



STATE OF KANSAS

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March 21, 1983

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ATTORNEY GENERAL OPINION NO. 83- 40

Fred W. Rausch, Jr.
220 Southwest 33rd, Suite 202
Topeka, Kansas 66611

Re: Counties and County Officers -- Public Improvements --
Improvement Districts; Power to Regulate Use of Roads

Taxation -- Motor-Fuel Taxes -- Apportionment of
Moneys Collected, Counties and Cities

Synopsis: An improvement district organized pursuant to K.S.A. 19-2753 et seq. is a quasi-municipal corporation which possesses those powers granted by statute. Nowhere among these powers is the ability to permit only residents to use district streets which have been built or maintained with district funds. To the extent such power exists, it has been retained by the legislature, which possesses plenary control over the streets and highways of this state. Accordingly, district roads are not merely for private use of district residents.

Money collected by the state motor-fuel tax is apportioned pursuant to K.S.A. 1982 Supp. 79-3425, with a portion going into a special city and county highway fund. The statute providing for distribution of moneys in this fund, K.S.A. 1982 Supp. 79-3425c, speaks only of cities, counties and townships which are entitled to funds, and does not include improvement districts created by K.S.A. 19-2753 et seq. Cited herein: K.S.A. 19-2765, K.S.A. 1982 Supp. 79-3425c.

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Dear Mr. Rausch:

As attorney for Lakeside Village Improvement District in Jefferson County, you request our opinion on two separate

questions concerning streets in the district. Specifically, you first inquire whether the district's board of directors may legally limit access to district streets to residents and to those who demonstrate a legitimate purpose for entering the district. Second, you ask whether the district is entitled to receive any type of tax revenues, as do cities and counties, for use in maintaining its streets.

With regard to your first inquiry, we note that you enclosed a copy of an opinion letter you issued on January 17, 1983 to the district's board of directors. In your letter, you review the powers and duties of an improvement district, such as Lakeside Village, which is created pursuant to K.S.A. 19-2753 et seq. In particular, you quote K.S.A. 19-2765, Twelfth, which empowers an improvement district to

"do all other acts that may be necessary to carry out and execute the general powers hereinbefore or hereinafter granted, although not hereinbefore specifically enumerated."

No other provision of K.S.A. 19-2765 specifically refers to regulation of traffic on district streets, nor is there any other statute in the act which authorizes such action by an improvement district. Accordingly, if such a power exists, it must be inferred from the above-quoted language.

In your letter, you draw the following conclusions:

"It is my opinion that the above quoted part of 19-2765 cannot be interpreted to give the board such authority. The situation, in my opinion, would be analogous to the city council of a city attempting to permit only residents of the city to enter the city or for the board of county commissioners to prohibit non-residents from entering the county. . . .

"As you are very much aware, the powers of the board of directors of an improvement district are extremely limited. This was not a legislative oversight in my opinion. The primary purpose of the improvement district act appears to be to create a quasi-municipality outside the boundaries of cities wherein certain types of public improvements could be constructed
. . . .

"It is my further opinion that you are not authorized to establish a guard or a gate on the only road leading into the improvement district and permit only those individuals who can

qualify as residents or qualify in some other manner to be permitted to enter. The expenditure of improvement district money for the employment of a guard or the construction of a gate for that particular purpose would in my opinion, be an unlawful expenditure of improvement district funds."

We concur in your opinion. It is well settled that an improvement district, as a quasi-municipal corporation, has only those powers expressly authorized by statute or clearly implied therefrom. State v. Kansas City, 60 Kan. 518 (1899); State ex rel., Griffith v. Board of Trustees, 114 Kan. 485 (1923); Kaw Valley Drainage District v. Kansas City, 119 Kan. 368 (1925). Likewise, it is clear that it is the legislature, rather than any governmental subdivision, which possesses authority under the police power to regulate the use of highways and streets within the state. Riddle v. State Highway Commission, 184 Kan. 603 (1959). This power may be retained by the legislature, or delegated to a subordinate unit of government. Smith v. State Highway Commission, 185 Kan. 445 (1959), 10 McQuillin, Municipal Corporations, §30.41, 3rd ed. rev'd (1981). There has been no delegation of any power to restrict access to streets in the district. By virtue of being created or maintained with public moneys, district roads are public in nature, and the district does not have an inherent right to limit such access. Accordingly, it is our opinion that the board of directors may not expend district funds to restrict access to public streets in the district. See, e.g., Tyrolean Associates v. City of Ketchum, 100 Idaho 703, 604 P.2d 717 (1979) (no authority in city to grant exclusive private right to use public street), People v. Solomonow, 56 Misc.2d 1050, 291 N.Y.S.2d 145 (1968) (public streets may not be permanently closed to persons using it lawfully).

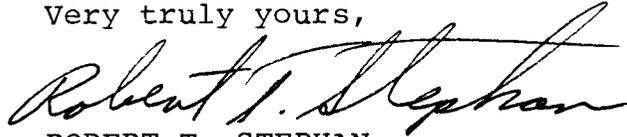
Your second inquiry concerns the eligibility of the district for state money generated by the motor fuel taxes imposed by K.S.A. 1982 Supp. 79-3401 et seq. Pursuant to various statutes contained in this article, taxes collected on the sale of such fuels are paid to the state treasurer, with a fraction of the money apportioned and paid out under the terms of K.S.A. 1982 Supp. 79-3425c. A review of this latter statute does not indicate that any provision has been made for distribution of this money to an improvement district such as Lakeside Village. Rather, funds are paid first to counties, with subsequent distributions made by them to cities and townships contained therein, according to the formulas set out in subsection (b). Accordingly, without action by the legislature, there exists no mechanism for Lakeside Village Improvement District to obtain motor-fuel tax proceeds.

Fred W. Rausch, Jr.
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In conclusion, an improvement district organized pursuant to K.S.A. 19-2753 et seq. is a quasi-municipal corporation which possesses those powers granted by statute. Nowhere among these powers is the ability to permit only residents to use district streets which have been built or maintained with district funds. To the extent such power exists, it has been retained by the legislature, which possesses plenary control over the streets and highways of this state. Accordingly, district roads are not merely for private use of district residents.

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Very truly yours,



ROBERT T. STEPHAN
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Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle