



STATE OF KANSAS

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May 19, 1983

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ATTORNEY GENERAL OPINION NO. 83- 75

Glenis L. Heldenbrand
Reno County Clerk
Reno County Courthouse
206 West First Street
Hutchinson, Kansas 67501

Re: Drainage and Levees -- Drainage Districts -- Election of Directors; Filling of Vacancy

Synopsis: Pursuant to K.S.A. 24-413, whenever a vacancy occurs in the office of director of a drainage district organized under K.S.A. 24-401 et seq., the remaining two directors shall appoint a person to hold the office until the next election. Such person must be a "qualified resident" of the district, as such term is used in K.S.A. 24-409 to include freeholders of the district who reside in the county in which the district is located. In the event that the two remaining directors are deadlocked and cannot appoint a third member, the district court may be asked, through an action in mandamus, to order the directors to perform their statutory duty. Cited herein: K.S.A. 24-409, 24-413, 60-801, 60-803.

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Dear Ms. Heldenbrand:

As County Clerk for Reno County, Kansas, you request our opinion as to two questions involving a drainage district located in Reno County. Specifically, you wish to know the qualifications for a person who is appointed to fill a vacancy to the board, and what can be done in the event that the remaining directors, who are empowered to make the appointment, become deadlocked and cannot agree on an appointee.

You inform us that on April 5, 1983, elections were held in Reno County for the three directors of Valley Township Drainage District, which is located entirely within the county. Immediately following the election, one of the newly elected directors resigned when it was determined he did not meet the qualifications of K.S.A. 24-409. In pertinent part, that statute states:

"In districts organized in counties having a population of less than 85,000, the directors provided for in this act shall be freeholders of such drainage districts residing in the county in which such district is located,
. . ."

In that the newly-elected director was not a "freeholder" (i.e., did not own land) within the district, he was not eligible to serve as a director.

The procedure to fill such a vacancy on the board of directors is set out at K.S.A. 24-413, which states:

"That should a vacancy occur at any time in the office of a director of any drainage district, the remaining directors shall appoint from the qualified residents in said district a person to hold the office of director until the next election."

You question whether the use of the phrase "qualified residents in said district" imposes a different requirement than that of K.S.A. 24-409, quoted above.

In our opinion, the qualifications for an appointed director are the same as for one who is elected. In the case of Valley Township Drainage District this means that he or she be a freeholder of the district residing in the county where the district is located. While the literal meaning of the phrase underscored above in K.S.A. 24-413 would limit the board to appointing a replacement director from those actually living within the district, such a reading would produce a result contrary to the general qualifications requirements contained in K.S.A. 24-409. Accordingly, the statute must be read in such a way as to give effect to the purpose of the legislature in providing residency requirements. Reeves v. Board of Comm'rs of Johnson County, 226 Kan. 397 (1979), Baker v. R. D. Andersen Construction Co., 7 Kan. App.2d 568 (1982). As no definition has been provided for the term "qualified residents," the term should be construed so as to be harmonious with the rest of the act in which it appears. State v. Pelzer, 230 Kan. 780 (1982). In short,

without a more definite statement from the legislature that residency requirements are to be different for appointed and elected directors, we do not believe such a result should be reached.

You also inquire about the procedure to be followed when the two remaining directors cannot reach agreement as to the third member of the board. Although the Drainage Act itself does not contain any provision for breaking such a deadlock, it is our opinion that reference can be had to K.S.A. 60-801 et seq., which concern actions in mandamus. As defined by K.S.A. 60-801, a mandamus proceeding, if successful, has the effect of compelling an elected official or board to perform a specified duty which arises from operation of a statute. Gronniger v. Board of Doniphan County Commissioners, 6 Kan. App.2d 1160 (1981). Were the district court to find that the remaining directors were under a duty to appoint imposed by K.S.A. 24-413, and that they had failed to fulfill this duty, it could direct them to do so. K.S.A. 60-803 provides for proceedings in contempt should a mandamus order not be obeyed. Given the local nature of the drainage district, the county attorney would very likely be the proper party to bring such an action, in the event it would be required.

In conclusion, pursuant to K.S.A. 24-413, whenever a vacancy occurs in the office of director of a drainage district organized under K.S.A. 24-401 et seq., the remaining two directors shall appoint a person to hold the office until the next election. Such person must be a "qualified resident" of the district, as such term is used in K.S.A. 24-409 to include freeholders of the district who reside in the county in which the district is located. In the event that the two remaining directors are deadlocked and cannot appoint a third member, the district court may be asked, through an action in mandamus, to order the directors to perform their statutory duty.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Assistant Attorney General