



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 90- 95

Douglas G. Simms
Attorney for Kansas Bostwick
Irrigation District No. 2
1830 M. Street
Belleville, Kansas 66935

Re: Irrigation--Districts--Payment for Property and
Improvements; Additional Bonds, Election; Agreement
with Federal Agencies; Water Rentals or Charges;
Approval of Contract by Court Before Assessments
Extended; Service of Process

Synopsis: Pursuant to K.S.A. 42-711, an irrigation district
created pursuant to K.S.A. 42-701 et seq. has
the authority to change the operation and
maintenance formula that determines the schedule of
assessments which cover the district's cost of
delivering water to its patrons. The change can be
effected without seeking court approval. Cited
herein: K.S.A. 42-701 et seq.; 42-711; 42-721.

* * *

Dear Mr. Simms:

As counsel for the Kansas Bostwick Irrigation District No. 2
(district) you inquire whether K.S.A. 42-711 authorizes the
board of directors to change the operation and maintenance
(O & M) formula used to determine a patrons' assessment, and
if so, whether this proposed change can be effected without
court approval.

You indicate that the O & M formula in question is used to determine the schedule of assessments which covers the district's costs of delivering the water to the patrons of the district.

As background you indicate that the district was incorporated October 28, 1948 pursuant to K.S.A. 42-701 et seq. (G.S. 1949). Pursuant to K.S.A. 42-721 the district entered into an agreement with the United States, Department of Interior, Bureau of Reclamation for the establishment, construction and completion of necessary irrigation works. See Mizer v. Kansas Bostwick Irrigation District, 172 Kan. 157 (1951) (contract court approved as required by K.S.A. 42-721 and 43 U.S.C. 345 § 511).

Your first question involves K.S.A. 42-711 which delineates the powers of the board of directors of the irrigation district. Pertinent to your question are subsections (d), (e), and (g):

"(d) The board of directors shall have full power to do any and all things required by the federal statutes now or hereafter enacted, and any and all rules and regulations thereunder in connection with any contract between the United States and the district for the construction, operation and maintenance of any and all necessary works for the storage and distribution of water therein for beneficial use.

"(e) The board of directors shall have the power, subject to limitations contained in this act, to determine a plan or method for raising funds to finance the costs of construction and maintenance, or [sic] irrigation and drainage works within the district, and to provide funds for the purchase of existing irrigation or drainage works. Such plan may provide for the issuance of bonds, or for the payment of construction costs or purchase price or both, by creating a fund obtained from water rentals or charges to water users, or for a combination of such methods for raising funds. The term 'works' as used in this

act shall include canals, irrigation ditches, pipe lines, pumping plants, drainage ditches, rights of way, easements, reservoirs, dams and necessary sites for pumping plans, reservoirs and dams and/or drainage and other property required for complete operation of a system of irrigation.

"(g) The board of directors shall be empowered to exercise all rights, authority, express and implied, that may be necessary to do and perform and carry out all of the expressed purposes of this act and all purposes reasonably implied and incidental thereto." (Emphasis added).

These subsections empower the board first, to meet all federal requirements in connection with a contract with the United States government; second, to establish a plan for raising funds to finance the costs of construction and (pertinent to our question) to finance costs of maintenance; third, to exercise both express and implied powers to carry out the expressed purposes of the act which include operation and maintenance of irrigation works built in conjunction with the United States government [subsection (a), K.S.A. 41-701].

The contract between the district and the United States (Contract I/r - 1584) provides for the transfer of the water supply works to the district. The contract requires the district to operate and maintain the works without cost to the United States [article 9(c)]. Thus, the district is required by contract [article 9(c)] and authorized by state law to charge its patrons for the costs of delivering the water (these costs are part and parcel to operating and maintaining the water supply system). Neither the contract between the district and the federal government nor state statute specifies how this charge to the water users is to be determined or ascertained. In our judgment how this charge is determined lies within the discretion of the board and is authorized by subsections (d), (e) and (g) [implied powers]. Thus in our opinion included in the powers found in K.S.A. 41-711 is the authority to change the O & M formula that determines the schedule of assessments which cover the cost of delivering the water to the patrons of the district.

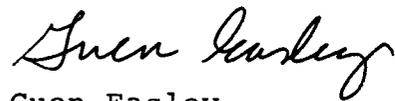
Your second question is whether a change of the formula that establishes the schedule of assessments in question can be effected without the court approval under K.S.A. 42-721.

K.S.A. 41-721 states the district must file a court action for the approval of any contract and for the approval of the proposed assessments. The "schedule of assessments" in this statute are those pursuant to federal contract, providing for the repayment of the federal government costs of establishing and constructing the irrigation works. See Kansas-Bostwick Irrigation District v. Mizer, 176 Kan. 354, 364 (1954) dealing with construction costs of the irrigation system and defining "schedule of assessments" (in K.S.A. 41-721) by turning to the federal contract.

The assessments in question do not involve repayment costs; they are O & M costs that the district incurs delivering the water to patrons. Thus we opine K.S.A. 41-721 does not require that assessments regarding the district's costs for delivering water be court approved.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


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Assistant Attorney General

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