



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 92- 91

Linda P. Jeffrey  
Shawnee County Counselor  
Shawnee County Courthouse  
200 E. 7th, Room 203  
Topeka, Kansas 66603-3922

Re: Counties and County Officers -- Public  
Improvements; Improvement and Service Districts --  
Special Benefit Districts

Roads and Bridges; Roads -- Improvement of Roads in  
Benefit Districts -- Improvements of Public Roads  
in Areas Platted Outside of Cities; Special  
Assessments

Synopsis: The requirement of a 3/4 majority vote of the  
county commissioners in K.S.A. 19-270 does not  
apply to approval of street improvements and  
assessments unless the project falls within an  
improvement district which was created pursuant to  
K.S.A. 19-2701 et seq. Cited herein: K.S.A.  
19-270; 19-2701; 68-728.

\* \* \*

Dear Ms. Jeffrey:

As Shawnee county counselor, you have requested our opinion as  
to whether the 3/4 majority vote requirement in K.S.A. 19-270  
is applicable when the county wants to establish an assessment  
district pursuant to K.S.A. 68-728 within the fringe area of a  
city.

K.S.A. 19-270(b) states that "no special benefit district shall be created, established or otherwise formed within the fringe area of any city unless approved by at least a 3/4 majority vote of the board of county commissioners of the county in which the city is located."

A special benefit district includes any:

- "(A) Sewer District;
- (B) water district, rural water district and water supply district;
- (C) fire district;
- (D) improvement district;
- (E) industrial district; and
- (F) drainage district." K.S.A. 19-270(a)(1).

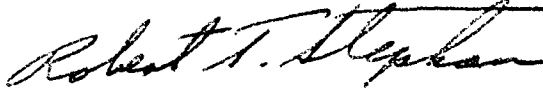
Arguably, a street improvement project and assessment could create an improvement district within the purview of K.S.A. 19-270(a)(1)(D). However, review of the legislative history of K.S.A. 19-270 indicates that the statute was intended to apply only to improvement districts created pursuant to K.S.A. 19-2701 et seq. Report, Special Committee on Local Government Interim Committee, December 4, 1985; Minutes, House Local Government Committee, March 18, 1986. Since the street improvement project referred to in your request letter does not involve such an improvement district, the 3/4 majority vote required in K.S.A. 19-270 would not be applicable to an assessment district established under K.S.A. 68-728 et seq.

Legislative history also indicates that K.S.A. 19-270 was only one part of numerous statutory changes addressing the issue of annexation. K.S.A. 19-270 was drafted to give the county and city some control and input into the establishment and expansion of special district governments like those listed in K.S.A. 19-270(a)(1)(A-F). Furthermore, since the issue of annexation was part of an interim committee study the year before this statute was enacted, the legislature had ample opportunity to include street assessment districts established under K.S.A. 68-728 et seq. if they had desired the statute to cover such an issue. Since the legislature did not include such, we must "give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be." State v. Coley, 236 Kan. 672, 675 (1985); Randall v. Seeman, 228 Kan. 395 (1980).

In conclusion, the requirement of a 3/4 majority vote of the county commissioners pursuant to K.S.A. 19-270 does not apply

to street improvements and assessments unless the project falls within an improvement district which was created pursuant to K.S.A. 19-2701 et seq.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann  
Assistant Attorney General

RTS:JLM:MJS:bas