to vote, absence the additional factor of water use.

However, if this second, alternative factor is present, it is our opinion that the subsection would allow a tenant-user to vote, in that he would meet the second prong of the eligible voter test. While each qualified voter is allowed to cast only one vote, thus limiting a landowner who is also a user, there appears to be nothing which prevents two eligible voters to come from the same tract of land, as one would represent the land and the second the amount of water used. As each would be subject to a district assessment on his respective interest or use (K.S.A. 82-1030), each would, through his vote, be able to exercise a voice in shaping district policy.

Finally, we note that a mechanism exists for a landowner to avoid being assessed for his land, to-wit:

> "Any landowner who is not a water user may have his or her land excluded from any district assessments and thereby abandon his or her right to vote on district matters by serving a written notice of election of exclusion with the steering committee or the board. Such a landowner may again become an eligible voter by becoming a water user or by serving a written notice of inclusion on the board stating that he or she has elected to be reinstated as a voting member of the district and will be subject to district assessments."

In the case described here, where the tenant is actually using and paying for the water, this option could be used by a landowner who felt his participation in the district to be of no value, and thereby did not care to retain his right to vote in district elections.

In conclusion, pursuant to K.S.A. 82a-1021(e), an eligible voter in groundwater management district elections must either own a specified quantity of land or be a user of a specified amount of groundwater annually. In the case of property which is leased to a tenant, the statute provides that the landowner, and not the tenant, possesses the right to vote for such property, unless provided otherwise by the parties in interest. However, should the tenant meet the standard for a water user, he too would be an eligible voter.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Jeffrey S. Southard

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RTS:BJS:JSS:hle