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ATTORNEY GENERAL OPINION NO. 88- 115

The Honorable Rick Bowden
State Representative, Ninety-Third District
433 Walnut
Goddard, Kansas 67052

Re: Counties and County Officers -- Sewer Districts --
Creation of District by Petition; Contents

Synopsis: It is our opinion that a valid petition pursuant to K.S.A. 1987 Supp. 19-27a03 must: 1) contain the statements set forth in subsection (b) of that statute, and 2) follow the applicable provisions of K.S.A. 25-3601 et seq. Without a proper petition, or the alternative action by the secretary of health and environment or the local health officer, the board lacks jurisdiction to take action pursuant to K.S.A. 1987 Supp. 19-27a01 et seq. Cited herein: K.S.A. 1987 Supp. 19-27a01; 19-270; 19-27a03; K.S.A. 25-3601; 25-3602; 1970 House Bill No. 1254, ch. 147, § 1; Const. Kan. Bill of Rights, § 18; U.S.C.A. Const. Amend. XIV.

* * *

Dear Representative Bowden:

As State Representative for the ninety-third district you request our opinion concerning K.S.A. 1987 Supp. 19-27a03. You ask what constitutes a legal petition pursuant to that statute and specifically ask, "1) is it a valid petition if a persons signs only a blank sheet of paper with no explanation as to what the petition calls for, and 2) if wording on the

petition is changed after a person signs it is the petition binding and valid."

K.S.A. 1987 Supp. 19-27a03 states:

"(a) Subject to the provisions of K.S.A. 1986 Supp. 19-270, the board of county commissioners of any county shall have the power to create a sewer district in the manner hereinafter provided whenever:

(1) A petition requesting the creation of a sewer district is filed with the board; or

(2) the secretary of health and environment or the local health officer determines and certifies to the board that unsanitary conditions exist or are expected to develop and which may be removed or prevented by the installation and utilization of sewers.

(b) Any petition requesting the creation of a sewer district shall be signed by the owners of at least 51% of the acreage of the land in the proposed district. The petition shall state:

(A) the boundaries of the improvement district;

(B) the nature of the improvement;

(C) the estimated cost of the improvement;

(D) the proposed method of assessment;
and

(E) the proposed apportionment of cost, if any, between the district and any other sewer district operated and maintained by the governing body.

The petition also shall state that if the board of county commissioners determines the improvement project is not feasible that all costs and expenses of the work,

including preliminary planning, engineering, legal and other preliminary work of skilled persons employed by the board shall be assessed against the property of persons signing such petition. Any person signing the petition who desires to withdraw such person's name may do so by giving written notice to the county clerk on or before the date of the hearing on the petition. The petition shall be null and void after the board has determined not to create the district or after a period of two years from the date of the first signature on the petition, whichever occurs first." (Emphasis added).

K.S.A. 1987 Supp. 19-270 provides the requirements for conducting the necessary hearing and a guide for determining the advisability of authorizing the creation of a district. If the board approves or disapproves the creation of a district, K.S.A. 1987 Supp. 19-270 allows any aggrieved person or city to appeal that decision to the district court within thirty days.

As provided by K.S.A. 1987 Supp. 19-27a03(a), the board of county commissioners has the power to create a district only if (1) it receives a petition or (2) the secretary of health and environment or the local health officer makes certain determinations.

K.S.A. 1987 Supp. 19-27a03(b) mandates what a petition for a sewer district shall include, but does not discuss the basic nature of petitions. A petition is generally defined as "[a] formal written request addressed to some governmental entity." Blacks Law Dictionary 1031 (5th ed. 1979). Such a request by the petitioners, if properly made, sets the procedures of K.S.A. 1987 Supp. 19-27a01 et seq. in motion and gives the board of county commissioners the jurisdiction and authority to take further action. Without a request in the form of a sufficient petition, or the alternative determination by the secretary of health and environment or local health officer, the board is without power to act pursuant to K.S.A. 19-27a01 et seq.

Kansas law regarding sufficiency of petitions is contained at K.S.A. 25-3601 which provides:

"Whenever under the laws of this state a petition is required or authorized as a part of the procedure applicable to any county, city, school district or other municipality, or part thereof, the provisions of this act shall apply, except as is otherwise specifically provided in the statute providing for such petition. The sufficiency of each signature and the number thereof on any such petition shall be determined in accordance with the provisions of this act by the county election officer or such other official as designated in the applicable statute."
(Emphasis added).

Enacted pursuant to 1970 House Bill No. 1254 (L. 1970, ch. 147, § 1), this act is entitled "[a]n act concerning petitions in counties, cities, school districts and other municipalities, or part thereof; determination of sufficiency of petition," thus indicating that its application is not restricted to petitions for elections. Nor is this act rendered inapplicable merely because it is located in chapter 25. All matters which are germane to and naturally connected with the subject announced by the title may be validly included in the statute. 82 C.J.S., Statutes, § 220 (1953). It is therefore our opinion that K.S.A. 25-3601 et seq. applies to all petitions required or authorized by law, except as otherwise specifically provided in the statute providing for such petition. K.S.A. 1987 Supp. 19-27a03 does not provide requirements to the contrary.

K.S.A. 25-3601 et seq. procedures provide assurances that a petition may be relied upon as expressing the intent of the petitioners. This insures that the governmental entity has the authority to act pursuant to a statute which requires or authorizes a petition. K.S.A. 25-3602(b) sets forth the requirements of a valid petition. K.S.A. 25-3602(c) requires that the person collecting signatures (the circulator) verify that they witnessed the signing of the petition by each person whose name appears thereon. Failure to comply with the applicable statutory requirements renders a petition invalid. Without a proper petition the board lacks authority to act pursuant to K.S.A. 1987 Supp. 19-27a03(a)(1).

A recent decision by the Kansas Supreme Court on the act in issue opined that "K.S.A. 1986 Supp. 19-27a06, enacted in 1983, prevents an unconstitutional taking by prohibiting the

addition of land to the sewer district and requires a second public hearing when the cost of the project exceeds more than ten percent of the initial estimated cost." Allison v. Board of Johnson County Comm'rs, 241 Kan. 266, 271 (1987). The court thereby recognized the property interest at stake and approved the statutory scheme enacted to provide due process. Moreover, when a valid law authorizes an assessment to pay for an improvement it determines the rights and liabilities of the parties. McQuillin, "Municipal Corporations", Special Assessments § 38.08 (1987). Failure to follow the statutory methodology may result in an assessment that is void. Dodson v. City of Ulysses, 219 Kan. 418, 425 (1976).

It is therefore our opinion that, in order to take action pursuant to K.S.A. 1987 Supp. 19-27a01 et seq., a petition must contain those statements set forth in subsection K.S.A. 1987 Supp. 19-27a03(b) and, pursuant to the directives contained in K.S.A. 25-3601, the applicable requirements of K.S.A. 25-3602. Moreover, in addition to statutory requirements, the very definition of a petition requires that the petitioners' request be stated on the petition to assure that other requests or petitions, not necessarily known to those who signed the petition, are not attempted to be included as part of the petition. Minor changes may be made in the form of the petition after the signers have affixed their signatures thereto, but an insufficient petition may not be made sufficient by amendment after the time limit for filing has expired. 26 Am. Jur. 2d, Elections § 189 (1966). See also, Duggan v. Emporia, 84 Kan. 429 (1911).

In answer to your specific inquiries, it is our opinion that signatures to blank sheets of paper that are not attached to a petition document cannot be considered a petition, as any request may later be fraudulently attached to those signatures. There must be some assurance that the request before the board is the one made by the signators. Moreover, if the wording on the petition is changed after a person signs it, so as to entirely alter the request being made, the intent of the signator is not reflected in the latter document. It is therefore not a petition for that request.

Under K.S.A. 1987 Supp. 19-27a03(a)(1), the board of county commissioners cannot act until a petition request is made. Factual determinations concerning what was requested requires substantial competent evidence concerning the intent of

signers. See Board of County Comm'rs of Johnson County v. Kearney, 8 Kan. App. 2d 534, 535 (1983). That is the purpose of the procedures established by K.S.A. 25-3601 et seq. A question of fact, such as what the signators were requesting, is properly answered by those authorities given jurisdiction in the matter.

Very truly yours,


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