



STATE OF KANSAS

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January 7, 1983

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ATTORNEY GENERAL OPINION NO. 83- 1

The Honorable Ardena Matlack
State Representative, Ninety-Third District
615 Elaine Avenue
Clearwater, Kansas 67026

Re: Waters and Watercourses -- Groundwater Management
Districts -- Records of Meetings; Effect of Official
Public Records Act

Synopsis: The Official Public Records Act (K.S.A. 45-201 et seq.) applies to the records of a groundwater management district organized pursuant to K.S.A. 82a-1020 et seq. While the minutes of each meeting of the district's board of directors are not expressly required by law to be kept, they are a necessary method of exercising other functions of the board, and so are impliedly required to be kept and are thus subject to the Public Records Act once they have been approved by the board. However, as the making of an attendance list taken of those eligible voters attending a meeting of the board is neither required by law nor necessarily implied, such lists, if made, are not subject to the Act. A secretary who is absent from a meeting may, by completing the minutes taken by a temporary secretary, submit them as a valid record of what transpired. However, in that the secretary was not present, he or she may certify the results of a roll call vote only by relying on records taken by someone serving as temporary secretary. Cited herein: K.S.A. 45-201 (as amended by L. 1982, ch. 182, sec. 135), K.S.A. 82a-1027.

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Dear Representative Matlack:

As Representative for the Ninety-Third District, which is contained in the western part of Sedgwick County, you request

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our opinion on three related issues concerning meetings of groundwater management districts. Specifically, you inquire: 1) whether minutes of a regular meeting of the district's board of directors can be withheld from release because they have not been signed by the secretary of the board; 2) whether a list of those eligible voters attending a meeting is public information; and 3) whether the results of a roll call vote can be certified by the secretary of the board when he or she was not present at the time of the vote.

In replying to your first two inquiries, it is first necessary to determine whether the records involved are ones to which a member of the public has a right. K.S.A. 45-201 et seq., the Official Public Records Act, is quite specific as to the units of government which are affected:

"All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen."
K.S.A. 45-201(a), as amended by L. 1982, ch. 182, §135.

As a prior opinion of this office has held that a groundwater management district is subject to the Act (No. 82-72), it remains to determine whether the records involved are "required to be kept and maintained" by law.

In examining the statutes which specifically govern groundwater management districts (K.S.A. 82a-1020 et seq.), we are unable to find any which require that the secretary of the board keep either minutes of the meetings or a record of those persons attending the meeting as interested observers. However, a district board is required to elect a secretary [K.S.A. 82a-1027(b)], and one of a secretary's general duties is keeping records in the form of minutes. 56 Am.Jur.2d Municipal Corporations, §180. Such records are implicitly necessary for the performance of other functions of the board. For example, K.S.A. 82a-1027(c) states that a majority of the directors voting shall determine all actions taken by the board. Without the keeping of formal written records, it would be difficult, if not impossible, to determine what actions had been taken by the board in previous meetings, and whether such action was legally proper. McQuillin, Municipal Corporations, Sec. 14.01 (1981). Hence, the keeping of minutes by a secretary is a "convenient, appropriate or customary method of discharging the duties" of the office of

secretary, leaving the records open to public inspection under K.S.A. 45-201 (as amended). City of Topeka v. Stauffer Communications, Inc., 7 Kan.App.2d 353 (1982).

Further, in our opinion, this is the case, whether or not the secretary has affixed his or her signature. Once the board has approved the minutes, they stand as a conclusive record of the action taken at that meeting. The failure to sign or a delay in signing cannot prevent the minutes from becoming subject to public scrutiny, especially where the statutes contain no requirement that the minutes be signed at all. McQuillin, Municipal Corporations, §14.03 (1981).

We cannot reach the same conclusion, however, as to a list of eligible voters who attend a regular, as opposed to an annual, meeting of the board. Again, there exist no statutes which require such a list to be kept, and we are unable to conclude that the preparation of such a list is somehow helpful or necessary in performing other duties of the board which are required by law. Rather, this would appear to be a discretionary activity of the board, much like the eligible voter affidavits at issue in Attorney General Opinion No. 82-72. Here, as there, it is our opinion that as such documents are not required to be kept or maintained, in the event they are prepared there exists no duty to open them to public inspection.

Your third inquiry concerns the power of a secretary to "personally certify" to a roll call vote taken in her absence. We presume that the results of the vote were communicated to her later by the secretary pro tem, appointed as authorized by K.S.A. 82a-1027(c), or by another member of the board serving in the same capacity unofficially. In either event, the actual, physical presence of the secretary is not required, in the absence of statute to the contrary. At McQuillin, Municipal Corporations, §14.02, it is stated (at pp. 3-4):

"The officer designated to make and keep municipal records is usually the only one legally authorized to do so, although frequently a deputy of such officer may do so at the direction of such officer or in his absence. So may acting officers occupying the offices of the designated officers. In the absence of the person named, and where there is no deputy, the law often provides for the appointment of a clerk or secretary pro tem, in which event the person designated to make and keep the municipal records may be compelled to make as part of the record the proceedings kept by the clerk pro tem.

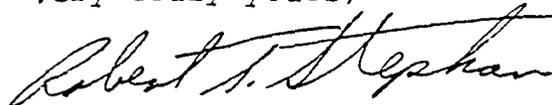
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"Even in the absence of a provision for a clerk pro tem, it has been held that corporations have the incidental power to name a person for this purpose. Records kept by such person or records completed by the secretary or clerk from memoranda kept by the temporary clerk, duly appointed by the corporate authorities, are legal evidence of the transactions of the corporate meetings."

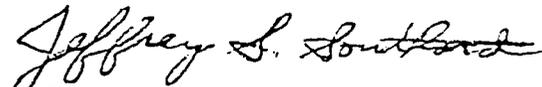
Accordingly, a secretary could complete and sign minutes of a meeting at which she was not in attendance, including the results of a roll call vote. While she could not swear to the results on the basis of events she personally witnessed, as in an affidavit, such a formality is not required.

In conclusion, the Official Public Records Act (K.S.A. 45-201 et seq.) applies to the records of a groundwater management district organized pursuant to K.S.A. 82a-1020 et seq. While the minutes of each meeting of the district's board of directors are not expressly required by law to be kept, they are a necessary method of exercising other functions of the board, and so are impliedly required to be kept and are thus subject to the Public Records Act once they have been approved by the board. However, as the making of an attendance list taken of those eligible voters attending a meeting of the board is neither required by law nor necessarily implied, such lists, if made, are not subject to the Act. A secretary who is absent from a meeting may, by completing the minutes taken by a temporary secretary, submit them as a valid record of what transpired. However, in that the secretary was not present, he or she may certify the results of a roll call vote only by relying on records taken by someone serving as temporary secretary.

Very truly yours,



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