STATE OF KANSAS

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September 1, 1982

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ATTORNEY GENERAL OPINION NO. 82- 184

The Honorable W. Edgar Moore
State Representative, Twenty-Sixth District
1264 East Sleepy Hollow
Olathe, Kansas 66062

Re: Agriculture -- Conservation Districts -- Discretion of County to Provide Funds

Synopsis: The provisions of K.S.A. 1981 Supp. 2-1907b are permissive with respect to the payment of county moneys for the operation of soil conservation districts, and boards of county commissioners are not required by this statute to make such payments. Cited herein: K.S.A. 1981 Supp. 2-1907b.

* * *

Dear Representative Moore:

You have requested that this office render an opinion regarding whether boards of county commissioners are required to provide moneys for the operation of soil conservation districts.

K.S.A. 1981 Supp. 2-1907b, provides in pertinent part:

> "In any county in which all or a substantial part of the county is included within the boundaries of a conservation district established under chapter 2, article 19 of the Kansas Statutes Annotated, or any amendments thereto, the board of county commissioners may, upon request of the supervisors of the conservation district, pay to the district moneys from the county general fund for the supervisors to carry out their duties under this act. The amount authorized shall not exceed $7,500 annually. In addition to moneys from the county general fund, the board of

> county commissioners may levy an annual tax, not to exceed .5 mill or $15,000 whichever is less, to provide additional moneys for the operation of the conservation district." (Emphasis added.)

A fundamental rule of statutory construction is that the intent of the legislature, when ascertainable, must govern. Jolly v. Public Employment Retirement System, 214 Kan. 200 (1974), Brown v. Keill, 224 Kan. 195 (1978), State ex rel., Stephan v. Martin, 227 Kan. 456 (1980). We observe that K.S.A. 1981 Supp. 2-1907b utilizes discretionary language regarding the board of county commissioner's authority to provide moneys for the operation of the soil conservation district. It is our opinion that had the legislature intended to require counties to provide moneys to soil conservation districts the term "may" would not have been used in K.S.A. 1981 Supp. 2-1907b. Rather, the legislature would have utilized the term "shall" or other mandatory language. Cf. Gleason v. Sedgwick County, 92 Kan. 632 at 634 (1914).

We realize that in certain instances the term "may" is construed to mean "shall" or "must." However, in such cases it is considered that the legislative intent is that the power granted in permissive form is mandatory in substance. City of Wauwatosa v. County of Milwaukee, 125 N.W.2d 386 at 398 (Wis. 1963). The court in Gleason v. Sedgwick County, supra, stated that

> "may means must only in cases where public interests and rights are concerned, and where the public or third persons have a claim de jure that the power be exercised." Id. at 635.

It is our opinion that the test set out in Gleason v. Sedgwick County is not satisfied in the present context because no de jure or independent claim of right exists vis a vis the availability of government-sponsored soil conservation services. Therefore, K.S.A. 1981 Supp. 2-1907b should not be construed to require that counties must provide moneys to soil conservation districts. See also: Bradley v. Cleaver, 150 Kan. 699 at 701-702 (1939) and Phelps v. Lodge, 60 Kan. 122 at 124 (1899), State v. School District, 80 Kan. 667 at 669 (1909), Roth v. Ness County, 69 Kan. 667 at 668-669 (1904), Colby University v. Village of Cananduigua, 69 F. 671 at 672-673 (1895), Western Distributing Co. v. Public Service Commission, 58 F.2d 239 at 241 (1931), National Bank v. City of St. John, 117 Kan. 339 at 342 (1924), Commonwealth v. Woodring, 137 A. 635 at 639, and State v. Morgan, 112 So. 865 at 866, and Attorney General Opinion No. 82-163.

In summary, it is our opinion that the provisions of K.S.A. 1981 Supp. 2-1907b are permissive with respect to the payment of county moneys for the operation of soil conservation districts, and boards of county commissioners are not required by this statute to make such payments.

Very truly yours,

Robert T. Stephan

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RTS:BJS:RVE:hle