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November 9, 1983

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ATTORNEY GENERAL OPINION NO. 83- 161

Lyndus Henry
Johnson County Counselor
Johnson County Courthouse
Olathe, Kansas 66061

Re: Counties and County Officers -- Public Improvements -- Sewer Districts; Assessment of the Cost of Construction of Improvements

Synopsis: 1983 House Bill No. 2010 authorizes the governing body of any sewer district to provide, by resolution, for the delay of the assessment of the actual cost incurred in the construction of improvements except for the cost of interest on temporary notes issued for the improvement. During each year of the delay, the governing body of the district is required to levy a special assessment against the tangible taxable property within the sewer district in an amount sufficient to pay the cost of the interest on the temporary notes.

The bill makes no distinction between outstanding accrued interest and interest to be accrued in the future and requires that the cost of the interest on the temporary notes be recovered during the delay period. In light of the legislative intent expressed by the history of 1983 House Bill No. 2010, it is our opinion the bill requires that the amount of interest accrued on temporary notes issued to finance any sewer improvement project, whether such interest accrued on temporary notes issued before the adoption of the "delay resolution" or during the period of delay, be paid by the end of the delay period. This interest may be calculated and paid over the delay period, by means of equal annual assessments against the tangible taxable property in the district.

Pursuant to 1983 House Bill No. 2010, the governing board of a sewer district may provide for a delay of assessment of costs for a period not to exceed 10 years. Under the language of the bill a 10 year delay is not mandatory and the governing body may include provisions in a resolution adopted under H.B. 2010 providing for cessation of the delay period upon the occurrence of one or more prescribed contingencies.

1983 House Bill No. 2010 §1(b) requires the governing body of a sewer district to hold a hearing on the proposed special assessments in the first year of the delay. In each year thereafter, the governing body is required to apportion the cost of interest on the basis it determines and levy a special assessment for such interest. No hearing is required on such assessments after the first year of the delay period. Cited herein: 1983 House Bill No. 2010 (L. 1983, ch. 89).

* * *

Dear Mr. Henry:

As Johnson County Counselor and on behalf of the Board of County Commissioners of Johnson County, you have requested an opinion from this office on the application of 1983 House Bill No. 2010 (L. 1983, ch. 89) to the Blue River Main Sewer District No. 1 in Johnson County, Kansas.

We understand that in January, 1981, the Board of County Commissioners first apportioned the costs of the Blue River Sewer District to the landowners within the district. After this action, various landowners in the district filed lawsuits against the Board challenging the amount and methodology of the assessment. Because of this litigation and various other factors, the Board has not completed a final apportionment of the costs of the district. You indicate that by the end of 1983 the interest accrued on temporary notes issued to finance the costs of the project in the district will be approximately \$1,300,000. You also have assured us that information sought in this opinion request does not pertain to or affect "issues threatened, pending or scheduled for determination by the courts" in the presently pending litigation relating to this sewer district.

The legislative history of 1983 House Bill No. 2010 clearly indicates the bill was proposed and passed in response to the difficulties which Johnson County has encountered in assessing the cost of improvements in the Blue River Main Sewer District. The bill, a product of the House Committee

on Local Government, provides that the governing body of any sewer district may delay the assessment of the actual cost incurred in the construction of improvements for a period of up to 10 years. During each year of the delay period, the governing body is required to levy a special assessment upon the property in the sewer district sufficient to pay the cost of interest on the temporary notes issued to finance the improvement project. The legislative history further indicates that this bill was offered, along with several other proposals which were not passed, to respond to the financing and assessment difficulties encountered in the Blue River District and to provide some flexibility in resolving those difficulties. See Minutes of the House Committee on Local Government, January 19, 1983; March 3, 1983.

You first inquire whether all interest which has accrued on the temporary notes to the date of action under 1983 House Bill No. 2010 must be collected over the period of the delay and, if so, may such accrued interest be collected in equal installments over the delay period?

1983 House Bill No. 2010, in Section 1, provides:

"(a) The governing body of any sewer district may provide, by resolution, for the delay of the assessment of the actual cost incurred in the construction of improvements except for the cost of interest on temporary notes issued therefor. The delay may not exceed a period of 10 years. The resolution shall state the period for which the delay is granted and a certified copy of the resolution shall be filed with the register of deeds. No fee shall be charged for the filing and the register shall record and index the resolution."

"During the period of delay, the governing body annually shall levy a special assessment against the tangible taxable property within the district in an amount sufficient to pay the cost of the interest on the temporary notes. The cost of the interest may be assessed equally per square foot against all tracts of land within the district or against the assessed value of the property with or without regard to the buildings or improvements thereon or in any other reasonable manner." (Emphasis added.)

The bill authorizes the county commissioners, as the governing body of the sewer district, to delay the assessment of the actual cost of the construction of improvements. The cost of interest on the temporary notes issued for the improvement, however, is specifically excepted from the authority to delay assessment of costs. The statute makes no distinction between interest accrued and future interest, indicating that all interest on temporary notes must be retired during the period of delay.

The legislative history of the bill indicates that its purpose was to provide a mechanism for delaying assessment of the actual costs of the improvement project, except for the interest on temporary notes. The payment of such interest is not to be delayed; it should be recovered during each year of the "delay period." See Minutes, Interim Committee on Local Government, September 16, 1982; Minutes, House Committee on Local Government January 19, 1983; March 3, 1983. Moreover, the history of the bill offers no indication that interest already accrued is to be distinguished from future interest when applying the provisions of the bill. Thus, based upon the language of H.B. 2010, it is our conclusion that the Board of County Commissioners, should it decide to proceed under the provisions of H.B. 2010, must provide for the payment of interest which has accrued on temporary notes already issued by the county and for the payment of interest which will accrue on any temporary notes during the delay period.

The second part of your inquiry asks whether interest which has already accrued on the temporary notes may be collected in equal installments spread over the delay period as opposed to, we assume, assessing all accrued interest in the first year of the delay. 1983 House Bill No. 2010 may be interpreted to permit either result. Section 1(a) of the bill provides for the delay in the assessment of the actual cost incurred in the construction of the improvements and specifically excepts from the delay "the cost of interest on temporary notes issued therefor." Section 1(b) provides that, in each year of the delay, the district governing body shall levy a special assessment "in an amount sufficient to pay the cost of the interest on the temporary notes."

Curiously, the bill does not address the question of interest accrued on the temporary notes at the beginning of the delay period. In fact, the bill, as discussed above, makes no distinction between outstanding accrued interest and interest to accrue in the future. Instead H.B. 2010 separates interest from principle on the temporary notes and requires that interest be recovered on an annual basis during the delay. Thus, it would appear at first glance that, in the

first year of the delay period the previously accrued interest is an outstanding cost on the temporary notes which, under the language of this bill, must be recovered that year.

This conclusion, although consistent with the language of section 1(a), is inconsistent with the intent to provide flexibility which is expressed in the history of H.B. 2010. In addition, the assessment of all the accrued interest in the first year of the delay will effectively negate, at least in that year, the ostensible relief offered by this bill to the landowners in the Blue River District.

In view of these apparent inconsistencies, it is our opinion that the purpose of H.B. 2010 is better served by examining it in the context of several well accepted rules of statutory construction. It has often been held by Kansas appellate courts that all rules of statutory construction are subordinate to the fundamental rule that the intent of the legislature must control. The legislative intent should govern even though it may not follow the literal words of the statute. If a statute is susceptible to more than one construction, it should be considered in its entirety and in light of the legislative intent; "a statute should never be construed so as to produce uncertainty, injustice or confusion if it is possible to construe it otherwise." Baker v. R.D. Andersen Constr. Co., 7 Kan.App.2d 568, 571 (1982). Further, in determining legislative intent, the courts look to the purpose, necessity and effect of the statute, giving consideration to the causes of a statute's adoption, the historical background and the effect the statute may have under the various possible constructions. See State ex rel. Stephan v. Lane, 228 Kan. 379, 390 (1980); State, ex rel., v. City of Overland Park, 215 Kan. 700, 713 (1974). Finally, we note that a statute is not to be given arbitrary construction, according to the strict letter, but instead should be construed to advance the sense and meaning fairly deducible from the context. Statutes should be construed with reason, considering the practicalities of the subject matter addressed. See Nohinek v. Logsdon, 6 Kan.App.2d 342, 344 (1981); Anderson v. Overland Park Credit Union, 231 Kan. 97, 106 (1982).

As noted above, 1983 House Bill No. 2010 was enacted in response to the difficulties encountered in assessing the cost of the Blue River Sewer District; the bill was intended to offer relief both to the county and to the landowners in the district. Thus, the bill should be construed to effectuate that purpose. It is clear that the bill requires that the cost of interest on the temporary notes be assessed during the period of delay. Because the interest already accrued is such a large sum it would negate the relief offered by the bill to require that this accrued interest be assessed

in the first year of the delay. Reading subsections (a) and (b) of H.B. 2010 together, and in light of this legislative history, we are led to conclude that the legislature intended to provide that the amount of interest accrued on temporary notes issued to finance any sewer improvement project, whether such interest accrued on temporary notes issued before the adoption of the "delay resolution" or during the period of delay, be paid by the end of the delay period. Apparently this total amount of interest is to be calculated and paid over the delay period, by means of equal, annual assessments against the tangible taxable property in the district.

It is beyond the scope of this opinion request to examine the possible financial arrangements which would allow the county to utilize H.B. 2010 in this manner. It is clear beyond question, however, that H.B. 2010 requires that all interest on the temporary notes issued on this project be assessed during the delay period.

You next ask whether the county commissioners, as the district governing board, may incorporate provisions into a resolution adopted under H.B. 2010 providing for the cessation of the delay period upon the occurrence of certain specified contingencies. The contingencies discussed in your request are:

"(a) The expiration of the time period involved.

"(b) All lawsuits pending against Blue River Main Sewer District No. 1 are settled or disposed of by litigation during the period.

"(c) A favorable method of financing is agreed upon by the parties in the various lawsuits now pending which would benefit both the county, the litigants and other property owners in the district.

"(d) In the event the county should determine to absorb the costs of all existing treatment plants or a portion thereof in a county-wide or district-wide consolidation with payment for all plants by the consolidated entity."

You indicate that the County Commissioners do not wish to be locked into a mandatory 10 year delay if any of the above contingencies should occur.

The bill provides that a district governing body may provide, by resolution, for the delay in assessment of costs and that the "delay may not exceed a period of 10 years." The bill further states "the resolution shall state the period for which the delay is granted" The emphasized language clearly provides the 10 year period as an outside limitation. As discussed above, this bill was designed to provide the district governing body with some flexibility in regard to financing and assessing the cost of this and other public improvements. We note here that if the contingencies discussed in your request occurred, future delay of the assessment of costs in the Blue River District would be unnecessary. Thus, it would be unduly restrictive, and inconsistent with the language and purpose of the bill, to conclude that 10 years is the mandatory delay period. However, consistent with our conclusions regarding your first inquiries, we must note that, under the terms of H.B. 2010, interest on temporary notes relating to sewer improvements must be assessed by the end of the delay period either at the end of 10 years or upon the occurrence of one of the specified contingencies.

Your final inquiry asks whether Section 1(b) of H.B. 2010 requires the governing body of the district to conduct a hearing in each year of the delay period before special assessments may be levied under the terms of the bill. That section provides:

"(b) During the period of delay, the governing body annually shall levy a special assessment against the tangible taxable property within the district in an amount sufficient to pay the cost of the interest on the temporary notes. The cost of the interest may be assessed equally per square foot against all tracts of land within the district or against the assessed value of the property with or without regard to the buildings or improvements thereon or in any other reasonable manner.

"After the governing body determines the cost of the interest and the assessment to be made against each tract of land within the district, it shall prepare an assessment roll. The proposed assessment roll shall be filed with the county clerk and be open for public inspection. The governing body shall publish a notice that it will meet to consider the proposed assessments. The notice shall be published once each week for two consecutive weeks in the official county newspaper. The

second notice shall be published at least 10 days prior to the meeting and shall state the date, time and place of the meeting, the cost of the interest, the proposed method of assessment and that written or oral objections will be considered at the hearing. A copy of the notice also shall be mailed by prepaid first class mail at least 10 days prior to the hearing to all landowners made liable to pay the assessments. The failure of any landowner to receive the notice shall not invalidate the proceedings. At the meeting or at any adjournment thereof, the governing body shall hear all objections to each proposed assessment and may amend the proposed assessments as to any tract of land. The governing body shall levy the special assessments against the property described in the assessment roll by the adoption and publication of the appropriate resolution. The assessment shall become a lien on the property against which the assessment is made from the effective date of the resolution. Each year thereafter, the governing body shall determine and apportion the cost of the interest on the basis it determines and shall levy a special assessment therefor. Notice of the assessment shall be published once each week for two consecutive weeks in the official county newspaper. (Emphasis added.)

Based upon the emphasized language, it is possible to reach two quite different conclusions about the meaning of this section. The first is that the word "annually", found in the first sentence of this section, applies to the duties attendant to the levy of a special assessment specified in the second paragraph. Under this interpretation, the district governing body would be required to hold a hearing on the special assessments levied in each year of the delay period. This interpretation would, in effect, make the final two sentences of section 1(b) surplusage, as those final sentences provide for what is to happen in "each year thereafter." If the preceding portions of that paragraph are read as annual requirements there is no need to specify what will happen in "each year thereafter."

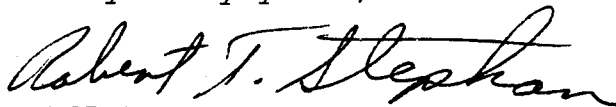
Two general rules of statutory construction are helpful here. First, it is generally understood that in construing statutes the legislative intention should be determined from a general consideration of the whole act, and effect must be given, if possible, to the entire statute and every part thereof. State ex rel. Stephan v. U.S.D. 428, 231 Kan. 579 (1982). Second,

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constructions which render part of a legislative act surplusage and futile are to be avoided if reasonably possible. See American Fidelity Ins. Co. v. Employers Mut. Cas. Co., 3 Kan.App.2d 245, 249 (1979); Consumers Co-operative Ass'n v. State Comm. of Rev. & Taxation, 174 Kan. 461 (1953). Utilizing these rules of construction, it is our conclusion that a hearing on the proposed special assessments is required only in the first year of the delay period. In each year thereafter, the governing body of the sewer district "shall determine and apportion the cost of the interest on the basis it determines and shall levy a special assessment therefor." Although the governing body must publish notice of the assessment for two consecutive weeks it is not required, in subsequent years, to hold a hearing and consider objections or amendments to the proposed assessments of interest costs.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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