



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 84- 7

Lewis A. Heaven, Jr.
Bennett & Heaven
11125 Johnson Drive
Shawnee, Kansas 66203

Re: Drainage and Levees -- General Provisions --
Dissolution of Districts; Elections; Transfer of
Funds

Synopsis: K.S.A. 1983 Supp. 24-139 provides for the dissolution of a drainage district upon the completion of certain specified steps, including the filing of a petition and notice and hearing. In the event that a petition opposing the dissolution is filed, the question shall be presented to the district's electors at the next election held in the district. In that no provisions are made for a special election, this would be at the next election held for the purpose of electing directors or approving the issuance of bonds. Upon dissolution, that portion of district funds which are attributable to territory of the district within a city shall be transferred to that city. Depending on when such dissolution occurs, some funds due the district may not yet have been collected by the county treasurer, and so may have to be paid to the city at a later date. Once a district is dissolved, its power to levy a tax under K.S.A. 1983 Supp. 24-407 ends, and may not be transferred to the city in which part or all of its territory lies. Cited herein: K.S.A. 12-2001, 19-2601b, 19-2801, K.S.A. 24-139, 24-407, K.S.A. 24-412, 24-425, L. 1983, Ch. 117.

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Dear Mr. Heaven:

As City Attorney for the City of Merriam, Kansas, you request

our opinion on three inter-related questions concerning the dissolution of a drainage district under K.S.A. 1983 Supp. 24-139. Specifically, you inquire regarding: (1) the timing of an election which must be held if sufficient persons protest the dissolution; (2) the distribution of district funds following dissolution; and (3) the ability of a city containing territory of the former district to assume the latter's mill levy authority.

K.S.A. 1983 Supp. 24-139 was enacted during the 1983 legislative session as Chapter 117 of the laws of that year. Subsection (a) sets forth the procedure to dissolve a drainage district, and states as follows:

"Whenever a petition requesting the dissolution of a drainage district, signed by a number equal to at least 5% of the qualified voters of the district, is presented to the board of county commissioners, the board shall call and hold a public hearing on the proposal to dissolve the district. Notice of the hearing shall be published once each week for two consecutive weeks in the official county newspaper. After the public hearing, if the board determines and finds it is in the best interests of the affected landowners in the district, the board shall adopt a resolution dissolving the district. The resolution shall be published once in the official county newspaper.

The dissolution shall be effective upon the date of publication of the resolution unless within 60 days of publication a petition protesting the dissolution, signed by a number equal to at least 5% of the qualified voters of the district, is filed with the county election officer. If a petition is filed, the district shall not be dissolved until the proposal is submitted to and approved by a majority of qualified voters of the district voting thereon at the next drainage district election."
(Emphasis added.)

Your first question concerns the date at which the question of the district's dissolution may be submitted to the electors, assuming that a protest petition has been submitted as provided above.

Election for directors of a drainage district are held every four years, at which time all three positions on the board are filled. K.S.A. 24-412. In that the most recent elections were held in April of 1983, the "next drainage district election" will not occur until 1987. Of course, there may be elections

prior to that time relating to the issuance of bonds by the district, held pursuant to K.S.A. 24-425 or other statutes in chapter 24 which so provide. However, given a district which has gone so far as to adopt a resolution of dissolution [K.S.A. 1983 Supp. 24-139(a)], this is unlikely. Therefore, in the absence of any language which provides for a special election to be held immediately, must the district in fact wait until 1987?

In our opinion, the answer to this question must be in the affirmative. For whatever reason, the legislature has determined not to include language in K.S.A. 1983 Supp. 24-139 which would allow for an election to be held for the sole purpose of determining the question of dissolution. A brief review of other statutes indicates that this has been permitted in numerous situations through the use of express language. For example, see K.S.A. 12-2001 (b) (6) (special election for the adoption of city ordinance granting franchise), K.S.A. 19-2801 (acquisition of public park, museum or recreation grounds), and K.S.A. 19-2601b (establishment of homes for the aged). Clearly, the legislature, when it desires to do so, may specifically authorize the holding of a special election following the filing of a petition protesting a certain governmental action. In that it has not done so here, we are not prepared to read into the statute by implication that which has not been expressly set out.

Your second question deals with the distribution of moneys held by the district upon its dissolution. Subsection (d) of K.S.A. 1983 Supp. 24-139 states as follows:

"Upon dissolution, the chairperson of the governing body of the drainage district shall certify the amount of moneys of the dissolved drainage district that is attributable to that portion of the dissolved district located within the city. After certification, the chairperson shall transfer that amount to the city treasurer. The balance shall be transferred to the county treasurer."

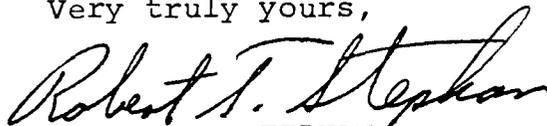
In our opinion, this subsection acts as to both money currently held in district accounts, and as to levy money which is due the district, but which has not yet been received. For example, if a dissolution petition were adopted in July, prior to the submission of the district's budget for the following year, the only moneys available would be those currently held by the district. However, should dissolution occur in April, prior to receipt by the county treasurer of the mid-year property tax payments in June, there would be money due the district which was not yet on hand. Distribution of these funds to the city would accordingly be delayed until after

they were received by the county treasurer and credited to the district. Presumably the funds would be distributed on the basis of the distribution of the assessed property contained in the district, i.e. if 70% of the taxes were generated by levies made on property contained within the city's limits, then that percentage of proceeds would be distributed to the city.

Finally, you inquire whether the city acquires the authority granted the district to levy taxes upon property. At present, K.S.A. 1983 Supp 24-407(11) sets the levy at a maximum of 5 mills. The statute is silent as to the ability of a city to acquire this authority for future years, and we know of no general principles of law which would allow one governmental entity to acquire, by annexation, the authority given to another unit to tax at a particular level. While the city will have the responsibility to maintain those works of the dissolved district which are within the city [K.S.A. 1983 Supp. 24-139 (c)], it will have to do so with its own resources rather than any taxing authority given to the former district.

In conclusion, K.S.A. 1983 Supp. 24-139 provides for the dissolution of a drainage district upon the completion of certain specified steps, including the filing of a petition and notice and hearing. In the event that a petition opposing the dissolution is filed, the question shall be presented to the district's electors at the next election held in the district. In that no provisions are made for a special election, this would be at the next election held for the purpose of electing directors or approving the issuance of bonds. Upon dissolution, that portion of district funds which are attributable to territory of the district within a city shall be transferred to that city. Depending on when such dissolution occurs, some funds due the district may not yet have been collected by the county treasurer, and so may have to be paid to the city at a later date. Once a district is dissolved, its power to levy a tax under K.S.A. 1983 Supp. 24-407 ends, and may not be transferred to the city in which part or all of its territory lies.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Assistant Attorney General