



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 86

Charles R. Rayl
P.O. Box 640
302 Broadway
Cottonwood Falls, Kansas 66845

Re: Drainage and Levees -- Watershed Districts -- Use
of Absentee Ballots or Voter Proxy in Election of
Directors

Elections -- Absentee Voting -- Application to
Watershed District Elections

Synopsis: K.S.A. 1985 Supp. 24-1211, which provides for the
election of directors of a watershed district at an
annual meeting, states that elections shall be by
ballot and that qualified voters shall be entitled
to vote at any such meeting. Said statutory
language does not authorize absentee ballots to be
voted at said meeting, nor does it authorize the
use of proxy voting. Cited herein: K.S.A. 1985
Supp. 24-1211; G.S. 1961 Supp. 25-1102, Repealed,
L. 1967, ch. 208, §19; K.S.A. 1985 Supp. 25-1115;
K.S.A. 25-1117; 25-1119.

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Dear Mr. Rayl:

As attorney for South Fork Watershed Joint District No. 76 of
Chase, Butler, and Greenwood Counties, you request our
opinion on whether voter proxy or absentee ballots are

permitted to be voted by qualified voters at the annual meeting of a watershed district.

K.S.A. 1985 Supp. 24-1211, which provides for election of directors at an annual meeting, states:

"In not less than twelve (12) months, nor more than thirteen (13) months after the recording of the certificates of incorporation, and annually thereafter, a meeting shall be held for the election of directors whose terms expire
Elections shall be by ballot. Qualified voters shall be entitled to vote at any such meeting." (Emphasis added.)

The statute thus provides that an election for the directors of a watershed district shall be by ballot, and that qualified voters shall be entitled to vote at any such meeting. However, it makes no provision concerning the use of absentee ballots or the legality of a person voting by proxy at the annual meeting.

In order to answer your question on absentee ballots, it is necessary to examine Kansas case law and the general election laws providing for absentee voting, K.S.A. 25-1101 et seq. These statutes by their terms apply only to primary and general elections and to question submitted elections.

In Wycoff v. Board of County Commissioners, 191 Kan. 658 (1963), plaintiffs contended that the Logan County Board of County Commissioners had a mandatory obligation to inform qualified electors absent in military service of their right to register before a special election. The Supreme Court of Kansas disagreed, noting that:

"[O]ur statute which permits voting by citizens absent from the state does not apply to a special election such as here considered. It applies only to primary and general elections and to the offices specifically designated. (G.S. 1961 Supp., 25-1102.)" (Repealed by L. 1967, ch. 208, §19.)

While the absentee voting statute cited in this case has been repealed, the act in which it was contained has been replaced by K.S.A. 25-1114 et seq., an act which also deals with absentee voting. K.S.A. 25-1119 in particular contains broad provisions which permit an absent registered elector the right to vote an absentee ballot upon the day of any primary, general or question submitted election, but makes no such provision concerning a special election. Accordingly, we conclude that the decision of the Kansas Supreme Court denying a citizen the right to vote by absentee ballot at a special election is still valid under our current election laws, and is relevant for purposes of this opinion.

In 1967, an opinion was requested from Attorney General Kent Frizzell as to whether residents of the state of Kansas owning land in an irrigation district could vote by absentee ballot at the election for directors of the irrigation district. Attorney General Frizzell responded with a letter to Mr. Clayton S. Flood stating:

"From the statutes directly involved and the general election laws of Kansas it is our conclusion that absentee ballots are neither required nor authorized. The general election laws providing for absentee ballots, 25-1101 et seq. by their terms apply only to certain elections. These are the elections of members of the legislature, state, county, township, city, and school officers."

In our opinion, the rule which prevented the use of absent voter ballots at an election for directors of an irrigation district would also prevent the use of absent voter ballots at an election for directors of a watershed district. Although K.S.A. 42-706, a statute dealing with the board of directors of irrigation districts, has since been amended at subsection (f) to specifically allow for the election of directors by absentee voting, no such amendment has been made to K.S.A. 1985 Supp. 24-1211. Thus, an election for the directors of a watershed district must adhere to general election law guidelines for absentee voting provided at K.S.A. 25-1101 et seq.

K.S.A. 1985 Supp. 25-1115 defines general and primary elections:

"General election' means the election held on the Tuesday succeeding the first Monday in November of even-numbered years, the elections held for officers on the first Tuesday in April, and in the case of special elections of any officers to fill vacancies, the election at which any such officer is finally elected."

"Primary election' means the election held on the first Tuesday in August of even-numbered years, the election held five weeks preceding the election on the first Tuesday in April, and any other preliminary election at which part of the candidates for special election to any national, state, county, city or school office are eliminated by the process of the election but at which no officer is finally elected." (Emphasis added.)

K.S.A. 25-1117 defines a question submitted election:

"Question submitted election' means any election at which a special question is to be voted on by the electors of the state or a part of them." (Emphasis added.)

Because the annual election for directors of a watershed district may be held at any time during the year, it cannot be classified as a general or primary election. Furthermore, such election clearly does not fall within the statutory definition of a question submitted election. Thus, we conclude an election to choose directors of a watershed district must be classified as a special election. Once this classification has been made, we must next determine whether the Kansas general election laws prohibit the use of absent voter ballots at a special election.

K.S.A. 25-1119 deals with the extent of the absentee voting right. The statute allows any registered elector, whether absent from the elector's voting place due to travel, sickness or military service, the right to vote an absentee ballot on the day of any primary, general or question submitted election. Since the statute makes no specific reference to special elections, we infer that the legislature did not

intend to confer absentee voting rights on qualified electors of a special election. This inference is supported by two Latin phrases frequently used in statutory construction. The first, inclusio unius est exclusio alterius, means "the inclusion of one is the exclusion of another;" the second, unius est exclusio alterius, means "the expression of one thing is the exclusion of another."

We conclude that, based on the Kansas Supreme Court decision in Wycoff v. Board of County Commissioners, supra, a letter from Attorney General Kent Frizzell prohibiting the use of absentee ballots at special elections, and statutory construction of Kansas general election laws pertaining to absentee voting (K.S.A. 25-1101 et seq.), absentee ballots are not permitted to be voted by qualified voters at the annual meeting of a watershed district.

You also inquire whether a person may vote by proxy to elect directors at the annual meeting of a watershed district. It is our opinion that such proxy voting is not authorized. K.S.A. 1985 Supp. 24-1211 provides that qualified voters shall be entitled to vote at any such meeting. Nowhere in this section or any other laws pertaining to elections in the state of Kansas is there any reference to the use of a proxy except for the organization of the county central committee of a political party.

In 1967, a similar question was asked of Attorney General Kent Frizzell, in regard to irrigation district elections. Attorney General Frizzell responded with a letter to Mr. Arno Windscheffel stating:

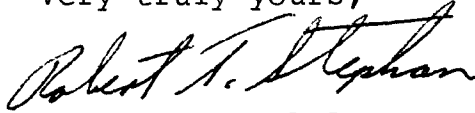
"The irrigation district is a public quasi-municipal corporation and as such is not governed by the general corporation laws. Therefore, the use of proxy votes by stockholders of a private corporation where the same is authorized by statute and by the articles and bylaws of the corporation is not analogous to or authority for their use in the operation of an irrigation district."

We concur with this result, and feel it is analogous to your similar question regarding a watershed district. Thus, we conclude the use of proxy votes by qualified electors at the

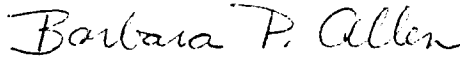
annual meeting of a watershed district is not authorized by Kansas general election laws.

In summary, it is our opinion that K.S.A. 1985 Supp. 24-1211, which provides for the election of directors of a watershed district at an annual meeting, does not authorize absentee ballots to be voted at said meeting, nor does it authorize the use of proxy voting.

Very truly yours,



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