



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 29, 1983

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 83- 148

The Honorable James D. Braden
State Representative, Sixty-Fourth District
Box 58
Clay Center, Kansas 67432

Re: Cities, Third Class--General Provisions--
Incorporation of Cities

Synopsis: An improvement district is a public corporation organized to perform governmental functions, and is not a "nonprofit corporation," as said term is used in K.S.A. 15-116. Cited herein: K.S.A. 15-116, 19-2756, 17-6002, 17-6805, 17-7002, 17-7504, 17-7513, K.S.A. 1982 Supp. 82a-902(b).

* * *

Dear Representative Braden:

You request our interpretation of subsection (b) of K.S.A. 15-116. Specifically, you ask whether an improvement district would be considered to be a "nonprofit corporation," as said term is used in the aforesaid statute relating to incorporation of cities.

Subsection (b) of K.S.A. 15-116 provides as follows:

"No territory shall be incorporated as a city except as provided in subsection (d) (2) unless it has 300 or more inhabitants or has 300 or more platted lots each of which is served by water and sewer lines owned by a nonprofit corporation. The number of inhabitants

shall be determined by an enumeration by a qualified signer of the petition who shall make an affidavit that an enumeration has been made of the inhabitants of the territory after the beginning of the circulation of the petition, and stating the number of inhabitants found, and specifying the dates when it was begun and when completed. The number of platted lots served by water and sewer lines owned by a nonprofit corporation shall be determined by the county engineer, who shall state the findings by affidavit. Such affidavits shall be attached to the petition before it is filed. The board of county commissioners may cause another enumeration to be made if it believes the number of inhabitants may be less than 300." (Emphasis added.)

We are informed that the underscored provision in the above-quoted statutory excerpt was added in 1967 (L. 1967, Ch. 113, §1) to permit the incorporation of certain platted territory near Lake Perry in Jefferson County. The water and sewer lines in the subject territory were apparently owned by a nonprofit corporation, but, as far as we are aware, the area was never incorporated as a city.

K.S.A. 19-2756 provides that an improvement district incorporated in this state is a "body politic and corporate," and a "public corporation." A "public corporation" is created by the legislature to perform public, governmental functions. Jefferson County v. Drainage District, 97 Kan. 302 (1916). The term "public corporation" has been defined in the State Water Planning Act, for example, as follows:

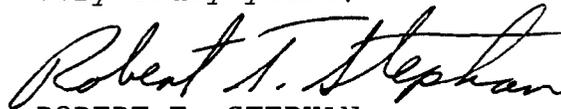
"'Public corporation' means a body that has for its object the government of a political subdivision of this state and includes any county, township, city, district, authority, or other municipal corporation or political subdivision of this state." K.S.A. 1982 Supp. 82a-902(b).

Although an improvement district, as a public corporation, is not formed to generate a "profit," such fact does not establish that an improvement district is a "nonprofit corporation," as

The Honorable James D. Braden
Page Three

said term is used in K.S.A. 15-116. A nonprofit corporation is a private corporation organized pursuant to the General Corporation Code, K.S.A. 17-6001 et seq., which Code has numerous provisions relating to such corporations. See K.S.A. 17-6002, 17-6805, 17-7002, 17-7504 and 17-7513. In our opinion, an improvement district is a public corporation organized to perform governmental functions, and is not a "nonprofit corporation," as said term is used in K.S.A. 15-116.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm