



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 27, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 37

Henry R. Blase
Sedgwick County Counselor
County Courthouse, Suite 359
Wichita, Kansas 67203-3790

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

Synopsis: Petition provisions set forth in K.S.A. 19-27a01
are sufficient to ensure valid petitions submitted
in accordance with their terms. Compliance with
other statutory enactments containing petition
verification procedures is not necessary. Cited
herein: K.S.A. 19-27a01; 19-27a03; 19-27a05;
K.S.A. 1989 Supp. 25-3601; K.S.A. 25-3602.

* * *

Dear Mr. Blase:

As Sedgwick County Counselor and on behalf of the Board of
County Commissioners you request an opinion relating to the
ability of Sedgwick county to create sewer districts by
petition pursuant to K.S.A. 19-27a01 et seq.

You inform us that the Board of Sedgwick County
Commissioners (the "County") has received petitions requesting
the creation of lateral sewer districts in the County. The
County has made a determination that the petitions are
sufficient in accordance with the specifications of K.S.A.
19-27a03 and have been signed by at least 51% of the property
owners in the proposed districts. Public hearings were held

as required in K.S.A. 19-27a05, the County passed the necessary resolutions, and is now prepared to start construction on the project.

Your question concerns whether the petition requirements set forth in K.S.A. 19-27a01 et seq., specifically, 19-27a03, are sufficient to ensure a valid petition to create a lateral sewer district. K.S.A. 19-27a03 provides:

"(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).

The legal issue presented by your question is whether it is necessary to comply with the additional petition verification procedures found in the election statutes, K.S.A. 25-3601 et seq. We note that in Attorney General Opinion No. 88-115 we discuss the potential applicability of K.S.A. 25-3601 et seq. to petitions done pursuant to improvement statutes. For reasons discussed herein the conclusion drawn in Attorney General Opinion No. 88-115 is herewith modified.

K.S.A. 25-3601 et seq. are applicable only when other statutes authorizing petitions are silent concerning specific requirements of the petitions. K.S.A. 1989 Supp. 25-3601 states "[w]hen any statute makes specific provisions concerning matters that K.S.A. 25-3601 et seq. and amendments thereto also has requirements which are different therefrom, the provisions of the specific statute shall control."

K.S.A. 19-27a03 provides a number of specific requirements including that a petition requesting creation of a sewer district be signed by 51% of the landowners of the district, state the nature and estimated cost of the improvement, and state the proposed method of assessment and cost apportionment, if any, between the district and any other sewer district maintained by the governing body. Language in K.S.A. 25-3602(b) & (c) indicates clearly that its provisions are applicable to petitions for elections. These sections state:

"(b) Each petition shall, unless otherwise specifically required: (1) Clearly state the question which petitioners seek to bring to an election;

"(2) name the taxing subdivision or other political subdivision in which an election is sought to be held; and

"(3) contain the following recital above the spaces provided for signatures: . . .

"(c) Every petition shall contain, at the end of each set of documents carried by each circulator, a verification, signed by the circulator, to the effect that the circulator personally witnessed the signing of the petition by each person whose name appears thereon. The circulator of a petition shall be duly registered to vote and a resident of the political or taxing subdivision in which the election is sought to be held."
(Emphasis added).


Based on this wording we can find no reason to reach the conclusion that in order to create a valid petition under K.S.A. 19-27a03, the verification requirements in the election statute must be followed. Nothing in either set of statutes suggests this procedure.

While Kansas case law does not address the specific issue of the sufficiency of a petition filed under K.S.A. 19-27a03, the courts in a number of cases have examined the issue of petition sufficiency as they relate to various municipal improvements. The cases explore the sufficiency of petitions filed for cities under a number of improvement statutes including K.S.A. 12-6a01 et seq. K.S.A. 12-6a04 is a statute utilized for street improvements which establishes essentially the same criteria for petitions as those found in K.S.A. 19-27a04. In Giddings v. City of Pittsburg, 197 Kan. 777 (1966), the Court notes that "under the terms of 12-6a04, . . . if the petition be signed by owners of over one-half the property located in such an improvement district, . . . then the petition is sufficient to initiate an improvement project without notice and regardless of protest." 197 Kan. at 781. The Court in Barrows v. City of Ness City, 235 Kan. 818 (1984) and in Shaw v. City

of Wakeeny, 187 Kan. 301 (1960) discusses the sufficiency of improvement petitions done pursuant to K.S.A. 12-602. In each of these cases, the Court discusses the sufficiency of petitions pursuant to the statutes directing their submission and makes conclusions of law without establishing a compliance with any other statutes, including the elections provisions found in K.S.A. 25-3601 et seq.

The petition requirements set forth in K.S.A. 19-27a03 are clear and specific. Nothing in K.S.A. 19-27a01 et seq. or K.S.A. 25-3601 et seq. suggests it is additionally necessary to follow the verification procedures set forth in K.S.A. 25-3602. To the extent that Attorney General Opinion No. 88-115 conflicts with the views herein expressed, that opinion is herewith modified. Accordingly we express our opinion that compliance with the requirements set forth in K.S.A. 19-27a01 is sufficient to ensure a valid petition to create a lateral sewer district.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas

Rebecca E. Floyd

Rebecca E. Floyd
Assistant Attorney General