MINUTES

JOINT HOUSE AND SENATE COMMITTEES ON LOCAL GOVERNMENT

August 19, 1993
Room 313-S -- Statehouse

Members Present

Senate Committee

Senator Mark Parkinson, Chairperson
Senator Marian K. Reynolds, Vice-Chairperson
Senator Paul Feleciano, Jr.
Senator U. L. "Rip" Gooch
Senator Audrey Langworthy
Senator Alfred Ramirez
Senator Pat Ranson
Senator Carolyn Tillotson

House Committee

Representative Nancy Brown, Chairperson
Representative Gary Hayzlett, Vice-Chairperson
Representative Richard Aldritt
Representative Barbara Ballard
Representative Les Donovan
Representative Robert Grant
Representative Carl Holmes
Representative Judith Macy
Representative Doug Mays
Representative Gayle Mollenkamp
Representative J. G. Novak
Representative Greg Packer
Representative Ted Powers
Representative Bob Tomlinson
Representative John Toplikar
Representative Robert Watson
Representative Gwen Welshimer
Representative Jack Wempe
Representative Bob Wootton

Staff Present

Mike Heim, Kansas Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees

Gene Tucker, Montgomery County Fire District
Dean Prochaska, Fire District No. 1, Shawnee County
Chris McKenzie, League of Kansas Municipalities
Bruce McDowell, Advisory Commission on Intergovernmental Relations
Dennis Schwartz, Member, Board of Directors, Kansas Rural Water Association
Dick Pelton, President, Kansas River Water Assurance District No. 1
David Pope, Chief Engineer, Division of Water Resources
Nancy Moore, City Attorney, Coffeyville
Barbara Butts, Municipal Accounting Section
Roy Bird, Kansas State Library
Chuck Engle, Topeka and Shawnee County Library Districts
Mike Dealy, President, Kansas Groundwater Management Districts Association
Laura Kelly, Kansas Recreation and Park Association

Morning Session

Special District Governments

The meeting was called to order in Room 313-S at 9:10 a.m., by Representative Nancy Brown, Chairperson, on August 19, 1993.

Representative Brown welcomed the Committee and asked Mr. Heim to give a brief overview of the purpose of this study.

Mr. Heim began by distributing copies of a portion of a report prepared by the League of Kansas Municipalities during last session entitled *Summary of Local Governments in Kansas -- 1991* which explains the types of local governments in Kansas. (See Attachment 1.) Mr. Heim highlighted the first page of the report and explained the charts and statistics that followed, calling special attention to the last pages of statistics where it is not always easy to identify a separate entity from a part of an existing authority. He also distributed copies of a chapter from *Kansas Local Government Law* published by the Kansas Bar Association which has more detailed information about special districts. (See Attachment 2.)

A representative asked if there is information on special district trends over a period of time. Mr. Heim responded that the trend is for more and more special districts being formed except in the area of education. The number of school districts has decreased dramatically over the past 70 years.

Gene Tucker with the Montgomery County Fire District began his testimony, giving a history of his fire district. In 1970, five townships petitioned the Board of County Commissioners to consolidate into one district, and by 1972 the Montgomery Fire District No. 2 was formed. At that time, four townships did not join, but by 1982 all had joined except one township in a distant area of the county. Bylaws for the fire district were prepared using K.S.A. 19-3601 *et seq.* The county commissioners accepted the consolidation for financial savings. His fire district's governing method is set up with a chairman, a vice-president, and a secretary. Mr. Tucker is a representative of the district before the Board of County Commissioners.

Mr. Tucker said the countywide system used in Montgomery County is best for all of its citizens because the rich help the poor. There are some difficulties in funding as a result of federal mandates. One such mandate deals with the requirement that all fire trucks be equipped with waterless hand soap and paper towels which is an extra expense and which is rarely used by firemen. As to budgeting for the district, when a fire truck is needed, he shops for a used one and submits the information to the board of county commissioners which has the final say on the purchase of equipment. In an emergency repair situation, Mr. Tucker can call a mechanic, but he must then report his action to the county commissioners. The county commissioners and the fire district meet together when the budget is drafted, and the commissioners approve it. The fire district is allowed 5 mills but at present they are at 3 mills.

Senator Parkinson asked Mr. Tucker his opinion as to why there are so many local units of government and systems. Mr. Tucker answered that the trend in fire districts is toward countywide units which offer more advantages, including financial, than separate township fire districts.

Mr. Tucker confirmed for Representative Brown that the Montgomery County fire district is strictly accountable and governed by the board of county commissioners. Representative Brown also asked what the Legislature could do to help fire districts. Mr. Tucker answered that one possibility would be a bill for township fire departments to put a certain percent of money into new equipment. Representative Brown informed him that a bill addressing this passed last session.

Dean Prochaska of Fire District No. 1 in Shawnee County was next to testify. He informed the Committee that his fire district includes three townships and the City of Silver Lake. The budget is approved by the county commissioners, and the district operates on a budget of $90,000 per year. As to the government, there is a trustee from each of the three townships and one representative from the City of Silver Lake. All of the townships have the same mill levy although it is not countywide.

A representative asked if the fire chiefs of fire districts ever meet to discuss what other districts are doing. Mr. Prochaska answered that he is not certain that there are any organized meetings for fire chiefs, however, the fire chief from his district informs them of what other districts are doing.

Chris McKenzie, League of Kansas Municipalities, followed with testimony regarding cities and drainage districts and cities and library boards with recommendations on how the Legislature can resolve the problems involved. Also included with the written testimony is a copy of the Attorney General's opinion stating that the cash basis law does not apply to libraries. (See Attachment 3.) With regard to the previous question regarding fire chief meetings, Mr. McKenzie informed the Committee that fire chiefs are very well organized statewide and are very cooperative.

Next to testify was Bruce McDowell, Advisory Commission on Intergovernmental Relations (ACIR), Washington, D.C. Mr. McDowell explained that ACIR is composed of federal, state, and local officials. He called attention to an ACIR report which he had distributed regarding special districts. (See Attachment 4.)

Mr. McDowell said that special district government is the only type of government that is growing substantially. The growth of special districts suddenly accelerated in 1987 and 1992. This growth resulted from the fact that local governments cannot support new growth in the community, therefore, new districts are created to get the financial support needed. He explained that for a special district to be considered for census purposes, it must have an independent body that can make policies and it must have a revenue source.

Mr. McDowell explained that there are two other kinds of new districts that have begun to take off. The first new type of entity is the residential community association. This kind of entity involves a type of private government by the owner of property when a deed is signed. Election is by the property owners, therefore, since it is private, it will not be challenged in court. Residential community associations have grown from 6,000 in 1960 to 130,000 today. Residence in such an area involves a double taxation issue because it is very seldom that you will find that local government reduces taxes because you are a resident of a residential community association, especially with regard to road maintenance.

The second new type of entity involves downtown areas having financial problems. The downtown businesses band together by establishing a special tax district which includes a voluntary tax to be used solely for the upkeep of the district.

Mr. McDowell turned attention to his handout (Attachment 4). He explained that the first ten pages include what has been written recently about special districts. He summarized each section and pointed out Kansas' standing on each of the charts and graphs, noting that only four other states have more local governments than Kansas does.

Representative Brown asked if there are any states that have determined statutorily for what special districts should be accountable. Mr. McDowell did not have this information but recommended that Kathy Wells at the state ACIR in the State of Louisiana be contacted for an answer to this question.

A senator asked Mr. McDowell if he felt special districts should be consolidated. Mr. McDowell answered that he would not recommend consolidation in rural areas. If consolidation is considered, local input should always be considered.

Dennis Schwartz, Kansas Rural Water Association, began his testimony regarding rural water districts. He also passed out copies of a yearbook which the Kansas Rural Water Association has produced which includes a factual history of rural water in Kansas and an explanation of what his organization deals with. He made a brief statement with reference to his written testimony and explained that the map included with the testimony shows the areas of the state that are served by rural water. He indicated there is no typical rural water system in Kansas. (See Attachment 5.)

Representative Brown asked Mr. Schwartz if he feels there are problems with the current laws with respect to rural water districts. Mr. Schwartz said that his organization is presently processing a proposed amendment dealing with annexing land to an existing system which would cross county lines.

A representative asked Mr. Schwartz if there is a requirement that a rural water district have an alternate source of water in the event of a natural disaster or an emergency. Mr. Schwartz said there was no such requirement. He said the driving force for a new source of water is the federal Safe Drinking Water Act.

Representative Brown questioned Mr. Schwartz as to the scope of powers of water districts such as issuing bonds and assessing taxes. Mr. Schwartz explained that water districts do not have such powers, but they do have the power of eminent domain although it is rarely exercised.

Dick Pelton, Kansas River Water Assurance District No. 1, defined what a water assurance district is and gave relevant information to the committee. (See Attachment 6.) He confirmed for Representative Brown that a water assurance district has no taxing authority and operates purely on user's fees.

A senator had concerns and questions regarding "banking water rights" as found on page 3 of Mr. Pelton's written testimony. It was noted that this is a complex issue, and it was asked if Mr. Pelton would like to see legislation on this subject next year. Mr. Pelton replied that the possibility of legislation is being explored at present. He understands the senator's concern about the complexity of banking water rights, but water assurance districts are searching for a way to deal with changing needs, and this will require additional rights for assurance districts.

A representative asked if assurance districts have financial responsibility. Mr. Pelton answered that assurance districts have the responsibility of issuing bonds to pay for storage space.

Afternoon Session

David Pope, Chief Engineer, Division of Water Resources, made recommendations regarding the various types of special water districts organized in the State of Kansas. (See Attachment 7.)

Representative Brown asked Mr. Heim what taxing authority drainage districts have. Mr. Heim reported that average drainage districts have a 5-mill maximum levy.

A representative asked if buying and selling of water rights occurs throughout the state. Mr. Pope said that this does happen as water rights are considered as property and, therefore, can be bought and sold.

Nancy Moore, City Attorney for Coffeyville, related the problems which have occurred with the drainage district in Coffeyville. The drainage district in that area was first organized in 1907. A levee has been located there since the 1930s. Members of this drainage district are also residents of the City of Coffeyville, and the levee is made part of the City of Coffeyville. The levee is in need of repair, and this is where the problem lies. When the City of Coffeyville asked the drainage district to repair the levee, it would not comply. Furthermore, the levee has been exempted from inspection which has the end result of higher taxes for the City of Coffeyville to make the repair. At present, the city is attempting to find out the exact boundaries of the drainage district within the city and assistance is being given to the drainage district so that the levee can be brought up to standard. As to the mill levy of the drainage district, Ms. Moore did not have that information, but she said that the district collects a total of $5,000.

Barbara Butts, Municipal Accounting Section, related to the Committee what is involved in a special district budget and had a hand-out which included statistics on various types of special districts. (See Attachment 8.) She explained that the mill levy rates, while they are in the statutes, are suspended. She noted that, when she was compiling this information, she had difficulty in identifying special districts and had found that half of the districts are cemetery districts. The levy rate shown for a certain cemetery (10.48) appears to be high, but in checking further she has found that the cemetery district levies only about $3,500. Also of interest, she has found that one county has 30 cemetery districts. Representative Brown raised a question as to whether cemetery districts possibly could be consolidated.

Roy Bird, Kansas State Library, gave an overview of the organizational governance of public libraries. There are seven different types of library organizations in Kansas. His job is to consult with librarians, trustees, and government officials. When he first came to his job, the major emphasis was on librarians, but now it is on library trustees.

He explained the ways to organize a library -- in cities of the first, second, and third class, by townships, counties, regions, or districts. There is very little uniformity among these types as each one has different organizational standards, and the mill levies are different. Each library does have a governing board. The mayor of first, second, and third class cities appoints the board with the approval of the commission. In townships, the board is appointed by township trustees. In counties, the board is appointed by the chairman of the board of county commissioners. Regional library boards consist of six members which are appointed by an official of the townships involved. District libraries choose a board by election. He added that a library board constitutes a body which is corporate and politic which means it can be sued. Board members are subject to the Kansas Open Records Act and the Kansas Open Meetings Act.

With regard to funding, library boards use a fund which is separate from municipality funds, and there are levy limits for funding. Also, libraries can pass a charter resolution to exempt themselves from the tax lid, and this has been done frequently. As a public trust, libraries have statutory responsibilities with regard to their funds which are limited to the following: (1) the purchase or lease of buildings; (2) to acquire printed materials; (3) to employ librarians and other necessary persons to make the library operate; (4) to contact other established libraries to provide library service; (5) to establish and maintain a library; (6) to receive and administer grants; (7) to receive and administer gifts and donations; and (8) they are required to make annual reports to the State Library as well as to the municipality.

Representative Brown asked Mr. Bird to explain the process of removing a board member. Mr. Bird said that boards are composed of voluntary members who cannot serve more than four years. There are no statutes that speak to the issue of removing a board member.

Representative Brown expressed her concern that if library boards are exempt from the tax lid, there is no statutory accountability back to voters. Mr. Bird clarified that the exemption from the tax lid only allows the boards to apply a previous levy to new valuation.

Chuck Engle of the Topeka and Shawnee County library district, said the Topeka district may only increase its tax levy one-quarter mill each year. A further safeguard is that the public looks at the budget. He has also observed that even though the library trustees are not elected, they do make efficient use of funds. He explained further that if the library district has extra money, it can be put in a special capital fund that only can be used for capital improvements, which is an incentive to handle funds efficiently. Another aid to keeping the budget in line is the interlibrary book loan system. The Topeka library loans out five books for every one it borrows, and this helps keep library budgets in line.

A representative had questions for Mr. Bird as to how lease-purchase agreements are used by libraries. Mr. Bird said they are used for equipment such as computers and copying machines.

Mike Dealy, Kansas Groundwater Management Districts Association, said groundwater management districts were developed in response to the rapid development of groundwater difficulties at which time it was determined that something must be done to assure water supplies were managed for future needs. Mr. Dealy gave a review of the purpose, organizational formation, and statutory responsibilities of groundwater management districts. (See Attachment 9.) He also passed out copies of *Groundwater Management in Kansas*, which has further relevant information. (See Attachment 10.)

Representative Brown asked Mr. Dealy if he had any recommendations for changes in the statutes that would benefit groundwater management districts. Mr. Dealy had none at this time as he had come prepared only to provide information, but he will research to determine if there is a need for statutory change.

Attention was turned to Laura Kelly, Kansas Recreation and Park Association, as she began her discussion of another type of special district, recreation commissions. (See Attachment 11.) Ms. Kelly had handouts of a list of old statutes regarding recreation districts and a copy of the statute reflecting changes which have been made in the 1993 Session.

Representative Brown noted that recreation commissions offer programs, not facilities. They have traditionally used city-owned facilities, but the recent trend in some areas has been to take the lease-purchase approach in the facilities used. Ms. Kelly responded that, by statute, recreation commissions cannot purchase or own land unless it is given to them. Representative Brown stated that a way around this has been found in that facilities are leased for ten to 20 years, and then the land is given to them. Ms. Kelly commented that a city or school board may purchase facilities and lease to recreation commissions and may decide to give the facility to the commissions later. She further informed Representative Brown that there is a growing number of recreation commissions that lease facilities to provide a service to the public; however, for the most part, cities and school districts do provide facilities according to the statute.

A short discussion began with the question by a representative as to how recreation commissions raise their mill levy. Ms. Kelly said it is necessary to go back to the city or school boards to get a mill levy raised. If the public would want to decrease the mill levy, it would be necessary to have the 5 percent petition and then put it to a vote.

The meeting was then adjourned.

Prepared by Mike Heim

Approved by Committee on:

November 29, 1993
(date)

Local Governments in Kansas – An Inventory of Governmental Taxing Units

PART I

SUMMARY OF LOCAL GOVERNMENTS IN KANSAS--1991

1. Introduction

Kansas has a lot of governmental units--some 4,025. In addition to the state and national government, there are 2,146 general purpose local units and 1,879 limited purpose school and special districts with taxing powers. These totals exclude many special districts that do not have property tax powers.

The average number of governmental units per state is 1,663, according to a 1987 survey by the Bureau of the Census. Only the states of Illinois, Pennsylvania, Texas and California, in that rank order, have more local governments than Kansas. However, if special districts without property tax powers are excluded from the Bureau's figures, Kansas ranks 2nd highest in the nation, exceed only by Illinois. (For other Kansas rankings, see section 8, below, entitled "Local Units--How Kansas Compares Nationally".)

2. Summary of Kansas Local Units

This analysis identifies the following 4,025 governmental taxing units in Kansas:

105	County Governments
627	City Governments
1,414	Township Governments
304	School Districts (USDs)
19	Community Colleges
7	Regional Library Districts
728	Cemetery Districts
323	Fire Districts
32	Hospital Districts
77	Drainage Districts
74	Sewer Districts
105	Conservation Districts
95	Watershed Districts
26	Special Improvement Districts
4	Airport Authorities
6	Ambulance Districts
3	Community Building Districts
2	County Rural Road System
2	Industrial Districts
7	Irrigation Districts
37	Library Districts
9	Lighting Districts
2	Municipal University, Vocational School Districts
4	Park and/or Recreation and Museum Districts
9	Township Zoning Districts
1	Transit Authority
3	Water and/or Sewerage Districts

Local Gov't Interim
8-19-93
Attachment 1

3. What's a Government?

For the purpose of this report, a governmental unit is a public agency with the power of taxation. Such a governmental unit has a defined jurisdiction, an elected or appointed governing body, the power to raise and spend public funds, and the legal authority to perform one or more public functions or services. A governmental taxing unit may be distinguished from that which is commonly called a "political subdivision". A political subdivision has a territorial jurisdiction, usually has a governing board, may spend public funds for one or more purposes, may have authority to raise revenue by levying special assessments, fees or service charges, but lacks independent authority to levy property or other general taxes. Sometimes, the distinction is not clear, such as a recreation commission or library board which may legally certify a tax, but are not considered a separate governmental taxing unit for the purpose of this report. Kansas has many political subdivisions that are sometimes called governments but are not taxing units--see Section 7, below, entitled "Political Subdivisions."

4. Cross-county Districts.

While most local units in Kansas are either countywide or are located entirely within a county, there are 398 units of government which have parts in two or more counties. These 398 cross-county units collectively constitute 1,054 taxing districts. Except for county government, townships, conservation districts and a few other types, most of the different types of local units in Kansas are sometimes found in two or more counties. For example, only 103 of the 304 school districts in Kansas have boundaries totally within one county. The remaining 201 districts are formed from 540 county "parts". Fire districts, drainage districts, watershed districts and regional libraries are other examples of special districts which frequently cross county lines.

5. Summary of Governmental Types

Following are brief descriptions of the various local governments operating in Kansas. As noted above, these do not include political subdivisions or other agencies lacking tax authority.

5-A. County Governments

The 105 county governments in Kansas were created by state law, and the current total has remained constant since 1893, with only minor changes made in boundaries. The total population of the 105 counties is 2,477,574. Counties vary in population from Greeley with 1,774 to Sedgwick with 403,662. There are 32 counties with a population of less than 5,000 and nine with a population of over 50,000. The median size county (Russell), has 7,835 residents.

State laws applicable to counties are found primarily in K.S.A. Chapter 19. The principal, general public service functions common to all counties are law enforcement and road maintenance. Counties serve as an administrative agency of the state as well as a local government, and some county officers perform state assigned functions. For example, the county treasurer is involved in county government financial procedures, but also collects and distributes tax moneys of the state and local governments in a trust capacity. Kansas counties spend about $1 billion annually and employ about 15,450 full-time employees.

5-B. City Governments

The 627 cities in Kansas are municipal corporations, incorporated by the residents of a defined area under certain minimum state standards. Most Kansans live within cities (79.3

cent of the total), which have a combined population of 1,963,658. Cities vary in population om 8 in Freeport to 304,011 in Wichita. There are 26 cities with less than 50 people and 50 with over 5,000. The median size city has a population of 1,870. The average county has about six cities. The number of cities per county varies from one each in Grant, Lane, Scott and Wichita up to 18 complete cities and two parts of cities in both Johnson and Sedgwick.

There are 24 cities of the first class (usually over 15,000), 88 cities of the second class (usually 2,000 to 15,000), and 515 cities of the third class. However, the legal classification of a city is not very relevant to its powers. The principal statutes affecting cities are found in Chapters 12 through 15 of the Kansas Statutes Annotated. Cities, like Kansas state government, have powers conferred on them directly by the people through the Constitution (Article 12, Section 5, the "Home Rule Amendment"). Cities provide a wide variety of public services, spend about $2 billion annually, and collectively employ about 16,700 full-time employees.

5-C. Township Governments

Kansas has 1,414 townships, some of which are not active. Townships, found in 20 of the 50 states, have existed in Kansas since the beginning of statehood. The number of townships increased from 365 in 1870 to a peak of 1,552 in 1930, and has gradually declined since then--by 124 since 1970. All the geographical area of Kansas is within a township or within a city of the second or first class. The number of townships varies from a minimum of one in Kiowa and Wichita counties to a high of 31 in Reno county. The average county has about 13.5 townships.

The population of Kansas townships, net of all cities, is 513,916--equal to 20.7 percent of the state total. There are 101 townships with a population of less than 50 and seven with more than 5,000 people, the largest being Riverside (14,364) in Sedgwick county. Most larger populated townships are located adjacent to cities. The average Kansas township has a population of about 363, excluding cities of the third class.

Like counties, townships in Kansas were created largely on the basis of straight line geographic areas (survey townships). The basic legal authority of township governments is found in K.S.A. Chapter 80. The principal township officer is the trustee. Many Kansas townships are inactive; some are effectively dormant, with no active officers. The principal function of many townships (in the 35 counties using the township road system) is road maintenance. A few townships provide library, fire protection and cemetery service, but these same functions are often provided by special districts, of which the township is a part. The total expenditures of all townships is about $25 million annually.

5-D. Unified School Districts

The 304 unified school districts in Kansas (including Fort Leavenworth) cover the entire state. The first state legislature of Kansas in 1861 directed county superintendents to divide their counties into a convenient number of school districts. The number of school districts peaked at 9,284 in 1896. Voluntarily and mandated consolidations occurred since that time, with a 1963 law and subsequent legislation providing for the creation of unified school districts throughout the state.

Many school districts are large in area, with Comanche, Greeley, Hamilton and Stanton counties having either one district or constituting a part of only one district. The county with the largest number of school districts is Sedgwick with five full districts and parts of 15 others.

There are 103 districts with territory entirely within one county, with the remaining 201 districts including areas (540 parts) in more than one county.

Basic state laws governing school districts are found in K.S.A. Chapter 72. School districts provide an education program for students from kindergarten through 12th grade and often participate in area vocational schools and special education cooperatives. The state board of education has general supervision over local public schools. Unified school districts employ about 50,000 employees (FTE) and spend about $2 billion annually.

5-E. Community College Districts

There are 19 community college districts in Kansas, each of which is located in a different county except in Montgomery which has two (Coffeyville and Independence). Community colleges, formerly called junior colleges, date back to 1919 (Fort Scott and Garden City). Existing community college districts operate under K.S.A. Chapter 71. They provide comprehensive and diversified programs of two-year post secondary education and some are involved in area vocational school programs. Community college districts operate under the general supervision of the state board of education. Property taxes levied for community college purposes for 1991 totaled about $51 million.

5-F. Regional Libraries

There are seven regional library systems in Kansas, established pursuant to K.S.A. 75-2547 et seq. All or parts of 81 counties participate in these systems. Any taxing district within a participating county which regularly levies 1/4 mill or more for a public library may be excluded from the tax. A governing body of representatives of cooperating libraries administers the services provided to its participating libraries, and may levy a property tax for this purpose.

There are other library districts in Kansas. These are reported below under the heading "Other Special Districts."

5-G. Cemetery Districts

There are 728 active cemetery districts in Kansas, organized to establish and maintain local cemeteries. Some counties have no cemetery districts; the largest number is found in Clay county, with 30 cemetery districts and seven parts. Such districts are normally established under K.S.A. 15-1013 et seq., 17-1330 et seq., or 17-1342 et seq. Frequently, a cemetery district includes a township and a city of third class. Some districts appear to be essentially township cemeteries, but function as districts. The 728 cemetery districts levied about $2 million in property taxes for 1991 purposes.

5-H. Fire Districts

There are 323 active fire districts in Kansas. The number by county varies from none in 14 counties to Morris county with 11 full districts and two parts. There are at least 44 fire districts which cross county lines.

There are several state laws under which fire districts are created, primarily in article 36 of K.S.A. Chapter 19 and in Article 15 of K.S.A. Chapter 80. Usually, they are created by petition of the residents, with formal action by the board of county commissioners or a township board. As in the case of cemeteries, it is sometimes difficult to distinguish whether a fire department

peration is a township government function or whether a separate district exists; the latter is commonly found in those townships in which there is located a city of the third class. Most fire department operations in Kansas are city departments, many of which contract with districts or townships to provide fire protection service.

5-I. Hospital Districts

There are 32 hospital districts in Kansas, with such districts covering all or parts of 26 different counties. This total excludes city hospitals, and county hospitals not on a district basis. Of the 32 districts, at least three are inactive, one operates a clinic, two operate a nursing home and one provides an ambulance service. Hospital district laws, recodified in 1984, are found in K.S.A. 80-2501 et seq. and 80-2550 et seq.

5-J. Drainage Districts

There are at least 77 drainage districts in Kansas. There are probably more in legal existence, some of which are currently dormant. The 77 known districts are located within 31 counties, primarily in the eastern part of the state. Most counties have none; three counties have six whole drainage districts. They are formed under K.S.A. Chapter 24, Articles 4, 5 and 6, and their principal function is flood protection. Such districts may levy special assessments as well as taxes and may issue bonds. Some of the drainage districts maintain Corps of Engineering flood protection works. A few have territory within cities, largely as a result of past annexations.

5-K. Sewer Districts

There are at least 74 sewer districts now operating in Kansas. Sewer districts are found in 18 different counties. Most counties do not have a sewer district since they are typically found in areas adjacent to larger cities or in residential areas adjacent to a lake. The principal act for the formation of county sewer districts is K.S.A. 19-27a01 et seq. Township sewer districts may be formed under K.S.A. 80-2001 et seq.

5-L. Conservation Districts

The 105 conservation districts in Kansas are organized along county lines. They operate under K.S.A. 2-1901 et seq., with the primary function of developing comprehensive soil conservation plans for landowners. County governments may allocate general fund money to the district or levy a special tax for this purpose. While a conservation district is often considered a political subdivision of the county, they have a separate governing body and the power to sue and be sued, make contracts and own property.

5-M. Watershed Districts

There are 95 watershed districts in Kansas, some of which are inactive. Only 35 of these are located entirely within one county, with the balance including parts of two or more counties, depending on the location of the watershed. Most of them are in eastern Kansas. These districts are formed under K.S.A. 24-1201 et seq., with the primary function of reducing erosion, controlling floods and reducing sedimentation through dams. State grants for such districts are administered through the state conservation commission and federal grants have also been available.

5-N. Special Improvement Districts

There are 26 improvement districts in Kansas, located in 12 counties, with nine of them in Sedgwick county. Most improvement districts are located in urban areas. Improvement districts are formed under K.S.A. 19-2753 et seq. Their board of directors is elected and such districts have power to levy taxes and special assessments and to issue bonds for public facilities like streets, sewers and water service. The extent of their activity varies, some are inactive.

5-O. Other Special Districts

In addition to the units noted above, which are shown by county of location on the accompanying table, there are 89 other special districts found in 57 counties. These are reviewed below.

5-0-(1) **Airport Authorities.** There are four airport authorities in Kansas, constituting separate governmental units. These include the Salina airport authority in Saline county organized under K.S.A. 27-315 et seq., the metropolitan Topeka airport authority in Shawnee county operating under K.S.A. 27-327 et seq., the Herrington airport authority located in Morris county and the newly formed Pratt airport authority in Pratt county. Separate property taxes were not levied for 1991 purposes by the Herington and Pratt airport authority. The Wichita airport authority, under K.S.A. 3-162 et seq., is not an independent governmental unit.

5-0-(2) **Ambulance Districts.** There are six ambulance districts located within three counties. These include two in Chautauqua county, one in Geary and three in Wabaunsee. K.S.A. 65-6118 authorizes the establishment of ambulance service taxing districts in any county, with the county board constituting the governing body of the district.

5-0-(3) **Community Building Districts.** There are three community building districts in Kansas: Udall in Cowley and Sumner counties, Portis in Osborne and Smith counties and Palmer in Washington county. K.S.A. 15-11b01 provides for the creation of such districts, on petition of the electors, by any city of the third class and the surrounding area of not more than six square miles. The district is governed by a seven-member board of directors elected at annual meetings, to manage, operate and maintain a community building.

5-0-(4) **County Rural Road Systems.** There are two county rural road systems in Kansas, found in Leavenworth and Pottawatomie counties. Such districts are authorized by K.S.A. 68-591 et seq. Under this arrangement, all the township roads in the county are turned over to the county, which levies a special tax on property within townships, outside of cities. Since the jurisdiction and taxing authority does not apply to incorporated cities, it is considered to be a special district.

5-0-(5) **Industrial Districts.** There are two industrial districts in Kansas, located in Finney and Reno counties. They are formed under K.S.A. 19-3801 et seq. Such districts have powers similar to cities to provide services and facilities and are effectively designed to give special tax breaks for industries.

5-0-(6) **Irrigation Districts.** There are seven irrigation districts in Kansas, each of which has territory in more than one county. There are 14 counties containing areas included within an irrigation district. Such districts may be formed under the provisions of K.S.A. 42-357 et seq., enacted in 1891, or K.S.A. 42-701 et seq., enacted in 1941. All of the existing districts were

created under the 1941 law, which provides for a three-member board of directors with authority to levy general property taxes and special assessments on property within the irrigation district.

The existing districts, including those inactive but apparently in legal existence, are Kirwin No. 1 in Osborne, Phillips and Smith; Kansas-Bostwick No. 2 in Jewell and Republic; Webster No. 4 in Osborne and Rooks; Almena No. 5 in Norton and Phillips; Cedar Bluff No. 6 in Ellis and Trego; Kanopolis No. 7 in Ellsworth, McPherson and Saline; and Glen Elder No. 8 in Cloud, Mitchell and Ottawa. Glen Elder No. 3 was abolished in 1955.

5-0-(7) **Library Districts.** There are 37 library districts in Kansas, in addition to the regional cooperating library systems noted above. This total excludes the many city libraries throughout the state, which are not considered to be an independent taxing unit for the purpose of this report.

There are several statutes under which library districts are formed, including K.S.A. 12-1215, 12-1218, 12-1223, 12-1231, 12-1236, 72-1623, 75-2547 and their successive sections of the statutes. The library districts in Hutchinson, Salina and Topeka are considered separate taxing districts, since they have clear independent taxing power and the authority to own property. There are 19 county libraries which are considered to be special library districts, since the tax levied for library purposes is not necessarily applied countywide. County libraries are found in these counties: Coffee, Finney, Graham, Grant, Gray, Greeley, Hamilton, Johnson, Kearny, Kiowa, Lane, Lyon, Morton, Pawnee, Scott, Stanton, Stevens, Wichita and Wyandotte. Most county libraries are located in the more rural, western counties. Pottawatomie and Wabaunsee counties have a regional library district. A common form of library district is one that involves a township and a city of the third class. There are 14 township, city-township or non-county library districts, found in Comanche (2), Doniphan, Geary, Leavenworth (2), Linn (3), Lyon, Marion, McPherson, Meade and Miami.

5-0-(8) **Lighting Districts.** There are nine street lighting districts in Kansas, located in seven counties. Those include Garland in Bourbon county, Neal in Greenwood, Centerville in Linn, Bucyrus and Hillsdale in Miami, Ada and Wells in Ottawa, Pauline in Shawnee, and Piqua in Woodson county. Such districts are formed under K.S.A. 19-2716 et seq., to provide lighting in platted but unincorporated areas. An annual tax is levied on property within the district. The "governing body" is either the township board or county board of commissioners. Since a township or county tax levy must be townshipwide or countywide, absent a special district, it appears such lighting districts constitute a governmental taxing unit.

5-0-(9) **Municipal University, Vocational School Districts.** In addition to unified school districts and community college districts, only the Cowley County Area Vocational Technical School and Washburn Municipal University of Topeka in Shawnee county are considered, for the purposes of this report, to be a separate governmental taxing unit.

5-0-(10) **Park and/or Recreation, Museum Districts.** There are three park and/or recreation districts operating as governmental units. The Johnson county park and recreation district operates under K.S.A. 19-2859 et seq. A recreation district operates in Lyon county; the West Smith county recreation district includes parts of Smith and Phillips counties. For the purpose of this report, a recreation commission organized under K.S.A. 12-1902 et seq. is not considered a governmental taxing unit. In addition, a historical museum within U.S.D. 499 in Cherokee county is reported as a special taxing district.

5-0-(11) **Township Zoning Districts.** There are nine township zoning boards which levy a property tax for 1991 and are therefore considered to be governmental taxing units. These are all located in Miami county and may be abolished at the end of 1991. Township zoning boards are created under K.S.A. 19-2901. Under K.S.A. 19-2911, the zoning board prepares an annual budget and may certify a property tax.

5-0-(12) **Transit Authorities.** The metropolitan transit authority of Topeka in Shawnee county is the one taxing unit of this type in Kansas. The authority in Wichita is not generally considered to be a separate governmental unit. The Kansas City area transportation district and authority is not considered a governmental unit since it does not levy a property tax in Kansas. Transit authorities are created under Article 28 of K.S.A. Chapter 12.

5-0-(13) **Water and/or Sewer Districts.** In addition to the various water and sewerage districts noted above, there are three other water/sewer districts operating in Kansas. These include one water district in Geary county, and two sewer and water districts in Riley county.

6. County Comparisons

The accompanying table shows the number of governmental units by county. The average Kansas county has 38.3 units. The number of units tends to increase with population, with several exceptions. Wichita county has the fewest, with five full units within the county and parts of three other units. Sedgwick has the most, with 78 full units and 26 parts.

Counties with a gross total (whole units plus parts) of less than 20 include Cheyenne (18), Comanche (17), Grant (12), Greeley (12) Hamilton (18), Haskell (14), Kiowa (16), Morton (17), Scott (16), Seward (19), Stanton (11), Stevens (18), Trego (19), Wallace (15), Wichita (8), and Wyandotte (19).

Counties with a gross total of 80 or more units include Clay (81), Dickinson (87), Jefferson (84), Johnson (78), Marion (83), Marshall (83), Reno (97) and Sedgwick (104).

7. Political Subdivisions

While a governmental unit or a governmental-taxing unit is sometimes called a political subdivision, not all political subdivisions are governmental units or taxing units. The discussion under the heading "What's a Government?", above, attempts to distinguish the two types. However, the distinguishing line is sometimes thin. An example is the county cooperative extension council and the county conservation district--public agencies which exist in every county and which have a "governing body" separate from the board of county commissioners. For the purpose of this report, a conservation district is considered a governmental unit, but an extension council is not. While conservation districts do not have independent taxation power, they are recognized by law as distinct local governments. With a few such exceptions, a public agency must have independent taxing power to be classified as a governmental unit.

Some libraries are clearly governmental units and some are clearly political subdivisions, and some seem to fall in between. For the purpose of this report, a city library board (even though it has a governing body and some other attributes of a governmental unit) is not considered a governmental unit, except for the library systems in Hutchinson, Salina and Topeka which are clearly separate taxing units. Some county libraries are clearly separate governmental districts, when the library tax is not spread countywide, while others seem to be more of a subordinate

gency of the county government. Since this distinction is not always apparent, all known county public libraries, for which a tax is levied, are considered to be taxing units.

Kansas has hundreds of political subdivisions and special districts without independent power of taxation. (In addition, there are many hundreds of boards, commissions and associations, like a city planning commission or library board, which are sometimes identified as public agencies.) While some of the agencies listed below do not constitute a legal "political subdivision," they are listed here primarily for the purpose of showing examples of public agencies which are excluded from this report.

Area vocational and vocational-technical schools, excluding the Cowley County AVTS
Art museum boards
Business improvement districts--cities
Building authorities (e.g. Salina)
City hospital boards
Community mental health center
Cooperative extension councils--counties
County park boards
County road benefit districts
County sports authority boards
Education cooperatives--school districts
Fair association boards--counties
Firemens relief associations
Ground water management districts
Health boards--city-county
Health boards--multi-county (Butler-Greenwood)
Historical societies--cities and counties
Housing authorities--cities
Johnson County water district
Kansas City board of public utilities
Kansas City area transportation authority--largely Missouri
Leavenworth waterworks board
Library boards--cities, excluding Hutchinson, Salina and Topeka
Library boards--townships, non-district
Mental health centers
Missouri-Kansas development district and agency (inactive)
Municipal energy agencies
Museum boards
Parking authorities--cities
Port authorities--city, county, regional (may levy taxes only if approved by voters)
Planning commissions
Public building commissions--cities and counties
Public wholesale water supply districts
Recreation commissions--cities, school districts or joint
Regional planning commissions
Riley county law enforcement agency
Road benefit districts
Rural water districts
Special assessment benefit districts--cities and other units
Storm drainage districts
Water assurance districts

Governmental Taxing Units in Kansas by County

Note: When two numbers are listed (e.g. 2+3), the first shows the number of whole units; the second shows the number of parts of a unit within the county.

Name	1991 Population	Counties	Cities	Town-ships	School Districts	Comm. College	Region. Library	Cemetery Districts	Fire Districts	Hospital Districts	Drain. Dist.	Sewer Dist.	Cons. Dist.	Watershed Districts	Improve. Districts	Other Districts	TOTAL
Allen	14,638	1	9	12	2+3	1	P	2+2	3	0	0	2	1	0+3	0	0	33+9
Anderson	7,803	1	7	15	0+3	0	P	6+1	1	0	0	0	1	0+2	0	0	31+7
Atchison	16,932	1	5	8	1+6	0	P	14	6	0	0+1	0	1	3+2	0	0	39+9
Barber	5,874	1	7	18	0+4	0	P	6+2	1	1	0	0	1	0	0	0	35+7
Barton	29,382	1	9	22	2+6	1	P	3	1	1	0	0	1	0+1	0	0	41+8
Bourbon	14,966	1	6	11	1+3	1	P	16	4	0+1	0	0	1	2	0	1	44+5
Brown	11,128	1	10+1	10	0+6	0	P	9+2	0	0	0	0	1	2+4	0	0	33+14
Butler	50,580	1	13	29	2+10	1	P	1	9	0	0	2	1	1+4	0	0	60+15
Chase	3,021	1	5	9	0+4	0	P	0	1	0	1	0	1	2+7	0	0	20+2
Chautauqua	4,407	1	6	12	1+5	0	P	14	5+1	0	0	0	1	1+4	0	2	43+11
Cherokee	21,374	1	8	14	4+4	0	P	0	0	0	0	1	1	0	0	1	30+5
Cheyenne	3,243	1	2	7	1+1	0	P	2	1+1	0	0	0	1	0	0	0	15+3
Clark	2,418	1	3	6	0+4	0	P	0	3	1+3	0	0	1	0	0	0	15+8
Clay	9,158	1	6+2	18	0+3	0	P	30+7	7+1	0	2	0	1	0+2	0	0	65+16
Cloud	11,023	1	6+1	18	0+6	1	P	15+3	1+4	0	1	0	1	2+1	0	0+1	46+17
Coffey	8,404	1	6	14	1+4	0	0	10+1	0+1	0	1	0	1	1+4	0	1	36+10
Comanche	2,313	1	3	4	0+1	0	P	3	1	0	0	0	1	0	0	2	15+2
Cowley	36,915	1	7+1	25	2+8	1	P	7	8+2	0	0	0	1	0+6	0	1+1	53+19
Crawford	35,568	1	10	9	2+5	0	P	0	2	1	0	0	1	1	0	0	27+6
Decatur	4,021	1	4+1	25	0+5	0	P	10+3	0+1	0	0	1	1	0	0	0	42+10
Dickinson	18,958	1	9	24	1+6	0	P	30+3	5+3	1	0	0	1	0+2	0	0	72+15
Doniphan	8,134	1	8	9	3+3	1	P	2+1	5	0	4+1	0	1	0+1	0	1	35+7
Douglas	81,798	1	4	9	0+8	0	P	6+1	0+1	0	2+2	10	1	0+2	0	0	33+15
Edwards	3,787	1	4	10	1+2	0	P	2+2	0	0	0	0	1	0+1	0	0	19+6
Elk	3,327	1	5	10	0+6	0	P	10	1	0	0	0	1	0+6	0	0	28+13
Ellis	26,004	1	4	9	0+9	0	P	0+1	1+1	0	0	0	1	0	3	0+1	19+13
Ellsworth	6,586	1	5	19	1+4	0	P	3	4+3	0	0	0	1	0+1	0	0+1	34+10
Finney	33,070	1	2	7	2+1	1	0	0	0	1	1	1	1	0+2	0	2	19+3
Ford	27,463	1	4	14	0+8	1	P	1	1	0+3	3	0	1	0+1	1	0	27+13
Franklin	21,994	1	8	16	2+8	0	P	7+2	4	0	1	0	1	0+2	0	0	40+13
Geary	30,453	1	3	8	0+7	0	0	10+1	2+1	0	0	2	1	0+3	0	3	30+12
Gove	3,231	1	5	9	0+7	0	P	0	0+2	0	0	0	1	0	0	0	16+10
Graham	3,543	1	3	13	2+6	0	0	2+1	1	0	0	0	1	0	0	1	24+7
Grant	7,159	1	1	3	1+3	0	0	1	0	0	0	0	1	0	0	1	9+3
Gray	5,398	1	5	7	0+5	0	0	0	1	1	0	0	1	1+1	0	1	18+6
Greeley	1,774	1	2	3	1+0	0	0	1	1	0	0	0	1	0+1	0	1	11+1
Greenwood	7,847	1	7	15	1+7	0	P	5	1	0	0	0	1	1+6	0	1	33+16
Hamilton	2,388	1	2	8	1+0	0	P	1	1	0	0	0	1	0+1	0	1	16+2
Harper	7,124	1	7	6	1+5	0	P	7+1	0	2+2	0	0	1	0	0	0	25+9
Harvey	31,028	1	6+1	15	0+12	0	P	3	2+2	0	1+1	0	1	2+1	0	0	31+18
Haskell	3,886	1	2	3	0+4	0	0	1	0	2	0	0	1	0	0	0	10+4
Hodgeman	2,177	1	2	9	1+6	0	P	1	1	0	0	0	1	0+1	0	0	16+8
Jackson	11,525	1	9	15	1+9	0	0	20	4+1	0+1	1	0	1	0+4	0	0	52+15
Jefferson	15,905	1	8	12	1+10	0	P	21	12	0	6	7	1	1+1	2	0	72+12
Jewell	4,251	1	7	25	2+5	0	P	10+1	4+1	0	0	0	1	0	0	0+1	50+9
Johnson	355,054	1	18+2	9	3+5	1	0	6	6	0	2+1	20+1	1	0	0	2	69+9
Kearny	4,027	1	2	7	2+1	0	P	2	2	0	0	0	1	1+1	0	1	19+3
Kingman	8,292	1	7	23	0+5	0	P	2	0+1	0+2	0	0	1	0+1	0	0	34+10
Kiowa	3,660	1	3	1	2+2	0	0	3+1	1	0	0	0	1	0	0	1	13+3
Labette	23,693	1	8	16	2+4	1	P	5	2	0	1	0	1	0+1	0	0	37+6
Lane	2,375	1	1	8	0+4	0	0	1	0+1	0	0	0	1	0+2	1	1	14+7
Leavenworth	64,371	1	6	10	5+5	0	P	2	1	0	4	0	1	0	0	3	33+6
Lincoln	3,653	1	4	20	0+5	0	P	4	2+3	0	0	0	1	1+2	0	0	33+11
Linn	8,254	1	6	11	1+3	0	P	5	1	0+1	0	0	1	0+1	0	4	30+6
Logan	3,081	1	2+1	11	0+5	0	P	0	0+1	0	0	0	1	0	0	0	15+8

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Name	1991 Population	Counties	Cities	Town-ships	School Districts	Comm. College	Region. Library	Cemetery Districts	Fire Districts	Hospital Districts	Drain. Dist.	Sewer Dist.	Cons. Dist.	Watershed Districts	Improve. Districts	Other Districts	TOTAL
Lyon	34,732	1	9	11	1+7	0	0	0+2	1+3	0	0	0	1	2+6	0	3	29+18
Marion	12,888	1	12	24	1+9	0	P	13	8+1	1	1	0	1	0+6	3	1	66+17
Marshall	11,705	1	9	25	0+8	0	P	20+3	8+2	0	0	0	1	4+1	0	0	68+15
McPherson	27,268	1	8	25	2+7	0	P	3	8+4	0	4	0	1	0+1	0	1+1	53+14
Meade	4,247	1	3	9	1+5	0	P	2	1	2	1	0	1	0	0	1	22+6
Miami	23,466	1	4+1	13	2+6	0	P	7	2	0	0	0	1	0+1	0	11	41+9
Mitchell	7,203	1	6+1	20	0+5	0	P	21	3+3	0	0	0	1	0+2	0	0+1	52+13
Montgomery	38,816	1	9	12	1+6	2	P	14+2	1	0	3	2	1	0+3	0	0	46+12
Morris	6,198	1	7+1	11	0+5	0	P	17+1	11+2	0	0	0	1	0+6	1	1	50+16
Morton	3,480	1	3	6	2+0	0	0	3	0	0	0	0	1	0	0	1	17+0
Nemaha	10,446	1	7+1	20	1+7	0	P	14+1	8	0+1	0	0	1	0+4	1	0	53+15
Neosho	17,035	1	7	12	0+4	1	P	18+2	0	0	0	0	1	1+4	0	0	41+11
Ness	4,867	1	5	10	2+3	0	P	1	1	2	0	0	1	0+2	0	0	23+6
Norton	5,947	1	4+1	5	1+5	0	P	5+2	3+2	0	0	0	1	0	0	0+1	20+12
Osage	15,248	1	9	16	3+8	0	P	15+4	4+4	0	0	1	1	1+4	0	0	51+21
Osborne	4,867	1	5	23	0+7	0	P	22+1	7	0	0	0	1	0+1	0	0+3	59+13
Ottawa	5,634	1	5	20	0+6	0	P	14+1	6+4	0	0	0	1	0+1	0	2+1	49+14
Pawnee	7,555	1	4	21	0+3	0	0	5+2	0	0	0	0	1	0+2	0	1	33+7
Phillips	6,590	1	8	25	1+4	0	P	3	4+1	0	0	0	1	0	0	0+3	43+9
Pottawatomie	16,128	1	10+2	23	1+3	0	0	10	6+3	0+1	2	0	1	1+2	0	1+1	56+12
Pratt	9,702	1	7	7	1+7	1	0	3+1	0	0	1	0	1	0	0	1	23+8
Rawlins	3,404	1	3	10	2+4	0	0	0+1	2+1	0	0	0	1	0	0	0	19+6
Reno	62,389	1	14	31	1+10	1	P	2+1	7+4	0	6+2	8	1	0+4	1	2	75+22
Republic	6,482	1	8	20	0+6	0	P	24+5	10+3	0	1	0	1	0+1	0	0+1	65+17
Rice	10,610	1	9	20	1+6	0	P	3	0+2	2	1+1	0	1	0+1	0	0	38+11
Riley	67,139	1	4+1	14	0+8	0	P	8+4	1	0	0	1	1	0+1	1	2	33+15
Rooks	6,039	1	6	12	0+6	0	P	18	1+1	1	0	0	1	0	0	0+1	40+9
Rush	3,842	1	8	12	0+5	0	P	0	7	0	0	0	1	0+2	0	0	29+8
Russell	7,835	1	8	12	0+3	0	P	3+2	3+2	0	0	0	1	0+1	0	0	28+9
Saline	49,301	1	6	18	1+5	0	P	3+1	2+6	0	6	0	1	0	0	2+1	40+14
Scott	5,289	1	1	7	0+2	0	0	0	1	0	0	0	1	0+2	0	1	12+4
Sedgwick	403,662	1	18+2	27	5+15	0	P	7+1	1	1	4+2	3	1	1+5	9	0	78+26
Seward	18,743	1	2	3	1+4	1	P	4	1	0	0	0	1	0	0	0	14+5
Shawnee	160,976	1	4+1	12	2+7	0	P	0+1	5	0	6+1	9	1	0+2	1	5	46+13
Sheridan	3,043	1	2	14	0+9	0	P	4+1	3	0	0	0	1	0	0	0	25+11
Sherman	6,926	1	2	13	1+1	0	P	0	1+1	0	0	0	1	0	0	0	19+3
Smith	5,078	1	6	25	0+5	0	P	6	1	0	0	0	1	0	0	0+3	40+9
Stafford	5,365	1	6	21	1+7	0	P	10+4	0	4	0	0	1	0	0	0	44+12
Stanton	2,333	1	2	3	0+1	0	0	1	1	0	0	0	1	0	0	1	10+1
Stevens	5,048	1	2	6	1+2	0	0	2	1	1	0	0	1	0	0	1	16+2
Sumner	25,841	1	10+2	30	4+8	0	P	7+1	8+1	1+1	2	1	1	0+1	0	0+1	65+16
Thomas	8,258	1	5+1	13	0+6	1	P	2+2	5+1	0	0	0	1	0	0	0	28+11
Trego	3,694	1	2	7	0+5	0	P	0	1	0	0	0	1	0	0	0+1	12+7
Wabaunsee	6,603	1	7+2	13	0+7	0	0	5+3	1+2	0	0+1	1	1	0+4	2	3+1	34+20
Wallace	1,821	1	2	4	1+2	0	P	0	3	0	0	0	1	0	0	0	12+3
Washington	7,073	1	10+2	25	2+5	0	P	15+4	10	1	0	0	1	0+1	0	1	66+13
Wichita	2,758	1	1	1	0+2	0	0	0	0	0	0	0	1	0+1	0	1	5+3
Wilson	10,289	1	7	15	0+4	0	P	15+4	1	0	0	0	1	1+4	0	0	41+13
Woodson	4,116	1	3	6	1+6	0	P	9+3	0+1	0	0	0	1	2+2	0	1	24+13
Wyandotte	161,993	1	2+2	2	3+1	1	0	0	0	0	3	1+1	1	0	0	1	16+4
GROSS	2,477,574	105	612+30	1,414	103+540	19	0+81	680+96	279+86	27+16	72+13	73+2	105	35+165	26	77+25	3,627+1,055
NET		105	627	1,414	304	19	7	728	323	32	77	74	105	95	26	89	4,025

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Tabl **Number of Government Units by Type: 1992**

[For r. of symbols, see text]

Geographic area	All government units[1]	General purpose				Special purpose		Exhibit: Dependent public school systems[3]
		County	Subcounty			School district	Special district	
			Total	Municipal	Township[2]			
United States	**86 743**	**3 043**	**35 962**	**19 296**	**16 666**	**14 556**	**33 131**	**1 488**
Alabama	1 134	67	440	440	-	129	497	-
Alaska	176	12	149	149	-	-	14	54
Arizona	598	15	86	86	-	228	268	13
Arkansas	1 473	75	489	489	-	324	584	-
California	4 495	57	460	460	-	1 080	2 897	54
Colorado	1 826	62	266	266	-	180	1 317	-
Connecticut	575	-	179	30	149	17	378	149
Delaware	281	3	57	57	-	19	201	-
District of Columbia	2	-	1	1	-	-	1	3
Florida	1 041	66	390	390	-	95	489	-
Georgia	1 321	157	536	536	-	185	442	-
Hawaii	21	3	1	1	-	-	16	1
Idaho	1 105	44	199	199	-	116	745	-
Illinois	6 810	102	2 715	1 282	1 433	997	2 995	-
Indiana	2 976	91	1 574	566	1 008	310	1 000	-
Iowa	1 904	99	953	953	-	445	406	-
Kansas	3 918	105	1 982	627	1 355	324	1 506	-
Kentucky	1 345	119	438	438	-	177	610	-
Louisiana	461	61	301	301	-	66	32	-
Maine	799	16	490	22	468	88	204	198
Maryland	416	23	155	155	-	-	237	40
Massachusetts	851	12	351	39	312	86	401	354
Michigan	2 727	83	1 776	534	1 242	587	280	-
Minnesota	3 616	87	2 658	854	1 804	477	393	-
Mississippi	898	82	294	294	-	176	345	4
Missouri	3 368	114	1 257	933	324	553	1 443	-
Montana	1 305	54	128	128	-	544	578	-
Nebraska	2 997	93	986	534	452	842	1 075	-
Nevada	212	16	18	18	-	17	160	-
New Hampshire	531	10	234	13	221	168	118	9
New Jersey	1 625	21	567	320	247	550	486	77
New Mexico	494	33	99	99	-	94	267	-
New York	3 319	57	1 549	620	929	714	998	35
North Carolina	954	100	518	518	-	-	335	192
North Dakota	2 795	53	1 717	366	1 351	284	740	-
Ohio	3 534	88	2 259	942	1 317	665	521	-
Oklahoma	1 822	77	589	589	-	614	541	-
Oregon	1 487	36	240	240	-	340	870	-
Pennsylvania	5 397	66	2 570	1 022	1 548	516	2 244	-
Rhode Island	128	-	39	8	31	4	84	34
South Carolina	705	46	270	270	-	91	297	-
South Dakota	1 803	64	1 281	310	971	184	273	-
Tennessee	960	93	339	339	-	14	513	127
Texas	4 919	254	1 171	1 171	-	1 101	2 392	-
Utah	635	29	228	228	-	40	337	-
Vermont	690	14	287	50	237	278	110	-
Virginia	461	95	230	230	-	-	135	138
Washington	1 796	39	268	268	-	296	1 192	-
West Virginia	708	55	231	231	-	55	366	-
Wisconsin	2 752	72	1 850	583	1 267	430	399	6
Wyoming	576	23	97	97	-	56	399	-

[1]Includes the Federal Government and the 50 State governments, not shown in distribution by type.

[2]Includes "town" governments in the 6 New England States and in Minnesota, New York, and Wisconsin. In some States, townships have powers and perform functions similar to those of municipal governments.

[3]Public school systems operated as a part of a State, county, municipal, or township government. The count of "All governments units" does not include these numbers.

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Table [illegible]umber of Special District Governments by Function: 1992

[For mea[illegible]of symbols, see text]

Geographic area	All special district governments	Single function districts												
			Education services		Social services		Transportation				Environment and housing			
											Natural resources[3]			
		Total	Education[1]	Libraries	Hospitals	Health	Highways	Airports	Other[2]	Fire protection	Total	Drainage and flood control	Irrigation	Soil and water conservation	Other
United States	**33 131**	**30 457**	**870**	**1 063**	**774**	**619**	**666**	**447**	**296**	**5 354**	**6 564**	**2 976**	**815**	**2 466**	**307**
Alabama	497	466	-	-	42	22	-	20	5	4	68	1	-	67	-
Alaska	14	14	-	-	-	-	-	-	-	-	-	-	-	-	-
Arizona	268	265	-	-	10	5	4	-	-	130	71	16	54	-	1
Arkansas	584	542	-	-	-	-	10	7	2	48	230	161	1	68	-
California	2 897	2 647	1	33	75	87	49	13	23	395	489	97	172	105	115
Colorado	1 317	1 097	-	1	24	13	24	6	1	247	170	37	52	81	-
Connecticut	378	324	-	-	-	-	32	-	-	59	1	1	-	-	-
Delaware	201	198	-	-	-	-	1	-	-	-	192	187	-	5	-
District of Columbia	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Florida	489	453	4	3	30	16	7	6	9	60	136	62	6	63	5
Georgia	442	422	-	2	108	-	-	19	2	6	38	-	-	38	-
Hawaii	16	16	-	-	-	-	-	-	-	-	16	-	-	16	-
Idaho	745	716	-	49	14	3	64	1	1	130	170	53	65	50	2
Illinois	2 995	2 950	1	269	27	26	21	29	10	813	928	826	-	102	-
Indiana	1 000	972	416	245	16	-	-	-	-	1	132	39	-	93	-
Iowa	406	404	-	8	1	-	3	3	-	72	242	142	-	100	-
Kansas	1 506	1 487	-	23	28	2	1	1	3	-	261	136	11	114	-
Kentucky	610	597	-	110	8	33	6	-	-	93	128	8	-	120	-
Louisiana	32	27	-	-	-	-	1	-	12	-	2	1	-	-	1
Maine	204	176	-	-	3	-	-	-	4	-	13	-	-	13	-
Maryland	237	216	-	-	-	-	5	-	-	-	165	140	-	25	-
Massachusetts	401	386	-	-	1	-	1	-	-	15	14	-	-	13	1
Michigan	280	265	-	71	8	-	-	21	4	2	82	-	-	82	-
Minnesota	393	361	-	-	23	2	-	5	-	-	111	14	-	97	-
Mississippi	345	335	-	-	-	3	-	4	2	-	256	171	-	85	-
Missouri	1 443	1 431	-	136	18	111	321	1	2	208	175	173	-	2	-
Montana	578	549	-	-	13	-	-	8	-	150	129	21	51	57	-
Nebraska	1 075	908	-	-	18	1	20	63	-	422	96	42	46	6	2
Nevada	160	144	-	3	8	3	9	2	-	14	33	-	6	27	-
New Hampshire	118	99	-	-	-	-	5	-	-	16	10	-	-	10	-
New Jersey	486	444	-	-	-	7	7	-	33	171	17	-	-	17	-
New Mexico	267	260	-	-	4	-	-	-	-	-	220	152	18	50	-
New York	998	994	-	-	-	72	1	-	1	909	2	-	-	-	2
North Carolina	335	320	-	-	4	1	-	14	-	-	150	58	-	92	-
North Dakota	740	736	-	-	-	18	-	85	-	277	79	1	18	60	-
Ohio	521	504	-	61	9	40	-	50	14	41	98	12	-	85	1
Oklahoma	541	519	-	-	2	32	-	-	4	18	102	10	3	89	-
Oregon	870	850	-	5	14	9	17	1	10	268	202	74	76	51	1
Pennsylvania	2 244	1 963	260	2	65	16	13	36	93	1	10	8	-	-	2
Rhode Island	84	79	-	-	-	-	-	-	-	38	3	-	-	3	-
South Carolina	297	271	-	-	6	3	-	4	-	85	48	2	-	46	-
South Dakota	273	252	-	-	-	1	10	-	-	51	109	21	18	70	-
Tennessee	513	468	-	-	-	-	-	14	4	-	117	21	-	95	1
Texas	2 392	1 570	187	-	127	47	-	3	24	96	432	131	75	216	10
Utah	337	307	-	-	6	16	15	-	-	20	77	23	16	38	-
Vermont	110	99	-	-	-	-	1	-	-	22	14	-	-	14	-
Virginia	135	131	-	23	6	4	3	21	-	-	44	-	-	44	-
Washington	1 192	1 126	1	19	44	23	1	4	33	410	160	85	74	-	1
West Virginia	366	336	-	-	-	-	-	6	-	-	15	1	-	14	-
Wisconsin	399	394	-	-	-	-	-	-	-	-	179	31	-	9	139
Wyoming	399	366	-	-	12	3	14	-	-	62	128	18	53	34	23

See footnotes at end of table.

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Table Number of Special District Governments by Function: 1992—Con.

[For meaning of symbols, see text]

Geographic area	Single function districts—Con.									Multiple function districts			
	Environment and housing—Con.				Utilities								
	Parks and recreation	Housing and community development	Sewerage	Solid waste management	Water supply	Other[4]	Cemeteries	Industrial development and mortgage credit	Other single function districts	Total	Natural resources and water supply	Sewerage and water supply	Other
United States	**1 212**	**3 663**	**1 850**	**421**	**3 442**	**479**	**1 646**	**161**	**930**	**2 674**	**133**	**1 457**	**1 084**
Alabama	2	153	2	3	113	26	-	3	3	31	1	6	24
Alaska	-	13	-	-	-	1	-	-	-	-	-	-	-
Arizona	-	-	19	-	14	12	-	-	-	3	1	-	2
Arkansas	-	130	54	15	41	3	-	-	2	42	3	6	33
California	154	92	146	17	384	65	263	14	347	250	19	99	132
Colorado	52	96	127	7	139	5	82	-	103	220	14	128	78
Connecticut	24	95	4	6	11	21	-	-	71	54	-	4	50
Delaware	1	4	-	-	-	-	-	-	-	3	-	1	2
District of Columbia	-	-	-	-	-	1	-	-	-	-	-	-	-
Florida	14	107	3	1	17	13	-	6	21	36	3	7	26
Georgia	8	207	-	1	25	5	-	1	-	20	1	15	4
Hawaii	-	-	-	-	-	-	-	-	-	-	-	-	-
Idaho	21	13	39	1	30	-	178	-	2	29	1	26	2
Illinois	363	117	130	9	87	26	60	1	33	45	3	17	25
Indiana	5	62	20	60	7	3	-	-	5	28	4	4	20
Iowa	1	19	26	6	17	5	-	-	1	2	-	1	1
Kansas	4	207	12	1	273	3	655	2	11	19	8	-	11
Kentucky	-	24	15	20	157	3	-	-	-	13	1	7	5
Louisiana	-	1	-	2	2	3	-	3	1	5	4	-	1
Maine	1	27	42	3	75	6	2	-	-	28	-	14	14
Maryland	1	21	1	2	2	-	-	-	19	21	-	5	16
Massachusetts	-	255	10	3	68	19	-	-	-	15	1	1	13
Michigan	2	-	24	16	13	18	-	-	4	15	-	11	4
Minnesota	3	172	14	2	6	11	-	3	9	32	11	-	21
Mississippi	-	57	5	1	3	4	-	-	-	10	-	-	10
Missouri	2	159	37	-	223	2	-	-	36	12	-	-	12
Montana	-	18	30	37	35	3	73	1	52	29	2	26	1
Nebraska	1	137	24	-	11	35	79	-	1	167	15	55	97
Nevada	7	17	9	-	11	4	4	-	20	16	1	7	8
New Hampshire	1	23	4	3	33	2	-	-	2	19	-	3	16
New Jersey	-	83	96	16	11	-	-	1	2	42	-	35	7
New Mexico	-	5	2	3	11	-	-	1	14	7	-	6	1
New York	-	-	-	6	1	1	-	-	1	4	-	-	4
North Carolina	-	104	12	3	25	5	-	-	2	15	-	13	2
North Dakota	236	38	-	3	-	-	-	-	-	4	1	-	3
Ohio	77	59	8	16	15	14	-	2	-	17	1	4	12
Oklahoma	-	124	1	2	232	1	-	1	-	22	4	8	10
Oregon	37	22	43	3	129	17	65	5	3	20	1	1	18
Pennsylvania	96	88	682	65	332	36	-	100	68	281	1	195	85
Rhode Island	-	26	2	1	9	-	-	-	-	5	-	-	5
South Carolina	13	46	9	1	44	11	-	-	1	26	1	13	12
South Dakota	-	42	22	1	8	1	-	-	7	21	12	5	4
Tennessee	-	96	4	4	199	18	-	2	10	45	1	28	16
Texas	2	402	9	1	212	11	-	2	15	822	10	610	202
Utah	12	18	21	5	44	7	45	-	21	30	3	15	12
Vermont	2	9	-	9	39	3	-	-	-	11	-	-	11
Virginia	1	-	5	6	5	6	-	-	7	4	-	4	-
Washington	49	51	47	2	134	36	99	12	1	66	4	23	39
West Virginia	1	36	63	50	155	10	-	-	-	30	-	27	3
Wisconsin	6	188	15	-	2	2	-	1	1	5	-	-	5
Wyoming	13	-	12	8	38	1	41	-	34	33	1	27	5

[1]Primarily school building authorities.
[2]Includes parking facilities and water transport and terminals.
[3]Functions within the "Natural resources" category may overlap.
[4]Includes electric power, gas supply, and transit.

* U.S. G.P.O.: 1992-341-833:60348

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CHAPTER 13
SPECIAL DISTRICTS, OTHER LIMITED PURPOSE ENTITIES AND REGIONAL BODIES

I. INTRODUCTION

§13.01 A. Overview of Chapter

This chapter describes special district governments authorized under Kansas law which are by and large single purpose units of government. In addition, other public entities authorized under Kansas law that have local or regional responsibilities and functions but are dependent upon another independent unit of government are discussed. The chapter is comprehensive but not exhaustive since space does not permit treatment of all of the wide variety of local and regional boards, commissions and other entities that exist under Kansas law.

This chapter consists of a series of separate sections devoted to various types of special district governments and other legal entities that have some separate status from other local governments. Each section contains the following: the title of the special district government or other legal entity and the citation to the statute authorizing its creation, and three main subheadings: Background and Organization; Governing Body; and Scope of Powers. Under the first subheading, information is included which relates to the purpose served by the legal entity, why the legislation was developed, the extent of the use of the entity and the process which must be followed to create, expand or abolish it. Under the second heading, information is included on how the governing body is selected, either by election or by appointment, special voter qualifications, officer selection and major executive appointments. Under the last heading, information is provided about the overall powers of the special district or other legal entity including financial powers that the entities may exercise. The special district governments and other legal entities are grouped by function.

§13.02 1. *Growth of Special Districts*

As noted briefly in Chapter I, there has been a proliferation in recent years of special districts not only in number but also in the purposes for which they were created. The U.S. Bureau of the Census reported that there were 29,532 special districts in 1987, excluding school districts. This number represented an increase of nearly 5% over the 1982 count of 28,078 such units. Thirty years earlier, in 1957, the Census Bureau reported only 14,424 special districts. In Kansas there also has been significant growth in the number of special districts. The U.S. Bureau of the Census in 1967 reported 1,037 special districts in Kansas, with 1,219 in 1977 and 1,387 in 1987. See *1987 Census of Governments*, U.S. Dept. of Commerce, Vol. 1, No. 1, p. X.

There are several reasons for the increase in number and type of special districts, including that the existing general purpose local governments may not possess the powers necessary to perform a desired function or service or they may be restricted by taxing limits or bonded indebtedness limits. Further, a projected service area may not coincide with the territorial boundaries of an existing governmental unit. Finally, there may be other political reasons to create a special district.

§13.03 2. *Special District Chapter in Prospective*

A major focus of this book has been on state laws that have a general application to most local governments. Most, if not all of the special district governments or other legal entities described in this chapter, are also subject to the following: the Interlocal Cooperation Act and the Consolidation of Functions Act discussed in Chapter 4; the Open Meetings Act and Open Records Act covered in Chapter 5; the local conflict of interest law and the discussion of public officers described in Chapter 6; the Public Employer Relations Act, the Fair Labor Standards Act, the Federal Immigration Reform and Control Act and State and Federal Civil Rights laws discussed in Chapter 7; the Uniform Procedure for Payment of Claims Act and the public funds investment laws described in Chapter 8; and the Kansas Tort Claims Act, 42 U.S.C. Section 1983, and federal antitrust laws described in Chapter 12. In addition, many of the special district governments have been granted police power, described in Chapter 3. Many also are concerned with some of the provisions of the general election laws described in Chapter 6, with special assessments, municipal bond laws and the budget and cash basis laws dealt with in Chapter 8, with the property tax system and the property tax lid law described in Chapter 9, and are required to follow the Eminent Domain Procedures Act described in Chapter 10.

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Attachment 2

B. Some Generalizations About Special Districts

§13.04 1. *Special District Purposes and Functions*

The special districts and other legal entities described in this chapter can be grouped into seven functional categories: utilities; conservation and management of natural resources; education and libraries; health related functions and services; park and recreation services; transportation, economic development and planning; and miscellaneous public services and improvements.

§13.05 2. *The Formation Process*

The formation process for over half of the legal entities described herein begins by petition of residents or landowners to the board of county commissioners or some other public body or officer. Elections on the issue of establishing the local government entity are required for approximately one-third of the entities. Special qualifications for signing petitions or voting in an election on the issue of formation of an entity also are fairly common. For example, petitioners for the formation of sewer districts, rural water districts, drainage districts, watershed districts and industrial districts must own land. Petitions for the formation of conservation districts must be by owners or operators of farm land. Groundwater management districts require land ownership and groundwater usage. Irrigation district petitions must be signed by owners of irrigation lands.

§13.06 3. *Board of County Commissioners Role—A Special Law*

Boards of county commissioners play a key role in the formation process for some of the local entities. Further, a special law enacted in 1986 limits the formation and expansion of boundaries of certain "special benefit districts" on the "fringe areas of cities." The law applies to special benefit districts, defined to include sewer districts, water districts, rural water districts and water supply districts, fire districts, improvement districts and drainage districts. See K.S.A. 19-270. No special benefit district may be created or its boundaries expanded within the "fringe area" of any city unless the formation or expansion has been approved by a three-fourths vote of the board of county commissioners. Fringe area is defined to mean the area of unincorporated territory lying outside of but within three miles of the nearest point on the city limits of a city which has adopted subdivision regulations. Published notice of the hearing is required and testimony must be received from city, county, township or regional planning commissions having jurisdiction as well as from the city and any interested person.

The county board is required to approve or disapprove the creation or change in boundaries of the special benefit district within seven days of the hearing. In making its decision, the board must consider certain factors including: (1) the size and population of the city within three miles of the proposed special district; (2) the city's growth in population, business and industry during the past 10 years; (3) the extension of the city's boundaries during the past 10 years; (4) the probability of its growth toward the territory during the ensuing 10 years, taking into consideration natural barriers and other reasons which might influence growth toward the territory; (5) the willingness of the city to annex the territory and its ability to provide city services in case of annexation; and (6) the general effect upon the entire community. All of these and other considerations have to do with the overall orderly and economic development of the area and serve to help prevent an unreasonable, uneconomical multiplicity of independent municipal and special district governments.

Any person or city aggrieved by the county board's action may appeal within 30 days following the rendering of the decision to the district court of the county in which the affected area is located in the manner provided under K.S.A. 19-223.

§13.07 4. *State Officer Involvement*

State officers are involved in the formation process of a number of special districts or related legal entities. The Chief Engineer of the Division of Water Resources, for example, plays a role in the formation of rural water districts, drainage districts, watershed districts, groundwater management districts, irrigation districts and water assurance districts. When a special district government involves several local units of government joining together by agreement, the approval of the agreement by the Attorney General is sometimes required. See, for example, the formation process for public wholesale water supply districts, municipal energy agencies and certain regional planning agencies. See K.S.A. 19-3547(e), 12-888(b) and § 4 of L. 1991, ch. 56.

The Secretary of State is required to issue a certificate of incorporation or otherwise participate in the formation process for certain special district governments. Examples include the formation process for water assurance districts, certain drainage districts, watershed districts, groundwater management districts and irrigation districts. See K.S.A. 24-503, 24-1205, 42-704, 82a-1023, 82a-1336. Other state officers or departments such as the State Conservation Commission and the State Department of Health and Environment play roles in the formation process of conservation districts and sewer districts, respectively. See K.S.A. 2-1905 and 19-27a03(a).

§13.08 5. *Selection of Governing Bodies—Voter Qualifications*

Governing bodies are elected in approximately half of the special districts and other legal entities discussed in this chapter, with the balance of such entities governed by an appointed body. In several cases, such as with library boards and hospital districts, the governing body can be either elected or appointed. With hospital districts, voters can decide the issue of whether to have an elected or appointed board. See, for example, K.S.A. 80-2506 and 80-2508. With libraries, the nature of the library entity dictates whether the board is appointed or elected. See K.S.A. 12-1222 and 12-1238. With improvement districts, the initial board is appointed until or unless a certain number of people reside within the district in which case the governing body is then elected. See K.S.A. 19-2757.

Special voter qualifications which parallel requirements for petitioners discussed earlier exist in some instances where the governing bodies of special districts or other legal entities are elected. Examples include rural water districts, conservation

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districts, drainage districts, watershed districts, groundwater management districts and industrial districts.

§13.09 6. *Nature and Powers of Special Districts and Other Legal Entities*

Most of the entities dealt with in this chapter are special districts and are considered quasi-municipal corporations. Some of the entities described, however, are nothing more than an administrative agency of the local unit of government creating them. For example, the Kansas City Board of Public Utilities (BPU), even though governed by a separate elected body, has been held by the court and deemed by the Legislature to be an administrative agency of the City of Kansas City. Other entities which apparently are administrative agencies of other municipal or quasi-municipal corporations include the Leavenworth Waterworks Board, certain vocational schools and the two statutory types of business improvement districts. For some entities, such as some regional planning commissions, it is unclear whether those entities are quasi-municipal corporations, administrative agencies of the local units creating them or a hybrid.

Approximately two-thirds of the special districts and other legal entities treated in this chapter have power to levy ad valorem taxes directly or have such taxes levied on their behalf. About the same percentage may issue or have issued on their behalf general obligation bonds or revenue bonds or both types of debt instruments. Further, the same approximate percentage of entities may either exercise the power of eminent domain to acquire property directly or have another local unit of government exercise such power on their behalf. Other powers such as the power to sue and be sued, to enter into contracts and to buy, sell and hold property are generally given to special districts. Special district governments with seemingly the broadest powers include drainage districts, airport and port authorities and industrial districts.

II. UTILITIES

§13.10 A. Introduction

This section deals with several governmental entities that provide utility services to the persons and property within their territory. Included are the Kansas City Board of Public Utilities which provides that city with both water and electric services; the Leavenworth Waterworks Board which has responsibility for city water services; the Johnson County Water Supply and Distribution District which provides water services for a large portion of the county, including a number of cities; two types of rural water districts; sewer districts; public wholesale water supply districts which are vehicles for various governmental entities to cooperatively provide wholesale water supplies; and municipal energy agencies which allow cities operating electric generating systems to cooperate in acquiring or obtaining energy sources.

B. Kansas City Board of Public Utilities

K.S.A. 13-1220 *et seq.*

§13.11 1. *Background and Organization*

The Kansas City Board of Public Utilities (BPU), was created by a state law which applies only to cities of the first class having a population of more than 100,000 and owning and operating both a municipal waterworks and municipal electric light plant. Only Kansas City meets these criteria. See K.S.A. 13-1220 *et seq.*

§13.12 2. *Governing Body-Elected*

The BPU board consists of six members who serve four-year staggered terms. Three members are elected by district and three are elected at large. Elections are nonpartisan and are held at the same time as city elections, *i.e.* the first Tuesday in April. Board members are paid $100 per month and necessary expenses. The board elects a president and a vice-president and appoints a secretary from its own membership. See K.S.A. 13-1221.

§13.13 3. *Scope of BPU Powers*

The BPU has the "exclusive control of the daily operation of the water plant and the electric light plant" and has the responsibility for producing and supplying the city and its inhabitants with water and electric energy. It has the power to hire employees, except attorneys, and to fix their compensation. The Attorney General in Op. Att'y Gen. 93 (1981) said that the BPU was the proper governing body for purposes of electing coverage under the Employer-Employee Relations Act. K.S.A. 75-4321 *et seq.* It may purchase and hold property in the name of the city. Sale of real property or improvements is subject to approval by the governing body of Kansas City and the city is granted the power to condemn property on behalf of the BPU. The BPU may sue and be sued but only in the name of and on behalf of the city. Various other powers and responsibilities are listed in the statutes. See K.S.A. 13-1223, 13-1227 and 13-1228, 13-1231 and 10-1213. In Op. Att'y Gen. 222 (1980), the Attorney General concluded that the BPU was not subject to either the cash basis or budget laws since the BPU did not fit the definition of taxing subdivision or municipality under the budget law nor the definition of municipality or governing body under the cash basis law.

§13.14 4. *Administrative Agency of City*

The unique relationship between the BPU and the city of Kansas City was recognized by the court in *State ex rel v. McCombs*, 129 Kan. 834, 844, 284 P. 618 (1930) which upheld the constitutionality of the statute creating the BPU. This relationship was clarified by the court in *Board of Public Utilities v. City of Kansas City*, 227 Kan. 194, 605 P.2d 151 (1980) where the court held the BPU was not an independent legal entity but rather was an administrative agency of the city. The court contrasted the BPU with port authorities, water supply and distribution districts and industrial districts, all of which the court considered independent units of government. The court noted that the BPU enabling statute fell short of granting those powers normally considered inherent powers of an independent

legal entity, *i.e.* a municipal or quasi-municipal corporation, citing specifically the BPU's lack of taxing power.

The 1980 legislature agreed with the court when it codified and further limited the role of the BPU in reference to the City of Kansas City. See L. 1980, ch. 72. In *Board of Public Utilities v. City of Kansas City*, 496 F. Supp 389 (D. Kan. 1980), the BPU and its individual members brought an action challenging the constitutionality of the 1980 law noted above. The law, among other things, provides for the payment of money by the BPU to the city, makes board members and employees personally liable for any losses for failure to comply with city ordinances, requires the BPU to use the city legal staff, and sets out certain ratemaking and rate review procedures. The court rejected various constitutional challenges by BPU members who argued that the law impaired existing BPU contracts and denied rights of equal protection and the right to counsel for BPU board members. The court further determined that the BPU did not have legal standing to sue on its own behalf even under prior law. The court, in 1982, affirmed its earlier decision that the BPU was an administrative agency of the city and therefore qualified for governmental immunity that then existed for a city engaged in a governmental function under K.S.A. 1978 Supp. 46-902. See *Cross v. City of Kansas City*, 230 Kan. 545, 549, 638 P.2d 933 (1982).

C. Leavenworth Waterworks Board

K.S.A. 13-2414 *et seq.*

§13.15 1. *Background and Organization*

The Leavenworth Waterworks Board was established by referendum in 1937 following the passage of enabling legislation that year. The act applies only to the City of Leavenworth.

§13.16 2. *Governing Body-Elected*

The board consists of five members who are elected at large for four-year staggered terms. Board members serve without compensation. Members must be at least 30 years of age, have business experience and have been a resident of the city for at least five years prior to election. The city treasurer acts as ex officio treasurer of the board. The board may appoint and set the compensation of a manager of production and distribution, a manager of collections and accounts and other officers and employees as it deems necessary. See K.S.A. 13-2416, 13-2419 and 13-2420.

§13.17 3. *Scope of Powers*

A waterworks board has policymaking, administrative and operational responsibilities for a city's water supply system. It has control over personnel and the sale of excess water, and, in the name of the city, may acquire franchises and property. It may also require the city to condemn property for the board in the name of the city. See K.S.A. 13-2418.

The board sets water rates and may require the city to hold elections on bond issues for the water plant. See K.S.A. 13-2422. Like the BPU, the board appears to be an administrative agency of the city. See K.S.A. 13-2418.

D. Water Supply and Distribution Districts—Johnson County

K.S.A. 19-3501 *et seq.*

§13.18 1. *Background and Organization*

The water supply and distribution act applies to Miami, Franklin, Johnson and Wyandotte counties but only one such district has been created under its provisions, that being Johnson County Water District No. 1. See K.S.A. 19-3502. The main function of this district is to provide water supply and water treatment services for domestic, industrial and municipal water use. For a brief history of the need for the formation of this district in Johnson county, see *Water District No. 1 v. Robb*, 182 Kan. 1, 318 P.2d 387 (1957), wherein the court upheld the law against various state constitutional challenges, *e.g.* that the act constituted special legislation and that it provided for an unlawful delegation of legislative power.

Districts may be established by a board of county commissioners upon presentation of a petition by 1,000 qualified electors of the proposed district. The county board must hold a public hearing and if it finds that the creation of the district will be of public benefit, it may pass a resolution creating the water district. Districts may be created without regard to county, city or township boundary lines. See K.S.A. 19-3503. The district itself may increase its boundaries if presented with a petition signed by the owners of 51% of the land within the area proposed to be added to the district. See K.S.A. 19-3504.

§13.19 2. *Governing Body-Elected*

The governing body of a water district consists of a five-member board elected on a nonpartisan basis at spring elections which parallel city and school elections, for four-year staggered terms. A seven-member board will be elected from and after April 30, 1991. Elections are conducted by the county election officer. See K.S.A. 19-3505. Following each election, a chairman and vice-chairman are selected. The board may appoint a general manager who serves at the board's pleasure. See K.S.A. 79-35.

§13.20 3. *Scope of Powers*

Water districts are designated as quasi-municipal corporations and are granted the power to condemn property; to enter into contracts; to sue and be sued; to establish, construct, purchase, operate and maintain a water supply and distribution system; to provide for the chlorination and fluoridation of water and to connect with any source of water supply or construct, operate and maintain waterworks of plants anywhere within 20 miles of the district's boundary.

Districts are authorized to contract with the state and political subdivisions for the purpose of supplying water. Districts also have the power to set water rates; to issue revenue bonds and no-fund warrants for start up costs; and to levy a tax for the payment of the warrants prior to the issuance of the revenue bonds. See K.S.A. 19-3502, 19-3508, 19-3511, 19-3515, and 19-3521a.

The Attorney General, in Op. Att'y Gen. 108 (1984), said that a city under provisions of the general improvement and assessment law could not agree to extend water lines of Johnson

County Water District No. 1 since this would not be deemed to be a municipal work or improvement. See also Op. Att'y Gen. 92 (1989) which said the water district governing body must hold discussion of offers received in reference to the acquisition of a water utility during an open public meeting.

E. Rural Water Districts

K.S.A. 82a-601 *et seq.* K.S.A. 82a-612 *et seq.*

§13.21 1. *Background and Organization*

Rural water districts have been among the fastest growing special districts in Kansas. The 135 districts formed by 1967 rose to over 300 by 1989 according to the Kansas Rural Water Association. Rural water districts, according to the court in Dedeke v. Rural Water Dist. No. 5, 229 Kan. 242, 249, 623 P.2d 1324 (1981), are in law and in fact a public utility subject to state regulation and control and the owner of a benefit unit certificate is the owner of a property right protected by the requirements of due process. This case also held that water service cannot be terminated without giving the resident user adequate notice and an opportunity to contest the grounds for termination.

State regulation does not include state jurisdiction over the rates of rural water districts by the Kansas Corporation Commission. See *Shawnee Hills Mobile Homes, Inc. v. Rural Water* District No. 6, 217 Kan. 421, 428, 537 P.2d 210 (1975). The court said that rates were subject to a reasonableness test in that the rates may not be excessive or confiscatory but may include consideration of future contingencies, reasonable reserves for repair, improvement and replacement costs and one that will yield a fair profit. 217 Kan. at 431. See also Op. Att'y Gen. 95 (1989) which said that a city-owned and operated water company supplying water to a rural water district by contract could limit the availability of water services to new customers residing outside the city.

Rural water districts may be created under two general acts. The first, K.S.A. 82a-601 *et seq.*, allows any two or more owners of adjacent lands within a county to petition the county board for incorporation as a rural water-supply district. A hearing before the county board must be set and notice given to the Chief Engineer of the Division of Water Resources. See K.S.A. 82a-603. If the board of county commissioners determines at the public hearing that the petition is sufficient and the proposal will promote the public health, then the board must incorporate the rural water-supply district as a quasi-municipal corporation. See K.S.A. 82a-604. The district can be dissolved whenever 75% of the landowners petition to the county board for dissolution and it is found by the board that the district owns no property, that all its debts are paid, and that no meetings of the district have been held for more than a year. See K.S.A. 82a-611.

Under the second and more widely used act, K.S.A. 82a-612 *et seq.*, the procedures for the incorporation of "rural water districts" are similar but include the following exceptions. Only 50% of the landowners within the proposed district need to petition for incorporation to the county board. In addition, districts formed under this act may cross county lines. The petition in these cases is made to the county where the largest portion of the district will be located. See K.S.A. 82a-612(c) and 82a-614. Dissolution procedures are contained in K.S.A. 82a-629 as amended by L. 1991, ch. 291. The 1991 amendment clarifies that remaining property of the dissolving district must be distributed to an adjoining water district or to any other political subdivision. An Internal Revenue Service ruling said the prior law which provided for disposition of remaining property to subscribers of benefit units disqualified water districts from being treated as government entities under the Internal Revenue code thus jeopardizing the tax exempt status of water district revenue bonds. Procedures also exist for the addition or deletion of territory in the rural water district if approved by the county board and for the consolidation of rural water districts following a public hearing. Note that county board approval must meet the extraordinary vote requirements of K.S.A. 19-270. The Attorney General, in Op. Att'y Gen. 80 (1981), has said that districts may annex noncontiguous territory.

§13.22 2. *Governing Body—Elected*

All land owners within the district constitute a board of directors for rural water-supply districts formed under K.S.A. 82a-601 *et seq.* The board of directors of rural water districts formed under K.S.A. 82a-612 *et seq.* may include up to nine members elected by participating members for three-year staggered terms at annual meetings of the district. See K.S.A. 82a-617. Participating member is defined in K.S.A. 82a-612(d) to include an individual, firm, partnership or corporation which owns land and has subscribed to one or more benefit units of the district. The Attorney General has said in Op. Att'y Gen. 136 (1985) that a participating member must be the person holding fee simple title to the land. See also the discussion of benefit unit in *Shawnee Hills Mobile Homes Inc.*, 217 Kan. 421 at 423-4. The board of directors elects a chairman, vice-chairman, secretary and treasurer for one-year terms. The chairman is responsible for the operation and repair of the district and is entitled to compensation as determined by the board of directors.

§13.23 3. *Scope of Powers*

A rural water-supply district may construct, install, maintain and operate dams, reservoirs, pipelines, wells and other works as necessary; enter into contracts; sue and be sued; and buy, hold or receive property. See K.S.A. 82a-606.

Rural water district powers under K.S.A. 82a-619 are more extensive. They may exercise the power of eminent domain; cooperate and enter into agreements with or accept financial aid or other aid from the U.S. Secretary of Agriculture; acquire loans; and enter into contracts with the State Park and Resources Authority (State Department of Wildlife and Parks) for the purchase or sale of water. The Attorney General has stated that rural water districts have an implied power to sell property even though there is no explicit grant of such power. See Op. Att'y Gen. 146 (1987). The attorney general also has recommended rural water districts establish competitive bidding practices for construction contracts. See Op. Att'y Gen. 45 (1988).

Rural water-supply districts may issue bonds and levy taxes and levy special assessments to retire the bonds. See K.S.A. 82a-606. Rural water districts may levy special assessments, issue revenue bonds and acquire loans for the financing of up to 95% of the construction cost or purchase price

of any project. See K.S.A. 82a-619. Revenue bonds of rural water districts may be used as security for public funds deposits by banks if the district has been in existence for three or more years. See Op. Att'y Gen. 127 (1984).

The Attorney General has said that rural water districts are: covered by the Kansas Tort Claims Act (Op. Att'y Gen. 31 (1986)); bound by the open meetings law (Op. Att'y Gen. 97 (1988)); required to comply with laws governing deposit of public moneys (Op. Att'y Gen. 157 (1987)); but are not a "political subdivision" for purposes of an exemption from the Kansas Retailers Sales Tax Act (Op. Att'y Gen. 155 (1983)).

Plans, specifications, proposed operating budget, schedule of fees and benefit units and estimated costs of any proposed improvement must be filed with the Chief Engineer and the Secretary of the District. See K.S.A. 82a-621.

§13.24 4. *Other Water District Legislation*

Other more limited application water district legislation appears at K.S.A. 19-3522 *et seq.*, K.S.A. 19-3536 *et seq.* and K.S.A. 80-1616 *et seq.*

F. Public Wholesale Water Supply Districts

K.S.A. 19-3545 *et seq.*

§13.25 1. *Background and Organization*

Drought conditions in some parts of Kansas, as well as the demand for more water to meet the requirements of an expanding urban and suburban population in recent years, led to the passage of the Public Wholesale Water Supply District Act in 1977. The rationale of the act was to permit the creation of a district to obtain water on a large scale and to sell the water to participants. See Peck, "Legal Constraints on Diverting Water from Eastern Kansas to Western Kansas," 30 Kan. L. Rev. 159, 169 (1982).

Certain public agencies may enter into agreements providing for the formation of public wholesale water supply districts. The term "public agency" is defined as any county, township, city, town, water district or other municipal corporation, quasi-municipal corporation or political subdivision, or state or federal agency or instrumentality. Agreements are required to specify their duration; the organizational structure and composition of the district; the purposes of the agreement; the manner of financing the district; the permissible ways for partial or complete termination of the agreement; and other matters. See K.S.A. 19-3545, 19-3546 and 19-3547.

Every agreement must be submitted to the attorney general for review. The agreement also must be filed with the Secretary of State and the Register of Deeds of the county or counties in which the district will be located. If the agreement is approval by the Attorney General, then the Secretary of State has the responsibility to declare the district organized as a quasi-municipal corporation. See K.S.A. 19-3547 and 19-3549.

§13.26 2. *Governing Body-Appointed*

The governing body of the public wholesale water supply district may consist of one but not more than two persons appointed by each participating public agency. The term of office for representatives on the district's governing body may vary from one to four years but must be staggered. Members of the governing body elect a president, a treasurer and a secretary. The governing body is required to appoint a general manager of the district who shall be responsible for the administration and supervision of the water system. See K.S.A. 19-3550.

§13.27 3. *Scope of Powers*

Districts may enter into contracts for not to exceed 40 years with any pubic or private person or corporation for planning, development, construction, acquisition or operation of any facility or service, notwithstanding the cash basis law. See K.S.A. 19-3548 and Op. Att'y Gen. 83 (1987). Districts may also purchase, lease, construct and operate reservoirs, pipelines, check dams, pumping stations, water purification plants and other facilities for the production and wholesale distribution of water. They may exercise the power of eminent domain within and without the district; enter into franchises and contracts; sue and be sued; accept gifts and grants; and adopt rules and regulations. See K.S.A. 19-3552.

A district may issue no fund warrants to cover start up costs and to pay preliminary engineering and financial and legal services and revenue bonds to finance the acquisition, construction, improvement or repair of water systems. Three districts are authorized to issue general obligation bonds in amounts not to exceed 20% of the assessed valuation of the district. See K.S.A. 19-3553, 19-3554 and 19-3557. The Attorney General has confirmed that public wholesale water supply districts are covered by the Kansas Tort Claims Act. See Op. Att'y Gen. 177 (1986).

G. Sewer Districts

K.S.A. 19-27a01 *et seq.*,
K.S.A. 80-2001 *et seq.*

§13.28 1. *Background and Organization*

At least 93 sewer districts were reported in Kansas in a 1983 inventory of taxing units conducted by the League of Kansas Municipalities. See *Local Governments in Kansas—An Inventory of Governmental Taxing Units*, page 8. By 1988, 131 sewer districts were reported in the four largest counties alone, *i.e.* Johnson county reported 31 sewer districts, Sedgwick county reported 20, Shawnee county reported 63 and Wyandotte county reported 17 in the *Directory of Kansas Public Officials*, League of Kansas Municipalities, 1988-89 Edition.

County sewer district laws were recodified in 1983. The new law, K.S.A. 19-27a01 *et seq.*, incorporated a number of policy changes in the way in which sewer districts were formed, operated and financed. See L. 1983, ch. 99. That law also repealed most provisions of five separate county sewer district laws although several sections of these acts were retained in the recodification. For example, K.S.A. 19-27,170 *et seq.* relating to sewer districts in Finney county was not repealed.

Under the 1983 law, petitions for the formation of sewer districts require signatures by owners of 51% of the land. The

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petition must state the proposed boundaries, the nature of the improvements, the estimated costs, the proposed methods of assessment, and the proposed apportionment of costs. Sewer district is defined to include any main, lateral, joint or submain storm sewer or sanitary sewer district. The Attorney General has said the petition requirements set out in this statute are sufficient to insure valid petitions and therefore compliance with other statutory enactments relating to petitions is not necessary. See Op. Att'y Gen. 37 (1990) and K.S.A. 19-27a03. Note that any unplatted contiguous land under one ownership which exceeds ten acres may not be included in a lateral sewer district without the consent of the owner. See K.S.A. 19-27a02(k).

Sewer districts may also be formed by a board of county commissioners if the secretary of health and environment or the local health officer certifies that unsanitary conditions exist or are expected to develop and may be alleviated or prevented if sewers are installed. See K.S.A. 19-27a03(a). The attorney general has said, in Op. Att'y Gen. 115 (1988), that a county lacks jurisdiction to consider formation of a sewer district absent a petition or certification by the state or local health officer.

A preliminary survey and plan must be prepared prior to the creation of any sewer district. Costs of the preliminary survey are assessed against those petitioning for the creation of a sewer district. The board of county commissioners also may form a sewer district solely for the purpose of making a preliminary survey. See K.S.A. 19-27a04.

Township sewer districts may be formed under K.S.A. 80-2001 *et seq.* The township board of any township having a public water supply has the power to create a sewage district by passage of a resolution and publication of this resolution in the official county newspaper. Owners of 51% of the land may block the establishment of the district by filing a protest petition. See K.S.A. 80-2003. Plans for the sewage system must be approved by the secretary of health and environment. See K.S.A. 80-2004(b). K.S.A. 80-2002 provides sewer districts are a "body corporate." The court has held that a township sewer district is a quasi-municipal corporation, a subdivision of a township and has only such power as conferred upon it by statute. See *Paul v. Topeka Township Sewage District*, 199 Kan. 394, 399, 430 P.2d 228 (1967). The court stated that a sewer district's boundaries could only be expanded as provided by law, not pursuant to an alleged contract, and that a tax assessment resolution erroneously containing additional land did not supersede the resolution creating the district's boundaries.

§13.29 2. *Governing Body-Set By Law*

The board of county commissioners acts as the governing body of county sewer districts. See K.S.A. 19-27a01(a). The township board acts as the governing body of township sewer districts. See K.S.A. 80-2002.

§13.30 3. *Scope of Powers*

County sewer districts may exercise broad powers listed in K.S.A. 19-27a02. which include, among others, the power to sue and be sued; enter into contracts; exercise the powers of eminent domain; and establish a system of fines and civil penalties for industrial users. Note such sewer districts may exercise home rule powers granted to counties by statute regarding the governing and transaction of business of sewer districts. See K.S.A. 19-27a02(i).

The governing body also has the power to levy annually a special maintenance tax and a tax to offset abnormal delinquencies in the payment of special assessments under K.S.A. 19-27a23; establish a schedule of user charges under K.S.A. 19-27a09; impose special assessments under K.S.A. 19-27a07; and issue general obligation bonds of the county for sewage treatment disposal works and related structures with the costs paid by special assessments under K.S.A. 19-27al2. Revenue bonds may be issued for sewer districts in Johnson county. See K.S.A. 19-27a22. The Attorney General has opined that sewer districts are subject to the Kansas Budget law in Op. Att'y Gen. 34 (1984).

Public letting of construction contracts over $1,000 is required by K.S.A. 19-27a19. A unique feature of the law requires a second public hearing if the governing body of a sewer district determines at any time prior to letting contracts for construction that the costs of an improvement project will exceed more than 10% of the initial estimated cost. The governing body, after the second hearing, may stop work and dissolve the district if it deems this necessary. Costs incurred up to that point may be assessed against the property within the district. See K.S.A. 19-27a06.

Special assessment costs for any sewer improvements including treatment plants may be assessed on the basis of square feet, by the assessed value of the property, by a combination of these methods or by any other reasonable method. K.S.A. 19-27a07.

General powers of township sewer districts are listed in K.S.A. 80-2002 and 80-2010 and are notably less extensive than under the county law.

The court has stated that an action challenging the corporate existence of a sewer district cannot be maintained under what is now K.S.A. 60-907(a) since this section can be used only to challenge an illegal tax, charge or assessment, collection or proceeding to enforce the same. See *Bishop v. Sewer District No. 1*, 184 Kan. 376, 336 P.2d 815 (1959). See also *Dutoit v. Board of Johnson County Comm'rs*, 233 Kan. 995, 667 P.2d 879 (1983). An injunction may be sought, however, when the allegation is made that the county clerk illegally added land to assessment rolls. See *Nickelson v. Board of Lyon County Commissioners*, 209 Kan. 53, 57, 495 P.2d 1015 (1972).

The court in *Dutoit* held that property owners within a sewer district alleging excessive special assessments stated a cause of action alleging a wrongful deprivation or taking of property without due process under 42 USCA § 1983. The court, in *Allison v. Board of Johnson County Comm'rs*, 241 Kan. 266, 737 P.2d 6 (1987), held that the assessment of attorney fees must be against the county rather than the sewer districts involved.

H. Municipal Energy Agencies

K.S.A. 12-885 *et seq.*

§13.31 1. *Background and Organization*

The Kansas Municipal Energy Agency (KMEA), with headquarters in Mission, Kansas, represents 32 Kansas cities. The KMEA was organized under a law which permits any two or more cities or board of public utilities operating an electric generating system in 1976 to join together to form a municipal energy agency. Such agencies are created for the purpose of planning and developing electric supply transmission and distribution facilities and securing an adequate, economical and reliable supply of electricity. These agencies are designated by statute as quasi-municipal corporations with the curious statutory qualifier that these agencies are not relieved of liability for tortious actions under this law. See K.S.A. 12-885 and 12-886(b) and (d). The Attorney General has clarified that such agencies are covered by the Kansas Tort Claims Act in Op. Att'y Gen. 177 (1986).

The formation process is initiated by cities which must adopt resolutions stating their intent to form an agency. The resolutions are subject to a protest petition of 10% of those electors of those cities who voted in the last election, and if a petition is filed, voters must approve the creation of the agency. Once the resolutions become effective, the cities may enter into an agreement specifying among other things the cities involved, the duration of the agreement, and the number and method of selection of a board of directors. An agreement must be submitted to the Attorney General for approval and if given, then must be certified by the secretary of state and a copy thereof filed with the Kansas Corporation Commission. As a final step, the Secretary of State must file a copy of the agreement with the register of deeds of each county, whereupon the municipal energy agency becomes a quasi-municipal corporation. See K.S.A. 12-887 and 12-888.

Any city by the passage of an ordinance may become a member of an established municipal energy agency if the agency board of directors approve. When this occurs, the original agreement must be revised and then approved by the Attorney General. See K.S.A. 12-8,108.

§13.32 2. *Governing Body-Appointed*

An agency is governed by a board of directors of not less than seven persons. Directors may be selected as agreed upon but a majority must be members of governing bodies of participating cities or be directly selected by and be subject to removal by the governing bodies. Directors select a president, vice-president, secretary and treasurer from their membership. The latter two offices may be combined and the officeholders need not be members of the board. The board may employ a general manager and other personnel as necessary. See K.S.A. 12-891 and 12-892.

§13.33 3. *Scope of Powers*

Varied powers are granted to these agencies, including the ability to enter into franchises, contracts and agreements with any public or private person for the planning, development, construction or operation of any facility for the production or transmission of electricity or other energy or for any other service. Agencies have the power to contract for the purchase, sale, transmission or exchange of power with any utility within or without the state and may participate in any project within or without the state including the development of solar and wind facilities.

Member cities may enter into contracts not exceeding 40 years for the planning or study of any project, provision of services or purchase of electricity or other energy from the agency under K.S.A. 12-8,109 but are otherwise specifically made subject to the Kansas cash basis, budget and auditing laws. Agencies may acquire, hold, lease and dispose of property; acquire property by eminent domain, other than the property of other electric utilities; sue and be sued; and make, amend and repeal bylaws. Municipal energy agencies are specifically prohibited from contracting, acquiring or operating a coal gasification facility or coal slurry pipeline. In addition, municipal energy agencies are made subject to the jurisdiction of the Kansas Corporation Commission. See K.S.A. 12-895 and 12-896.

Municipal energy agencies may issue revenue bonds and interim financing receipts or bond anticipation notes, set rates or charges for electric power, and invest moneys not required for immediate use. Also these agencies may make payments in lieu of taxes to the taxing authority in which their property is situated. Municipal energy agencies specifically are prohibited from levying taxes or issuing general obligation bonds. See K.S.A. 12-898 and 12-899.

III. CONSERVATION AND MANAGEMENT OF NATURAL RESOURCES

§13.34 A. INTRODUCTION

This section describes local government entities that are involved in the management, control, conservation or productive use of natural resources. Three of these local entities are involved in the control of flooding, water runoff and soil erosion. One local entity's purpose is to conserve groundwater, and another's mission is to provide water for irrigation. Included in this section are conservation districts; drainage districts; watershed districts; groundwater management districts and irrigation districts. The section ends with a description of a new public entity called a water assurance district whose basic purpose is to provide a vehicle for municipal and industrial water users to band together to protect their water rights.

B. Conservation Districts

K.S.A. 2-1901 *et seq.*

§13.35 1. *Background and Organization*

There are 105 conservation districts in Kansas organized along county lines. The first district was organized in 1938, a year after the passage of the enabling act. This law was patterned

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after a model law sponsored by the U.S. Department of Agriculture. The final district was formed in 1954. The primary function of conservation districts is to develop comprehensive soil conservation plans for landowners with compliance being voluntary. Districts are formed under K.S.A. 2-1901 *et seq.*

Districts are described by statute as governmental subdivisions of the state and as public bodies corporate and politic. The Attorney General in Op. Att'y Gen. 31 (1987) concluded that district supervisors and employees were considered state rather than municipal employees for purposes of the Kansas Tort Claim Act.

Procedures for the formation of districts are initiated when 25 or more "occupiers" defined as owners or operators of farm land within a specified area, petition the state conservation commission for formation of a district. The state conservation commission must hold a public hearing and afterward cause an election to be held within the proposed district on the formation question. If a majority of landowners or operators within a proposed district vote in favor of the proposition, the state conservation commission then must further determine if the proposed district is "administratively practicable and feasible." If this determination is made, an application for incorporation is filed with the secretary of state. See K.S.A. 2-1905. Expansion of districts requires a petition meeting the same requirements as one for formation unless fewer than 25 occupiers of land are in the area to be added, in which case two-thirds of the occupiers must sign the petition without the need for an election. Dissolution must be approved by a majority of the landowners or operators within the district once a petition signed by 10% of the occupiers of land so request. See K.S.A. 2-1905(h) and 2-1916.

§13.36 2. *Governing Body-Elected*

A five-member board of supervisors, each of whom must be land occupiers, is elected for three-year staggered terms at annual meetings held in January or February in each district. The board must designate a chairperson and may hire a secretary, technical experts or other employees as necessary. Board supervisors receive no pay but are entitled to expenses. See K.S.A. 2-1907.

§13.37 3. *Scope of Powers*

Districts are granted powers to develop plans concerning soil erosion and flood damage prevention and water quality; to conduct surveys, research and disseminate information; and to conduct demonstration and prevention projects on state-owned land or other land within the district. Districts may make available agricultural and engineering equipment, fertilizer and seed that will assist in the conservation of soil resources. Districts also may purchase or lease any soil conservation or flood prevention project constructed by the United States or the state. Districts may sue and be sued; make contracts; adopt rules and regulations; require landowners or operators to enter into agreements or covenants as to the permanent use of lands as a condition for extending any benefit under this act; and buy, sell, hold and lease property. See K.S.A. 2-1908.

Districts may receive gifts, donations and contributions from any person and may set charges for various services provided by the district. Counties are authorized to furnish not more than $10,000 per year out of their general fund to districts for operating expenses or may levy an annual property tax sufficient to generate this same amount for a district. Sedgwick and Johnson counties may levy not to exceed 2 mills or a tax that would raise $55,000, whichever is less. See K.S.A. 2-1907b and 2-1908. Districts are eligible for grants from the state conservation commission and are authorized to accept and expend moneys for the purchase of surface water rights authorized under legislation enacted in 1988 and administered by the state conservation commission. See K.S.A. 2-1919.

The operation of a soil conservation district was discussed in *Burnison v. Fry*, 199 Kan. 277, 428 P.2d 809 (1967) but the district was not a party to the lawsuit.

C. Drainage Districts

K.S.A. 24-401 *et seq.*
K.S.A. 24-501 *et seq.*
K.S.A. 24-601 *et seq.*
K.S.A. 24-656 *et seq.*

§13.38 1. *Background and Organization*

A devastating flood in the Kansas River Valley in 1903 prompted the passage in 1905 of the first drainage district law. At least three other drainage district laws subsequently have been enacted. The main purpose of drainage districts is to provide flood protection and proper drainage for areas susceptible to these problems.

The formation and operation of drainage districts has generated more case law than for any other special district government treated in this chapter. Many of the legal principles in the discussion that follows have application to other political subdivisions treated in this work. For example, in *Dougan v. Rossville Drainage District*, 243 Kan. 315, 757 P.2d 272 (1988), the court held that drainage districts were subject to the Kansas Tort Claims Act. The court held that the discretionary function immunity provision of the Kansas act did not excuse a legal duty or preclude liability of the district as an upper proprietor of land. The court said the district gathered and diverted water from its natural course, deposited the water into a natural watercourse which caused the watercourse's capacity to be exceeded with the result being serious and significant damage to the lower property owner.

Drainage district laws also have withstood various constitutional challenges including that the laws constitute an unlawful delegation of legislative power. See *Railroad Co. v. Leavenworth County*, 89 K. 72, 78, 130 P. 855 (1913) and *State, ex rel, v. Drainage District No. 1*, 123 Kan. 191, 254 P. 372 (1927).

A drainage district has been described as a body politic and corporate, a subdivision of the state and a state institution in *State, ex rel v. Baker*, 156 Kan 439, 134 P.2d 386 (1943) as an administrative board in *Drainage District v. Railway Co.*, 99 Kan. 188, 161 P. 937 (1916); as an arm of the state to exercise its police power in *Wolf v. Second Drainage District*, 179 Kan. 655, 298 P.2d 305 (1956); as a quasi-public corporation in *Jefferson County v. Drainage District*, 97 Kan. 302, 155 P. 54 (1916); and

as a quasi-municipal corporation in *Roby v. Drainage District*, 77 Kan. 754, 759, 95 P. 399 (1908).

The court has, likewise, held that a drainage district, like a county, is a quasi-municipal corporation and that the power to create both municipal and quasi-municipal corporations is a legislative power and its exercise is a legislative function. See *State, ex rel v. Drainage District*, 123 Kan. 191, 192, 254 P. 372 (1927) citing *Callen v. Junction City*, 43 Kan. 627, 23 P. 652 (1890). Likewise, a decision by the board of county commissioners to detach territory under G.S. 1947, Supp. 24-498 from a drainage district was said to be a legislative decision and one that a drainage district may not appeal absent a statute granting a right of appeal. Further, findings made by a board of county commissioners of facts contained in a petition for the formation of a district may not be disputed by anyone. See *Wolf v. Second Drainage District*, 179 Kan. 655, 667, 298 P.2d 305 (1956). Further, facts found by a district court in the formation process may not be disputed unless fraud or misconduct is shown. See *State, ex rel v. Drainage Dist. No. 3*, 168 Kan. 569, 251 P.2d 161 (1950).

Procedures for the formation of drainage districts under the four general laws vary but all are keyed upon the drawing of a petition by landowners requesting the formation of a district. Under K.S.A. 24-401 *et seq.*, when a petition is presented to the board of county commissioners signed by either 2/5 of the taxpayers residing in the proposed district or by owners of 51% of the land, the board of county commissioners must hold a public hearing and then may declare the incorporation of the district.

See K.S.A. 24-403, 24-404 and 24-405. A variation of this procedure allows for the presentation to the county commission of a petition signed by not less than 3/5 of the owners of land if nonresidents and if there are not five resident taxpayers within the proposed district. See K.S.A. 24-458. Lands within a city may be included but consent of the governing body is required if the city has an assessed valuation of $150 million. See K.S.A. 24-402.

Under K.S.A. 24-501 *et seq.*, at least 2/5 of the landowners within a proposed district must petition the board of county commissioners. After a hearing, if the petition is found sufficient, it is forwarded to the secretary of state. The governor then has the responsibility to declare the formation of the district. See K.S.A. 24-502 to 24-504.

A third act, K.S.A. 24-601 *et seq.*, requires that a majority of landowners of swamp or over-flowed lands comprising at least 160 acres petition the district court for a declaration as a drainage district. Finally, a fourth act, K.S.A. 24-656 *et seq.*, establishes procedures for the incorporation of districts in two or more counties. A petition signed by 2/5 of the landowners must be presented to the secretary of state. If the proposed district contains a city, a vote must be held within the city on the issue of inclusion in the district in conjunction with the submission of the petition to the secretary of state. If approved by city voters, the election described later need not be held within the city. An investigation must be conducted by the chief engineer of the division of water resources, and an election must be held on the question by landowners within the district. If approved at the election, the secretary of state then declares the incorporation of the district.

§13.39 2. *Governing Body-Elected*

Under the first act, a three-member board of directors is elected for four-year terms. The directors then select a president, secretary and treasurer and also designate one member to serve as vice-president. The county treasurer may be designated as the ex officio treasurer of districts for the purpose of collecting and disbursing taxes and assessments. See K.S.A. 24-412. Under the second act, the board consists of one director elected from each county involved, and a director elected at large if there is an even number of counties, all to four-year terms. Directors then select a president, secretary and treasurer. See K.S.A. 24-506.

Under the third act, a five-member board of supervisors is elected to serve three-year staggered terms. A majority of the supervisors must be resident owners of the land within the district. See K.S.A. 24-605. Under the fourth act, a three-member board of directors is selected in the same manner as under the first procedure described above. The directors select a president, vice-president, secretary and treasurer although the office of secretary and treasurer may be combined. See K.S.A. 24-662.

Land ownership is typically required to vote in drainage district elections. In *The State v. Monahan*, 72 Kan. 492, 84 P. 130 (1905), the court held that Section 7 of the Bill of Rights of the Kansas Constitution which prohibits imposition of a property qualification for exercising the right to vote only applies to those offices and elections contemplated by the constitution not to drainage district elections. See, for example, K.S.A. 24-410 which defines "qualified elector" to mean "any qualified elector of the district and any person eighteen (18) years of age or over owning land within the district, although not a resident therein, or owning tangible personal property within the district and having residence within such district." See K.S.A. 24-605 which grants landowners one vote for each acre of land owned in the district. See K.S.A. 24-507, where only persons 18 years of age or older who are freeholder residents may vote and K.S.A. 24-656 which defines "qualified elector" to mean any person 18 years of age or over who owns land within the district. The Attorney General, in Op. Att'y Gen. 72 (1987), said that a property ownership qualification for drainage district elections was permitted.

3. *Scope of Powers*

§13.40 a. Overview

Drainage districts have a broad range of powers. For example, K.S.A. 24-407 provides that drainage districts, subject to the superior jurisdiction of the United States over navigable waters, have exclusive control of the beds, channels, banks and of all lands within the district between banks at high water mark the title to which is vested in the state. Note the Attorney General has said that drainage districts may prohibit or limit discharges into a drainage ditch that prevent its proper maintenance. See Op. Att'y Gen. 32 (1990). The statute lists 16 separate divisions of powers a district may exercise which include among many others the ability to widen, deepen, regulate and maintain the

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channels of all watercourses within the district; construct and maintain detention dams, reservoirs, ditches, drains, sewers and canals; regulate the height of all bridges and the number and height of piers; regulate the height of railroads and highways at points where their right-of-way intersects with levees; sue and be sued; buy, sell and hold real estate; and exercise the power of eminent domain.

Districts also may levy taxes, impose special assessments and issue general obligation bonds. See K.S.A. 24-407. Note K.S.A. 24-136 permits drainage districts to establish a special emergency fund to pay costs of emergencies either due to current injuries or because of imminent danger and to levy a special emergency tax or to transfer surplus moneys from the general fund. See Op. Att'y Gen. 159 (1987) discussing these powers. Further, K.S.A. 24-434 states the legislative intent is that the act shall be liberally construed to protect lands and to promote the public health.

Powers of drainage districts created under the other general laws of the state are similar. Districts organized under K.S.A. 24-656 *et seq.* exercise identical powers as those districts formed under K.S.A. 24-401 *et seq.*

The Kansas Supreme Court has held that there is no requirement that drainage districts build or maintain bridges where its ditches cross public highways and that a board of county commissioners has no right to recover the county's expenses for constructing such bridges. See *Jefferson County v. Drainage District*, 97 Kan. 302, 304, 155 P. 54 (1916). Drainage districts may condemn county road beds. See *Keimig v. Drainage District*, 183 Kan. 12, 16, 325 P.2d 316 (1958). Likewise, a district may widen, deepen and repair a ditch within its boundaries originally constructed by a township even though the township law provides for making needed repairs. See *State, ex rel v. North Topeka Drainage District*, 133 Kan. 274, 299 P. 637 (1931). The court has also held that cities and drainage districts may enter into contracts for joint sewer and drainage projects. See *Alber v. Kansas City*, 138 Kan. 184, 25 P.2d 364 (1933).

A district may enter into contracts with landowners outside the district to change the channels of watercourses and relocate and establish new channels and a court will not interfere unless bad faith or fraud is shown. See *Drainage District v. Drainage District*, 104 Kan. 233, 235, 178 P. 433 (1919). Private drainage systems within a district are subject to control of the board of supervisors of the drainage district. See *Schrag v. Blaze Fork Drainage District*, 119 Kan. 169, 237 P. 1047 (1925).

§13.41 b. Limits on District Powers

Powers of drainage districts are limited by K.S.A. 82a-301 *et seq.* which requires the written consent or permit of the chief engineer of the division of water resources before any dam or other water obstruction may be constructed, or any change may be made in an existing dam or other water obstruction or any change made in the course, current or cross section of any stream. In *State, ex rel v. Dolese Bros Co*, 151 Kan. 801, 814, 102 P.2d 95 (1940), the court recognized that drainage districts no longer enjoyed supremacy in the conduct of drainage powers within their boundaries. A year later, the court in *State, ex rel v. Stonehouse Drainage Dist.*, 154 Kan. 422, 118 P.2d 587 (1941), held that approval of the chief engineer of the division of water resources was a condition precedent to the legality of constructing and altering certain drainage and flood control projects. The court has also held that a drainage district may not operate a sand plant for profit despite a statutory authorization. The court reasoned that it was better that a "statute be construed to have no useful purpose than to construe it to create a power directly opposed to our definite state policy, as provided in our constitution and elsewhere, that the state, or its municipal subdivisions, shall not engage in purely commercial enterprises." See *State, ex rel v. Kaw Valley Drainage District*, 126 Kan. 43, 50, 267 P. 31 (1928).

Drainage districts must exercise their powers in a reasonable manner and may not act in an arbitrary, unreasonable or confiscatory manner. A district may order a railroad bridge removed since the security of people against the danger of floods is more important than interstate commerce if the bridge constitutes such an obstruction as to cause a river to overflow and endanger lives. See *Kaw Valley Drainage District v. Railway Co.*, 99 Kan. 188, 161 P. 937 (1916). A drainage district, however, may not build a dam or dike across a natural watercourse at a place where the water enters the district and divert the water onto public and private property in such a way as to maintain a public or private nuisance. See *State, ex rel v. Riverside Drainage District*, 123 Kan. 46, 54, 254 P. 366 (1927).

§13.42 c. Financial Matters

Drainage districts absent express statutory authority may not levy special assessments against the county for improvements on the basis of county roads and highways since the roads and highways do not constitute real estate owned by the county due to the fact that adjoining landowners own the fee and the county has only a public easement. See *Jefferson County Comm., v. Stonehouse Drainage District*, 127 Kan. 833, 837-8, 275 P. 191 (1929).

Costs of certain improvements may be paid out of the general fund of a drainage district and there is no requirement that the improvement be of a direct benefit to all of the taxpayers in the district since "the district is a unit for the interests of all, and there is nothing unfair about the fact that improvements are sometimes of a greater benefit to one than to another." See *State, ex rel v. North Topeka Drainage District*, 133 Kan. 274, 284, 299 P. 637 (1931).

Paying attorney fees and engineering fees out of the special improvement fund instead of the general fund was found to be void by the court since the former fund can be used only to pay for special improvements which benefit particular property. The payment constituted a breach of faithful duty by the treasurer of the district and rendered him and his bondsman liable. See *State, ex rel v. Baker*, 156 Kan. 439, 442, 448, 134 P.2d 386 (1943). See also *State, ex rel v. Baker*, 160 Kan. 180, 160 P.2d 264 (1945).

The enactment of the cash basis, budget and tax levy limitation law did not repeal or render inoperative the ability of a drainage district to make special assessments according to the court in *McCall v. Goode*, 168 Kan. 361, 363, 212 P.2d 209 (1949).

A drainage district refusing to pay a lawful debt may be compelled to levy a tax for purposes of paying the debt. See

Fidelity Nat'l Bank and Trust Co. v. Morris, 127 Kan. 283, 286, 273 P. 425 (1929). A drainage district trying to collect a debt from a county for work performed for removing the approach to one of the county's bridges was done in a proprietary capacity and as a result the district had to submit the claim within the two-year time period required by K.S.A. 19-308. See *Kaw Valley Drainage District v. Wyandotte County*, 117 Kan. 634, 232 P. 1056 (1925).

§13.43 d. Condemnation Proceedings

A plaintiff gas company was entitled to recover for the cost of lowering or relocating its pipeline as well as for the value of the land appropriated in *Cities Service Gas Company v. Riverside Drainage Dist.*, 137 Kan. 410, 20 P.2d 520 (1933). An owner of a milldam was entitled to compensation for its destruction by a drainage district in *Piazzek v. Drainage District*, 119 Kan. 119, 237 P. 1059 (1925). An owner of land is not entitled to compensation for the erosion of land due to drainage district improvements unless the district intended to widen the waterway by erosion. See *Sester v. Belvue Drainage District*, 162 Kan. 1, 4, 173 P.2d 619 (1946).

D. Watershed Districts

K.S.A. 24-1201 *et seq.*

§13.44 1. *Background and Organization*

Interest in the formation of a new type of special district for flood control increased after a major flood in eastern Kansas in 1951. Watershed districts were perceived as meeting a need that could not be sufficiently addressed by the major dams, reservoirs and channelization projects of the U.S. Corps of Engineers, by the reservoirs and reclamation projects of the U.S. Bureau of Reclamation, by the land treatment projects on individual farms carried out by the soil conservation service and local conservation districts, or by existing drainage districts. The idea was to fill a middle ground between the big dam proponents and the small dam or conservation proponents. See Larson, "Some Legal Aspects of the Kansas Watershed District Act," 7 Kan L. Rev. 376 (1959).

Watershed districts incorporate many of the same goals of other special district governments dealing with water issues. These goals include the alleviation of erosion, the control of floods and the reduction of stream sedimentation through the construction of works of improvement, primarily dams. Reservoirs created by the watershed dams may serve as storage of water for municipal, domestic, agricultural and industrial uses and for recreation and for fish and wildlife enhancement, if special storage allocations are designated and funded. See K.S.A. 24-1221 which provides that the watershed district act shall be supplemental to existing laws relating to drainage districts, flood control, irrigation, soil conservation and related matters and see Windscheffel, "Procedure in Formulating Watershed Districts," 36 J.B.A.K. 13 (1967). The unique feature of watershed district legislation when enacted in 1953 was that it did not restrict these districts by county boundaries as did laws at that time permitting the formation of drainage districts and soil conservation districts. See 7 K.L.R. 376 noted above.

Any area comprising a watershed, or two or more adjoining watersheds, which are subject to erosion, floodwater or sediment damage or which would otherwise benefit from the construction of facilities for the conservation, development, utilization or disposal of water, may be incorporated as a watershed district. A "watershed" is defined as all of the area within the state which drains toward a selected point on any water course, stream, lake or depression. See K.S.A. 24-1202.

Initially, a petition signed by 20% of the landowners representing 25% of the acreage within the proposed district must be filed with the secretary of state. See K.S.A. 24-1203. Any part or all of an incorporated city may be included in the petition as part of the proposed district after approval by the qualified voters of that city. See K.S.A. 24-1205. Other major stages in the organization of a district includes: approval of the petition by the chief engineer of the division of water resources under K.S.A. 24-1206; selection of a local board of directors or steering committee which arranges for a special election to allow voters in the proposed district to approve or disapprove its formation; and issuance, after voter approval, of a certificate of incorporation by the secretary of state. See K.S.A. 24-1207.

After incorporation of the district, the board of directors is required to submit to the chief engineer a general plan including cost estimates for proposed projects, and information on the geographic areas that will benefit from these works. If the general plan is approved by the chief engineer, a public hearing is held to discuss the plan and the method of financing. The plan and a resolution for financing must be adopted by the board, and finally approved by the chief engineer. See K.S.A. 24-1213 and 24-1214. Project construction plans also must be approved by the chief engineer. See K.S.A. 24-1216.

A watershed district may be dissolved after four years by a special election called by a majority of the board of directors if the district has not adopted a plan, has not constructed or contracted for works of improvement, or has not incurred obligations to maintain any works of improvement, or if a petition requesting an election on this issue is signed by 20% of the district landowners. A majority of the board or of the district landowners also can petition the chief engineer for a hearing on dissolution of part of the district. Certificates of dissolution are issued by the secretary of state. The chief engineer has the authority to transfer territory from one district to another or to authorize the expansion of a district's territory. See K.S.A. 24-1228 and 24-1229.

§13.45 2. *Governing Body-Elected*

Watershed districts are governed by a board of directors composed of between three and 15 qualified district voters. The initial board is elected by the steering committee responsible for setting up the district, from among its numbers. At least one director must be chosen from each subwatershed within the district, if the district is subdivided into subwatersheds in the petition for organization. Directors serve for three-year staggered terms and elections are held at annual meetings. See K.S.A. 24-1210.

Two categories of persons may vote in watershed elections: Any registered voter in the district and any person eighteen years

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of age or older who owns land within the district whether or not registered to vote. See K.S.A. 24-1202(j) and Op. Att'y Gen. 51 (1988). Absentee ballots and voting by proxy are not allowed according to Op. Att'y Gen. 86 (1986).

At the annual meeting required by K.S.A. 24-1211, a report must be prepared on the financial condition and activities of the district. The board is required to separately evaluate each project and determine whether the project is in the public interest. Op. Att'y Gen. 20 (1988).

The Kansas Supreme Court has held that the act makes no provision for appeal of decisions of the watershed board of directors. Hence, the only relief available is from illegal, arbitrary and unreasonable acts of the district by the use of an extraordinary remedy such as mandamus, quo warranto or injunction. See *Huser v. Duck Creek Watershed Dist. No. 59*, 234 Kan. 1, 4, 668 P.2d 172 (1983) in which plaintiff landowners sought a writ of mandamus and an injunction concerning the construction of a flood control dam and lake on their property. Plaintiffs argued that the dam and lake materially departed from the district's plan, that grasses more suitable to livestock on the dam or lake area should have been planted, that a fence installed to protect the dam should be moved and that they should have a right to use the lake water for irrigation. The court denied all claims. A concurring opinion noted that all landowners would be well advised to require watershed districts to pay them full compensation for the acquisition of easements for future flood control projects and that promises or inducements for granting the easements by the district such as the use of the water for irrigation should be reduced to writing. (234 Kan. at 12.)

§13.46 3. *Scope of Powers*

Watershed districts are described as bodies both politic and corporate, and have the power, to purchase, hold, sell and convey land and personal property; to acquire personal property by gift or purchase; and to acquire land or interests in land by gift, purchase, exchange or eminent domain. See K.S.A. 24-1209.

See *Roberts v. Upper Verdigris Watershed*, 193 Kan. 151, 392 P.2d 914 (1964), where the court held that an eminent domain commissioners' report cannot be varied for the purpose of reducing damages by evidence of an intended more limited use.

K.S.A. 82a-405 *et seq.* authorizes a property tax exemption for the remaining tract as an incentive for gifts of land by landowners to districts. The Attorney General has said that a district acquiring easements by donation may not expend public moneys to reimburse a landowner for reasonable costs associated in defending a claimed deduction for the donated easements. See Op. Att'y Gen. 117 (1986). The Attorney General, likewise, has said that a watershed district may sell or transfer watershed district property to a governmental entity at little or no cost for recreational purposes. See Op. Att'y Gen. 122 (1987).

Districts may operate or lease district properties and facilities; and contract with persons, corporations and other governmental units in Kansas or adjacent states. Districts participating in federal cost sharing or grant programs are required to restore wildlife habitats displaced as the result of construction, improvements or operations. However, they may not use eminent domain to acquire land for this purpose. See K.S.A. 24-1209.

Watershed districts may levy a general property tax of not to exceed two mills for administrative, operational and construction costs or up to four mills subject to a protest petition and election procedure. Further, districts may establish structure maintenance funds. See K.S.A. 24-1219. Districts may levy special assessments and may establish reasonable fees, charges and rentals for the use of district properties and facilities. A watershed district may issue no-fund warrants in an amount equal to two mills of the district's total taxable valuation to pay for initial organizational, engineering, legal and administrative expenses. In addition, a district may issue bonds in an amount up to 10% of the district's valuation, if voters approve. See K.S.A. 24-1220 and 24-1215. Bonds may be repaid using funds from either a general tax levy or special assessments. A watershed district may apply to the stste board of tax appeals for authority to issue no-fund warrants if unanticipated and unforeseen expenses occur. See Op. Att'y Gen. 134 (1987).

The court, in *Barten v. Turkey Creek Watershed Joint District No. 32*, 200 Kan. 489, 438 P.2d 732 (1968), noted that watershed districts can levy taxes only as authorized by statute citing the rule that municipal corporations have only such powers as expressly conferred. The court concluded that two tax statutes were in harmony and authorized the annual levy of a general tax of not to exceed two mills to create a general fund for the payment of engineering, legal, clerical, land and interests in land, installation, maintenance, operation and other administrative expenses. See K.S.A. 24-1214 which authorizes a general levy to pay for projects and K.S.A. 24-2419 which now authorizes a mill levy not to exceed four mills (then two mills) for a general fund. The court also concluded that a watershed work plan agreement was tantamount to a letter of intent to proceed with the district's plan and as such, does not amount to a commitment in violation of the cash basis and budget laws (200 Kan. at 506-7).

The Attorney General in Op. Att'y Gen. 99 (1987) stated that a watershed district could improve and maintain a road to a district dam but only if the responsibility for improving and maintaining the road did not fall upon another governmental entity and the road provided a direct and exclusive benefit to the district.

E. Groundwater Management Districts

K.S.A. 82a-1020 *et seq.*

§13.47 1. *Background and Organization*

Groundwater management districts are relatively recent special district governments designed to give some degree of local control over groundwater depletion problems existing in Kansas. See Peck, "Kansas Groundwater Management Districts," 29 Kan. L. Rev. 51 (1980).

The legislative declaration contained in K.S.A. 82a-1020 lists various reasons for the creation of these districts, including the proper management and conservation of groundwater resources, the prevention of economic deterioration, the stabilization of agriculture and the securing of the benefits of the

state's fertile soil and favorable location with respect to national and international markets. See K.S.A. 82a-1020 and Duncan, "High Noon on the Ogallala Aquifer," 27 Washburn L.J. 16 (1987) discussing the function of groundwater management districts in an overall discussion about the rapidly diminishing water resources in the Ogalla la Aquifer.

The formation process begins with the filing of a declaration of interest to form a district signed by at least 15 eligible voters of a district. The term "eligible voter" is the subject of a lengthy definition in K.S.A. 82a-1021(e). Generally, an eligible voter means any person 18 years of age or older or any public or private corporation who owns or has an interest in 40 contiguous acres of land outside a city or a person or corporation that withdraws and uses one acre-foot or more of groundwater per year.

The Attorney General, in Op. Att'y Gen. 59 (1985), provided a general discussion of the term "eligible voter." Further, in Op. Att'y Gen. 48 (1985), the Attorney General stated districts could require voters to complete affidavits attesting to their eligibility to vote and these affidavits would be public records subject to disclosure under the Kansas Open Records Act.

The first seven signatures of the declaration of interest constitute the steering committee of the proposed district with the first person signing being designated the chairperson. The declaration must be filed with the chief engineer of the division of water resources. The purpose of the steering committee is to work with the chief engineer in designating the specific lands to be included within the district. See K.S.A. 82a-1022.

The second step in the formation process is for the steering committee to circulate a petition which must be signed by 50 eligible voters or 50% of the eligible voters, whichever is smaller. The petition must be reviewed for approval by the secretary of state and the chief engineer. See K.S.A. 82a-1023 and 82a-1024. If approved, the steering committee is responsible for holding an election in the proposed district on the question of whether the district should be formed. If a majority votes in favor of the proposition, then the secretary of state is required to issue a certificate of incorporation for the district.

Districts may be dissolved at an election initiated either by the board of directors of a district or by 20% of the eligible voters of the district under K.S.A. 82a-1034.

§13.48 2. *Governing Body-Elected*

The board of directors of a groundwater management district may range from three to 15 members but must be an uneven number. The directors serve for three-year staggered terms. They receive no pay, although they may be reimbursed for necessary expenses. See K.S.A. 82a-1028. Elections are held at annual meetings of the eligible voters. Each voter may cast as many votes as the number of directors to be elected. The candidates who receive the greatest number of votes relative to the number of positions being filled win.

The board of directors selects a president, vice-president, secretary and treasurer. If a district has only three directors the positions of secretary and the treasurer are combined. the board may employ any legal, engineering, technical or clerical services it deems necessary. See K.S.A. 82a-1027.

Districts are required to prepare and annually review a management program which sets out groundwater problems and measures to address these problems. The chief engineer of the division of water resources must approve groundwater management programs. See K.S.A. 82a-1029.

See Op. Att'y Gen. 17 (1991) for a discussion of how a groundwater management district should proceed when cancelling and rescheduling a meeting.

§13.49 3. *Scope of Powers*

Districts are considered bodies corporate and politic with the power to sue and be sued, purchase, sell and convey land, water rights and personal property; and exercise eminent domain. Districts may construct, operate and maintain works determined to be necessary for drainage, recharge, storage, distribution or importation of water and recommend to the chief engineer areas to be designated intensive groundwater use control areas requiring the limitation or closing of the area for any further appropriation of groundwater. This type of action may also be initiated by petition of eligible voters or directly by the chief engineer. The chief engineer may delegate enforcement of corrective control provisions to Groundwater Management District No. 4 or to any city located within or partially within the district. See K.S.A. 82a-1038. Districts may install meters, gauges or other measuring devices to determine the quantity of groundwater withdrawn and recommend rules and regulations necessary to implement policies of the district which, to be enforceable, must be adopted by the chief engineer. See K.S.A. 82a-1028.

Districts may levy a water user charge of up to 60 cents per acre-foot (325,851 gallons) of groundwater withdrawn; levy an annual land assessment of up to five cents per acre; levy special assessments; and issue no-fund warrants, as well as special and general improvement bonds. See K.S.A. 82a-1030 and 82a-1031. The issuance of no fund warrants is subject to a 20% protect petition. Bond issues paid by a general assessment must be approved by voters of the entire district and bonds paid by special assessments must be approved at an election involving those who will pay the assessment. See K.S.A. 82a-1031 and 82a-1032. See also Op. Att'y Gen. 58 (1985) wherein the Attorney General said that the term "water user" defined in K.S.A. 82a-1021(k) includes those persons who use one or more acre feet of water per year for domestic purposes. A groundwater management district may require an individual to show that his or her domestic use does not reach this amount in order to qualify for the exemption from user charges authorized by K.S.A. 82a-1030, and which apply to all water users, including domestic ones. The Attorney General went on to say that individuals who live within the limits of a city which is a water user are represented in the affairs of the district by the city, unless they themselves use one or more acre feet of water a year and so qualify as water users. The presumption, however, is one of nonuse.

F. Irrigation Districts

K.S.A. 42-357 *et seq.*

K.S.A. 42-701 *et seq.*

§13.50 1. *Background and Organization*

Irrigation districts may be formed to provide irrigation works for landowners within their boundaries, to improve crop production and otherwise benefit the land. Districts can be established under a 1891 law, K.S.A. 42-357 *et seq.*, which provides that the board of county commissioners may form a district comprised of contiguous lands upon receipt of a petition signed by at least 75% of the landowners within the area who are county residents. A supplemental law, K.S.A. 42-381 *et seq.*, provides for an identical petition procedure for the formation of irrigation districts comprising contiguous territory in two or more counties. The petition must be accompanied by maps describing proposed ditches or other works needed to obtain water for irrigation and project cost estimates. If, after a hearing, the board of county commissioners finds the proposed district will be beneficial, it may incorporate the district.

Under a second and more widely used law, K.S.A. 42-701 *et seq.*, enacted in 1941, proceedings for the formation of an irrigation district commence when a majority of the qualified owners of irrigable lands petition the chief engineer of the division of water resources. The term "qualified owners of irrigable lands" is defined as three or more persons who together own at least 60 acres which represent a majority of the irrigable lands in the proposed district. Land included in the proposed district need not be contiguous. See K.S.A. 42-701(a). If, after a public hearing, the chief engineer approves the proposed district, he must issue a permit allowing its establishment and outlining its authority and limitations in acquiring water for beneficial use. A certificate of incorporation is issued by the secretary of state. See K.S.A. 42-703 and 42-704.

An irrigation district can be dissolved by the chief engineer if a dissolution petition is signed by a majority of the members of the district's board of directors or by a majority of the qualified landowners of irrigable land in the district, and if the chief engineer finds that the district has no property, that the board of directors has not met for at least a year prior to presenting the petition, and that the district is not functioning and will probably continue to be inoperative. See K.S.A. 42-722.

A district's boundaries may be expanded or reduced if a proper petition signed by landowners of more than one-half or more of the lands is presented following a public hearing by the chief engineer. See K.S.A. 42-725 *et seq.*

In *State, ex rel v. Knapp*, 167 Kan. 546, 556, 207 P.2d 440 (1949), the court rejected an argument that K.S.A. 42-701 *et seq.* conferred legislative power on the chief engineer. The court also held that it was not a material defect that a district's boundaries include within it some nonirrigable land or land which is not presently irrigable.

§13.51 2. *Governing Body-Elected*

Districts established under K.S.A. 42-357 *et seq.*, are governed by a three-member board of irrigation commissioners who are elected annually. The initial board is appointed by the county commission. See K.S.A. 42-363.

Districts formed under K.S.A. 42-701 *et seq.* are governed by a three-member board of directors elected for three-year staggered terms on the first Tuesday in March. Directors are elected by district in irrigation districts containing more than 30,000 acres, otherwise, directors are elected at-large. Directors must be landowners in the district and reside in the county in which the district is located. Electors in districts of more than 30,000 acres follow procedures under the state's general election laws; districts with less than 30,000 acres may elect directors at special annual meetings. See K.S.A. 42-706.

The Attorney General, in Op. Att'y Gen. 92 (1983), said directors hold over in office after the expiration of their term until a successor is properly selected. Their authority includes the power to fill vacancies by appointment caused by the resignation of another director.

Voter qualifications were dealt with in Op. Att'y Gen. 100 (1980) which stated that a person by virtue of K.S.A. 42-706(h) must be a United States citizen; 18 years of age or older; a resident of the irrigation district and an owner of a presently taxable interest in irrigable land included in the district. See also K.S.A. 42-364 which requires landownership and residence before a person may vote.

§13.52 3. *Scope of Powers*

Irrigation districts formed under both acts may acquire rights-of-way and sites for irrigation works, easements, water rights and property by purchase, condemnation or otherwise. See K.S.A. 42-388g and 42-711. Districts under K.S.A. 42-711 may construct, maintain and operate dams, reservoirs, slurries, ditches and canals for irrigation and may extend main ditches into adjoining counties and through as many counties as necessary to obtain an adequate water supply.

Districts under K.S.A. 42-701 *et seq.* are authorized to contract with the federal government in the construction, operation and maintenance of works for the storage and distribution of water under federal reclamation laws and may borrow money from the United States or its agencies.

Districts under both acts may levy general property taxes and special assessments, issue revenue bonds and general obligation bonds subject to an election, and establish charges for water. See K.S.A. 42-388b and K.S.A. 42-705 and 42-712 to 42-721. Irrigation districts under K.S.A. 42-701 *et seq.* may issue negotiable evidences of debt designated as irrigation district warrants to finance preliminary expenses and levy not to exceed two mills to repay these warrants. See K.S.A. 42-709.

The court in *Mizer v. Kansas Bostwick Irrigation District*, 172 Kan. 157, 239 P.2d 370 (1951) rejected an argument that a statute which was repealed and replaced by an alternative procedure, which provided for an election on the issue of making proposed improvements was part of valuable vested property right and part of a contract between the state and the signers of petition seeking the creation of an irrigation district. The court stated that irrigation districts like other districts and municipalities are creatures of the legislature. "Once the corporation has gone through the organization stage, the property owners who signed

the original petition for its organization have no other or additional rights than those of the other property owners, residents and electors on the district." 172 Kan. at 169. The court went on to note that "the entire affair is a matter of the police power of the state and subject to the legislative will." 172 Kan. at 173. The court likewise rejected the argument that the procedure for court approval of the assessment plan constituted an unlawful delegation of nonjudicial powers on the court. The court held that its role was limited to determining whether the schedule of proposed assessments was manifestly disproportionate which was a proper judicial function. For further discussion of the term "manifestly disproportionate," see *Kansas-Bostiwick Irrigation District v. Mizer*, 176 Kan. 354, 270 P.2d 261 (1954).

G. Water Assurance Districts

K.S.A. 82a-1330 *et seq.*

§13.53 1. *Background and Organization*

Water assurance districts are authorized under legislation enacted in 1986. See K.S.A. 82a-1330 *et seq.* The basic purpose of the law is to allow municipal and industrial water users to join together in a public legal entity to promote and protect their water rights.

A water assurance district is made up of "eligible water right holders" defined to mean any entity holding a water right or permit to appropriate water from a stream or water from the alluvium from a stream downstream from an assurance reservoir for municipal or industrial purposes. See K.S.A. 82a-1331(e).

The process of forming a district begins when a petition is filed with the Secretary of State signed by eligible water right holders of water rights totaling more than 20% of the combined quantities of all eligible water rights within the proposed district. K.S.A. 82a-1335. The secretary of state is required to determine the sufficiency of the petition and to transmit a certified copy to the chief engineer under K.S.A. 82a-1337. The chief engineer is required to determine the eligible water rights of a proposed district under K.S.A. 82a-1333 and approve the petition if certain findings listed in K.S.A. 82a-1337 are made. An election is required to be held under the supervision of a steering committee. See K.S.A. 82a-1335 and 82a-1338. If eligible water right holders representing more than 5% of the combined quantities of water rights vote in favor of the district, the secretary of state is required to issue a certificate of incorporation under K.S.A. 82a-1338.

§13.54 2. *Governing Body-Elected*

The governing body of the district, which must be an odd number, is composed of not less than three nor more than nine members who serve three-year staggered terms. See K.S.A. 82a-1340. Board members are elected by members of the district. Officers include a president, vice-president, secretary and treasurer. The latter two offices are combined for boards with only three members. See K.S.A. 82a-1341. Quarterly and annual meetings are required. See K.S.A. 82a-1342.

§13.55 3. *Scope of Powers*

Water assurance districts are considered bodies politic and corporate with the powers, among others, to sue and be sued, purchase, hold, sell and convey land and personal property and to execute contracts, employ staff as needed, and impose charges. Charges that may be imposed are to pay costs to the state of acquiring assurance storage from the federal government, operating costs, and payment of revenue bonds issued by the Kansas water office for financing large reservoir projects under K.S.A. 82a-1360 *et seq.* See K.S.A. 82a-1344 and 82a-1345.

Each member of a water assurance district is required to adopt conservation plans and practices which are subject to review by the Kansas water office director. K.S.A. 82a-1348. Districts are required to adopt budgets in the manner provided under the Kansas budget law. K.S.A. 82a-1342. See Op. Att'y Gen. 110 (1989) for a discussion of the Water Transfers Act, K.S.A. 82a-1501 *et seq.* and the Water Assurance Program Act, K.S.A. 82a-1330 *et seq.*

§13.56 IV. EDUCATION AND LIBRARY SERVICES

This section describes three local entities or administrative organizations aside from school districts that provide education services. These entities include municipal universities (Washburn University), community colleges and vocational technical schools. In addition, the section discusses library entities that are formed on a local and regional basis.

A. Municipal Universities - Washburn University

K.S.A. 13-13a03 *et seq.*

§13.57 1. *Background and Organization*

Washburn University of Topeka is the last remaining municipal university in the state. Two other municipal universities previously existed in Kansas, one in Wichita formed in 1926 and Campbell College of Holton which was in operation prior to 1900.

Statutory provisions for the establishment of municipal universities were repealed in 1976 and the law now simply refers to universities heretofore established under the provisions of the act. See K.S.A. 13-13a03 *et seq.* Provisions in effect prior to 1976 set forth procedures for the city to submit the question of creating a municipal university to city voters. An amendment in 1976 permitted the extension of the municipal university taxing district to include the entire county within which the university is located if approved by voters. Initiation of this question must be by petition of 10% of the qualified electors who live outside the city and to date no such petition has been filed. See K.S.A. 13-13a24.

§13.58 2. *Governing Body-Appointed*

A nine-member board of regents is responsible for governing the municipal university. Four members are appointed by the mayor with approval of the governing body. These

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members must be residents of the city and one from each of the three state senate districts and one from the city at large. The Attorney General has said that a person who voluntarily fails to maintain the senatorial district residency creates a vacancy in office. See Op. Att'y Gen. 51 (1989). Three members are appointed by the governor. Further, one member shall be the mayor and one member shall be a member of the state board of regents. Provision is made for a different board makeup if the taxing district is expanded countywide. The mayor's and governor's appointees have a four-year term of office. The state board of regents' member is selected annually by that body. See K.S.A. 13-13a04

The board is empowered to employ a president as chief executive officer and all teachers, administrative assistants and other employees as necessary. See K.S.A. 13-13a12.

§13.59 3. *Scope of Powers*

The municipal university has the power to buy, sell, rent and lease real and personal property and enter into contracts in discharge of its functions as a fully incorporated body. It may provide all necessary buildings, books, and other things necessary to maintain and further the university and its various colleges and departments. It has the power to establish all courses, degrees, questions of organization and discipline; to confer all honors, diplomas, certificates and degrees; and to furnish special courses and courses in vocational education and civic administration. The board may receive bequests and may act as trustee for property or funds and cooperate with any board of education, the city, state or federal government for the furtherance of education. See K.S.A. 13-13a11, 13-13a13 to 13-13a17.

A municipal university may levy a general property tax of not to exceed seven mills. Any mill levy increase above five mills is subject to a 5% protest petition on the issue of the increase in that year. In no case may the increase above five mills exceed one mill in a year or the overall seven mill maximum. It may issue general obligation bonds of not to exceed 2% of the assessed value of the taxing district; levy an additional three mills for a bond sinking fund or for construction, repair or additions to buildings; set fee and tuition charges for students; and set charges for the use of university facilities by other parties. See K.S.A. 13-13a18 and 13-13a23.

A system of out-district tuition for Washburn University which parallels the one for community colleges was established in 1982. See K.S.A. 13-13a25 *et seq.* Washburn University is currently seeking admission to the state university system. It also receives state grant money.

B. Community Colleges

K.S.A. 71-1101 *et seq.*

§13.60 1. *Background and Organization*

Community colleges are "bodies corporate comparable to other school districts." See *State, ex rel v. Hayden*, 197 Kan. 199, 200, 416 P.2d 61 (1966). Community colleges originated with legislation enacted in 1917 authorizing a two-year extension of the high school program in cities of the first and second class for the purpose of offering regularly accredited freshman and sophomore college work. The Legislature in 1965 enacted a comprehensive plan for a statewide system of junior colleges, the Community Junior College Act, L. 1965, ch. 417, which included limitations on the number of junior colleges that could be established and provided statutory guidance on how and where new community colleges could be organized.

The community college system at one time was described as creating a hybrid school that in some respects constituted a "super" high school and in other respects a "junior" college. See "Kansas Statutes: The Community Junior College Act—An Examination," 11 Washburn L.J. 499, 506 (1972). See also *State, ex rel v. Hayden*, 197 Kan. 199, 205 (1966). Note the term "community college" replaced the statutory terms junior college and community junior college in 1980. See L. 1980, ch. 207.

Procedures for the establishment of community colleges are rather elaborate and are contained in K.S.A. 71-1101 *et seq.* They include provisions for a preliminary study of the need and feasibly one or more school districts; a petition requesting the state board of education to establish a community college; submission of the petition to the state advisory council of community colleges for its recommendation; and an election in the proposed district on the issue. See K.S.A. 71-1103. The legislature in 1968, however, enacted a moratorium on the establishment of any new community colleges. See K.S.A. 71-1108.

Procedures for the attachment of territory are similar to those required for initial formation. See K.S.A. 71-1201 *et seq.* Consolidation of community colleges is provided for in K.S.A. 71-1301 *et seq.*

§13.61 2. *Governing Body-Elected*

The governing body of a community college district may be composed of a six-member or a seven-member board of trustees elected for four-year staggered terms on a nonpartisan basis at the spring general elections. Members may be elected by any of four methods, paralleling the methods the state has approved for unified school districts. They include: (1) election at large; (2) the six-district method; (3) the three-district method (two trustees from each district); and (4) the two-district method (three trustees from each district). The method of electing trustees may be changed upon initiation of the board of trustees or by petition of the electors, if approved by the state board of education and by the voters at an election. No board member may be an employee of the community college. See K.S.A. 71-1401 *et seq.*

The board of trustees may appoint and fix the compensation and term of office of the president or chief administrative officer of the college. The Attorney General has said that board members may accept complimentary tickets to community college sponsored events even though no statute authorizes compensation since such tickets would be considered a gift and not the expenditure of public funds. See Op. Att'y Gen. 9 (1990). Note the statutes were amended in 1990 to require that board members be paid subsistence allowances, mileage and other actual and necessary expenses. See K.S.A. 71-201.

3. *Scope of Powers*

§13.62 a. Overview

Broad powers for the board of trustees are listed in K.S.A. 71-201 which include the ability: to determine the educational programs of the college, subject to the approval of the state board of education; to appoint, upon nomination of the president or chief administrative officer, administrative and teaching staff members; to sue and be sued; to make rules and regulations for the administration and operation of the college; to enter into contracts; to buy, sell and hold property, or lease property for not to exceed 10 years; to exercise the powers of eminent domain. See Op. Att'y Gen. 33 (1991) which said the board of trustees had the power to base community college property since this power was included in the power to dispose of the property.

A restriction was passed in 1990 which prevents a board from purchasing or otherwise acquiring land or land and improvements outside the community college district. There is no requirement to sell such land already owned but boards may not construct improvements on this land. See K.S.A. 71-201(d). Community colleges and other educational institutions are granted the authority to enter into contracts with state agencies for provision of education services. See K.S.A. 75-3099. The Attorney General has stated that community colleges may enter into agreements with any state law enforcement agency to provide instruction on behalf of the state agency but not with local agencies since no statutory authority exists for these agreements. See Op. Att'y Gen. 79 (1984). Community colleges lack specific authority to contract to provide instruction outside the state according to Op. Att'y Gen. 38 (1985). Note that neither opinion considered the possible application of the Interlocal Cooperation Act. K.S.A. 12-2901 *et seq.*

Community colleges may levy general property taxes to finance that part of the budget which is not financed by anticipated state aid, student tuition, out-district tuition or federal aid. No levy limit is established but the tax lid law does apply. See K.S.A. 71-204 and K.S.A. 79-5021 *et seq.* Districts also may levy two mills for five years to establish a capital outlay fund under K.S.A. 71-501 or may issue general obligation bonds in lieu of this levy under K.S.A. 71-502. They may also levy not to exceed 1/4 mill for operating an adult basic education program under K.S.A. 71-617. They may establish a petty cash fund of not to exceed $1,000 under K.S.A. 71-201(16) and are required to follow a uniform chart of accounts under K.S.A. 71-211.

§13.63 b. Out-District Tuition

Out-district tuition charges have generated controversy between some counties and the state. The current out-district tuition rate, paid by counties without community colleges within their boundaries, is $24 per credit hour subject to a maximum of 64 credit hours unless the student is enrolled in certain nursing courses or freshman-sophomore level preengineering courses in which case a 72 credit hour limit applies. See K.S.A. 71-301. In *State, ex rel v. Hayden*, 197 Kan. 199 (1966), the court determined that out-district tuition did not represent taxation without representation since counties paying the tax were represented in the state legislature. Further, the court said Art. 11, § 1 of the Kansas Constitution requiring a uniform and equal rate of assessment and taxation only applied to the taxing district making the tax, *i.e.* the county required to levy the tax.

Further, in *State, ex rel Stephan v. Board of Lyon County Commissioners*, 234 Kan. 732, 676 P.2d 134 (1984), the court determined that a county under home rule powers could not exempt itself from out-district tuition requirements for community colleges or Washburn University. The Attorney General has said that a community college may charge out-district tuition for each student attending a satellite facility provided no other community college is located within the same district as the satellite facility. See Op. Att'y Gen. 94 (1989).

C. Vocational Education

K.S.A. 72-4411 *et seq.*

§13.64 1. *Background and Organization*

Vocational education programs may be conducted under either of two types of administrative organizations—area vocational schools (type I) and area vocational technical schools (type II). Type I schools may be established by and operated under the jurisdiction of any school district, community college, municipal university or under the state board of regents if the state board of education approves. Type II schools are specifically designated in the law, involve a cooperative effort among a number of school districts or other entities noted above and are governed by a board of control as set out by agreement of the participating members. Board of control members may be paid subsistence, mileage and other actual and necessary expenses. See K.S.A. 72-4412(b) and (c).

The law sets forth a procedure for designating new area vocational schools (Type I only) whereby the board of a school district, community college, municipal university, or regents' institution may present a plan for the establishment and operation of a school to the state board of education for its approval. The Attorney General has opined that the state board of education lacks authority to reject a plan for the establishment of a proposed area vocational school solely for the reason that the legislature may not provide additional funding for it. See Op. Att'y Gen. 169 (1983).

§13.65 2. *Governing Body—Set by law, Appointed*

Type I vocational schools are administrative agencies of the parent school and have no separate governing body. Type II schools are governed by an appointed board of control as established by agreement of the parties involved.

§13.66 3. *Scope of Powers*

Fees may be charged high school students enrolled whereas both fees and tuition may be charged postsecondary students and out-of-state students. See K.S.A. 72-4417 and K.S.A. 72-4422. Enrollment and admission of students is governed by K.S.A. 72-4418.

Vocational education institutions have no separate or independent levy authority. Sources of funds include federal aid, state aid for postsecondary students under K.S.A. 72-4430 *et seq.*, a mill levy levied for this purpose by community colleges

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which operate such a school under K.S.A. 72-4424, general fund support from the sponsoring school district, and gifts, grants and bequests. See K.S.A. 72-4423. A capital outlay fund is authorized under K.S.A. 72-4440 *et seq.* The Attorney General has said that county economic development tax funds may not be used for this purpose. See Op. Att'y Gen. 244 (1982).

D. Libraries

K.S.A. 12-1215 *et seq.*
K.S.A. 12-1218
K.S.A. 12-1223
K.S.A. 12-1231 *et seq.*
K.S.A. 12-1236
K.S.A. 72-1623
K.S.A. 75-2547

§13.67 1. *Background and Organization*

There are at least seven types of library entities that may be formed under the statutes. These include: free public libraries in Topeka, Salina and Hutchinson under K.S.A. 12-1215 *et seq.*; municipal libraries formed by a city, county or township under K.S.A. 12-1218 *et seq.*; regional libraries formed by two or more counties or two or more townships under K.S.A. 12-1231 *et seq.*; library districts formed by cities of the third class and townships under K.S.A. 12-1236 *et seq.*; free public libraries operated by the school board in cities between 120,000 and 200,000 under K.S.A. 72-1623 *et seq.* (Kansas City); and regional library systems to include any one or more libraries boards established under K.S.A. 75-2547 *et seq.* In addition, a separate library law was enacted for the Johnson County library in 1984. See K.S.A. 12-1223 *et seq.*

The primary purpose of most of the library entities listed above is to establish and provide library services to the area included within the entity's boundaries. The purpose of regional library systems, however, is to provide an umbrella organization to facilitate the cooperation and coordination of library services among participating members.

Formation procedures, under the first act, K.S.A. 12-1215 *et seq.*, required a petition by 25% of the voters and submission of the question of establishing a library to voters. These procedures were repealed as a part of the second act, K.S.A. 12-1218 *et seq.*, see L. 1951, ch. 485, sec. 24 and sec. 2, now K.S.A. 12-1219, which grandfathered in those libraries created under the first law.

The second act, K.S.A. 12-1218 *et seq.*, allows the governing body of any city, county or township to initiate a vote on the question of establishing a public library and requires an election if a petition signed by 10% of the electors who most recently voted for the office of Secretary of State is presented. If approved at the election, the governing body establishes the library as a separate corporate body. Regional libraries formed under K.S.A. 12-1231 *et seq.* are formed in a similar fashion as noted above.

Library districts under K.S.A. 12-1236 *et seq.* may be formed by cities of the third class and townships if separate petitions signed by 10% of the qualified electors both within and outside the city are presented to the county commission. The county commission must submit the proposition to the electors of the proposed district and, if approved, establish the library district.

The Kansas City school board is given the power under K.S.A. 72-1623 *et seq.* to establish a public library. No formation procedures are provided by statute.

Finally, a regional library system under K.S.A. 75-2547 *et seq.* may be established by any one or more library boards by petitioning the State Library Advisory Commission. The petition must include, among other things, a statement of purpose, a listing of counties and participating libraries to be included and the number of persons to be served. If approved, the regional system constitutes a corporate body. Seven different regional systems are established by K.S.A. 75-2549b. A taxing district that has regularly levied 1/4 mill or more for the support of a public library may petition the State Library Advisory Commission to withdraw from the system and avoid the regional system's tax under K.S.A. 75-2550. Procedures for withdrawal are set out in more detail in K.A.R. 54-1-17 *et seq.* and include the added requirement that the entity desiring withdrawal must have levied the required tax for not less than two years. The Attorney General has opined the regulation is valid. See Op. Att'y Gen. 108 (1987), Op. Att'y Gen. 50 (1980) and Op. Att'y Gen. 144 (1981). Not all counties listed in the statute for each regional system have opted to participate in these systems.

§13.68 2. *Governing Body-Appointed/Elected*

All library boards are appointed, with the exception of boards created under K.S.A. 12-1236 *et seq.* which are elected. Under K.S.A. 12-1218 *et seq.* municipal libraries are governed by a five-member appointed board. In the case of townships and all counties, except Johnson County, libraries are governed by a seven-member appointed board and in the case of certain cities and Johnson County by a 10-member appointed body. See K.S.A. 12-1222. Regional libraries under K.S.A. 12-1231 *et seq.* are governed by a seven-member appointed board with six selected by the counties or townships participating. In addition, the official head of the participating counties or townships are ex officio members. See K.S.A. 12-1232. In Op. Att'y Gen. 94 (1979), the Attorney General stated that the phrase "ex officio member" was a term of qualification signifying one who is a member of any body by virtue of his title to a certain office and not a term of limitation, thus ex officio members have the same rights, privileges, powers and duties as appointed members.

Seven directors are elected at annual meetings for library districts established under K.S.A. 12-1236 *et seq.* See K.S.A. 12-1238. The Attorney General has stated that notice requirements of the election under K.S.A. 12-1240 are directory in nature and do not have to be strictly complied with as long as the election date established by statute is used. See Op. Att'y Gen. 105 (1980).

In each of the above examples, board members serve for four-year alternating terms and elect from their membership a chairman, secretary and treasurer.

The Kansas City school board serves as the governing body of the public library under K.S.A. 72-1623 *et seq.* The governing board of a regional library system includes one or more representatives of each participating library board and one or more representatives appointed by the governor to represent territory not participating within the district. The term of office may be proposed in the petition to create the system but may not exceed four years. Any regional system may provide for the selection of an executive board subject to the rules of the State Library Advisory Commission. See K.S.A. 75-2550 and 75-2550a.

All of the above library entities may employ a librarian and other personnel as necessary.

The Attorney General has issued several other opinions of interest dealing with library board membership. Members of a public library board whose terms have expired may continue to serve as de facto members until such time as they are reappointed or the appointment of their successors is approved. See Op. Att'y Gen. 282 (1979). Membership on a library board established by a city constitutes the holding a city office and thus by virtue of K.S.A. 13-2903 any member who is related by blood or marriage to members of the city governing body is disqualified from setting on the library board. See Op. Att'y Gen. 99 (1979). The common law doctrine of incompatibility of offices has been said not to prevent a person from holding the office of county register of deeds and the office of a city library board member. See Op. Att'y Gen. 171 (1982).

§13.69 3. *Scope of Powers*

Library entities established under the various acts generally may sue and be sued; enter into contracts; acquire, hold and convey real and personal property; and purchase or lease a site or lease or erect a building for library use. The acquisition and disposition of real property is subject to the approval of the governing bodies of the creating municipalities. They may acquire by purchase, gift or exchange various library materials; establish and maintain a library or libraries and traveling library service; and adopt rules and regulations. See K.S.A. 12-1225b(b) for a listing of certain matters that are subject to control by the Johnson County Board of Commissioners. There is no listing of powers to be exercised by the Kansas City school board operating a public library.

Taxing powers of the various library vary but all have such power which ranges from 3/4 of a mill by regional library systems to six mills by the Topeka, Salina and Hutchinson libraries. See K.S.A. 12-1215, 12-1220, 12-1234, 12-1247, 12-1257, 72-1623a and 75-2551. All library entities likewise are governed by the tax lid law. A public library, however, has been said to constitute a separate taxing subdivision for purposes of the tax lid law. See Op. Att'y Gen. 167 (1987). The Attorney General also has set forth the procedures that public libraries and other taxing subdivisions other than cities and counties must follow to exempt the subdivision from the tax lid law. See Op. Att'y Gen. 129 (1989) and Op. Att'y Gen. 130 (1989). The Attorney General has said that a township that establishes a library under provisions of K.S.A. 12-1218 *et seq.* may not refuse to increase the mill levy for the library board as long as the levy does not exceed the 2.5 mill limitation since the amount of money to be raised by the imposition of the property tax is to be determined by the board of directors of the library. See Op. Att'y Gen. 36 (1986) and Op. Att'y Gen. 193 (1982). A township may not contribute money to a library district established under K.S.A. 12-1236 *et seq.* if the township is contained within the district's boundaries. If the township lies outside the district's boundaries, however, it may contract with the district for library services. See Op. Att'y Gen. 180 (1982).

Public libraries may establish capital improvement funds by transferring moneys into that fund not to exceed 10% from their general operating fund. See K.S.A. 12-1258.

Library entities other than regional systems also may receive moneys or grants from the state or federal government; receive gifts or donations and cause general obligation bonds to be issued by parent municipalities, if approved by voters, for a library site and building. The Topeka Public Library was granted special authority to issue general obligation bonds for library facilities under a 1989 law. See K.S.A. 12-1259. The Attorney General has said that K.S.A. 12-1244 implies that a library district may call an election to vote on the question of acquiring an existing building for library purposes in addition to the expressed statutory authority for calling an election to build, erect and equip a library building. See Op. Att'y Gen. 105 (1986).

§13.70 V. HEALTH RELATED FUNCTIONS AND SERVICES

This section describes two entities that perform local health functions and services. Included are hospital districts and emergency medical services districts.

A. Hospital Districts

K.S.A. 80-2501 *et seq.*

K.S.A. 80-2550 *et seq.*

§13.71 1. *Background and Organization*

Hospital district laws (six separate acts) were recodified in 1984 into one comprehensive act. See L. 1984, ch. 374. Hospital is defined under the new law to mean a medical care facility as defined in K.S.A. 65-425 and to include any clinic, long-term care facility, limited care residential retirement facility, child-care facility and emergency medical or ambulance service operated in connection with a facility. See K.S.A. 80-2501(b). See also K.S.A. 80-2550 *et seq.*, a supplemental act that permits the continuation of health care facilities and service districts under the provisions of the recodified hospital district law. Basically, this supplemental act permits the continuation of districts formed to operate clinics, long-term care facilities, homes for the aged and emergency medical or ambulance services.

Hospital districts may be formed by the board of county commissioners upon petition signed by not less than 51% of the qualified electors of the proposed district who reside within the limits of each political subdivision proposing to join the district. See K.S.A. 80-2501(e) which defines political subdivision as

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any township, city or hospital district. Territory may be added to hospital districts under K.S.A. 80-2503, 80-2522, 80-2523. Note that under K.S.A. 80-2522 a political subdivision wanting to be included within a hospital district does not need to be contiguous or adjacent to any boundary of the district. See also Op. Att'y Gen. 151 (1986). The existence of hospital districts within a county does not preclude the formation of a county hospital according to the Attorney General in Op. Att'y Gen. 84 (1988).

§13.72 2. *Governing Body-Elected/Appointed*

Basically, there are four options for selecting the hospital district governing board, which may be composed of three, five, seven or nine members. See K.S.A. 80-2506 and 80-2508. These options include members elected at annual meetings, an appointed board, and board members elected for either three-year or four-year terms at elections held on the first Tuesday in April each year. Board members must be residents of the district under K.S.A. 80-2506 and moving from the district disqualifies them from service on the board. See Op. Att'y Gen. 151 (1987). Compensation is permitted under K.S.A. 80-2510.

§13.73 3. *Scope of Powers*

The hospital board has the power to adopt bylaws and rules and regulations for the management of the hospital. It may appoint an administrator (K.S.A. 80-2511); may enter into contracts for the management of the hospital, may lease hospital property, may sue in its own name or in the name of the hospital (K.S.A. 80-2517); and may sell hospital property but must establish bidding procedures for the sale of property valued over $4,000 and for construction projects (K.S.A. 80-2520). Hospital boards may also exercise eminent domain powers under K.S.A. 80-2533. Hospital boards may also expend money for scholarships for persons who agree to become members of staff and may pay for professional liability insurance for staff. See K.S.A. 80-2511.

Hospital boards may issue general obligation bonds in an amount not to exceed 15% of the assessed value of the district; may issue no-fund warrants for shortfalls in the operations budget (K.S.A. 80-2519); may issue revenue bonds (K.S.A. 80-2525); and levy a tax of not to exceed two mills or the amount authorized to be levied in 1983 whichever is the greater amount and may levy additional taxes, subject to a protest petition and election procedure (K.S.A. 80-2516).

The Attorney General, in Op. Att'y Gen. 64 (1985), said hospital districts were separate taxing districts. Districts are excluded from the cash basis law under K.S.A. 80-2517(c). See also Op. Att'y Gen. 135 (1989) which said that hospital districts have an implied power to create indebtedness which flows from their express powers to acquire real estate and to construct and equip a hospital and from the fact such districts are exempt form the cash basis law. The opinion then said hospital districts may enter into lease-purchase agreements to finance construction projects.

§13.74 B. Ambulance Service Taxing District

K.S.A. 65-6118

Ambulance service taxing districts may be established by any county under provisions of K.S.A. 65-6118. The board of county commissioners serve as the governing body. The county treasurer is required to receive and expend funds for the district. The district may levy a tax of not to exceed three mills subject to a protest petition and election procedure. See K.S.A. 65-6118 and 65-6113(b) and (c).

§13.75 VI. PARK AND RECREATION SERVICES

Two local government entities are described in this section: the Johnson County Park and Recreation District, a special district government providing a full range of park and recreation services for the entire county, and recreation commissions which may be established either by cities or school districts or jointly by both cities and school districts.

A. Johnson County Park and Recreation District

K.S.A. 19-2859 *et seq.*

§13.76 1. *Background and Organization*

The Johnson County Park and Recreation District formed under K.S.A. 19-2859 *et seq.* provides a system of parks and recreation services for Johnson County. The separate public corporate nature of this entity was recognized by the Attorney General in an opinion which concluded that the county had no power under home rule to abolish the entity since such action did not constitute a "local" affair. See Op. Att'y Gen. 129 (1983).

The law provides that the Johnson County Park and Recreation District shall be established upon the presentation of a petition, signed by not less than 5,000 qualified electors, to the board of county commissioners. Following a public hearing on the topic, the board of county commissioners are required to adopt a resolution creating the district if it determines the interests of the area will be advanced by its creation. See K.S.A. 19-2861.

§13.77 2. *Governing Body-Appointed*

The district is governed by a seven member board for three-year terms appointed by the Johnson county board of county commissioners. Appointments are without regard to political affiliation and board members receive no compensation. The board annually elects a chairperson, a vice-chairperson, a secretary and a treasurer and it may employ or retain supervisory personnel, police, attorneys, landscape architects, and other personnel as necessary.

§13.78 3. *Scope of Powers*

The district's general powers are listed in K.S.A. 19-2862 and K.S.A. 19-2868, and include the power to buy, sell and hold property. The sale of real estate normally requires a vote of the people. Property may be exchanged under certain circumstances under K.S.A. 19-2868i. The district may make contracts including contracts with any agency of the United States for construction or maintenance of recreation areas at federal reservoirs. The district's board may exercise the powers of eminent domain; may operate recreational and cultural programs for all ages and cooperate with certain other government entities in the operation, improvement and maintenance of the Hillsdale State Park; may promulgate rules and regulations governing conduct in park areas; and may establish penalties for violations of district rules of not to exceed three months in jail or a fine of not to exceed $100 or both under K.S.A. 19-2873.

Competitive bids are reauired under K.S.A. 19-1881 for improvements exceeding $1,500 and this statute applies even when moneys spent are derived from insurance proceeds. See Op. Att'y Gen. 55 (1991).

The district may levy general property taxes not to exceed two mills for general fund purposes under K.S.A. 19-2876 and may levy an additional two mills, if approved by voters, for contracts with the federal government under K.S.A. 19-2881a. The district may issue general obligation bonds in an amount of not to exceed 1 1/2% of the assessed valuation of the district; may issue revenue bonds and revenue anticipation notes; and may issue no fund warrants. It may establish fees and charges for the use or participation in various park and recreation programs. See K.S.A. 19-2074. In addition, the district may receive funds from the county for park and recreation programs under the liquor drink tax. See K.S.A. 79-41a04.

B. Recreation Commissions

K.S.A. 12-1922 *et seq.*

§13.79 1. *Background and Organization*

Recreation commissions, as independent political subdivisions for the purpose of providing recreation programs, may be established under K.S.A. 12-1922 *et seq.* The law was recodified in 1987. The court in *Flanigan v. Leavenworth Recreation Commission*, 219 Kan. 710, 716, 549 P.2d 1007 (1976) recognized the independent status of these entities stating "Except for the fact that another municipality levied taxes for it, the recreation commission was a municipality just like any other."

Recreation commissions may be formed by a city or by a school district, either acting independently or jointly, whenever a petition signed by 5% of the qualified electors is presented requesting that the governing body or bodies establish a recreation commission and levy an annual tax of not to exceed one mill. According to Op. Att'y Gen. 61 (1979), a city may not place the question of establishing a recreation commission on the ballot at an election except upon presentation of a proper petition. A city and a school district may initiate the formation of a joint recreation system by adopting a joint ordinance or resolution. In any of the above situations the proposal must be submitted to voters for approval in accordance with elections held under the general bond law. If the election deals with the establishment of a joint district, it must be submitted to the voters of either the city or school district that has the larger assessed valuation. See K.S.A. 12-1925.

Once approved, the governing body of the city or school district, or both, provide by resolution or ordinance for the creation of the recreation commission and vest it with the powers necessary for the conduct of a recreation system.

Recreation commissions have the responsibility for conducting recreation programs within their boundaries. Cities and school districts operating recreation systems are required to cooperate by providing property and facilities and all recreation programs and services thereof shall be delegated to the recreation commission. See K.S.A. 12-1924.

§13.80 2. *Governing Body-Appointed*

The governing body of any city or school district acting independently appoints four recreation commission members who, in turn, appoint a fifth member. If a city and a school district act jointly, then each entity appoints two recreation commission members who in turn appoint the fifth member. Recreation commission members serve four-year staggered terms and their successors are selected in the same manner as they were appointed. Note that not all recreation commissions are governed by a five-member body since under prior law some commissions had nine members. The law permits recreation commissions to continue as constituted prior to the recodification. See K.S.A. 12-1926.

Recreation commissions elect a chairperson and a secretary. The treasurer of the city or school district levying the tax on behalf of the recreation commission serves as the ex officio treasurer of the commission.

§13.81 3. *Scope of Powers*

Powers of recreation commissions are enumerated in K.S.A. 12-1928 and include, among others, the power to adopt rules and regulations for the operation of the recreation system, to employ a superintendent and other employees, to sue and be sued, to enter contracts, to acquire title to personal property by purchase, bequest, gift or other donation and acquire title to real property but only by devise, gift or other donation. See Op. Att'y Gen. 157 (1988) where the Attorney General concluded recreation commissions did not have the power to lease real property from a school district. In response to this opinion, the 1989 legislature authorized recreation commissions to lease real or personal property for a period of not to exceed 10 years. Any lease is subject to approval by the city or school district to which it must certify its budget.

Recreation commissions are required to prepare an annual budget, give notice and hold budget hearings and certify their budgets to the governing body of the city or school district that levies the tax on their behalf. The law provides for a maximum of four mills for the general fund. See K.S.A. 12-1927(a). Annual increases in the mill levy for the general fund are subject to a protest petition and election procedure. Mill levy increases may not exceed one mill per year. The Attorney General in Op.

Att'y Gen. 133 (1987) stated that a recreation commission appointed by a city if reorganized as a joint city and school district recreation commission would be subject to the one mill maximum levy limit in its first year of operation. In addition, an added mill levy of not to exceed one mill unless a higher amount is approved by the city or school district, may be made for purchasing insurance and creating an employee benefits contributions fund under K.S.A. 12-1928(e) and (i).

§13.82 VII. TRANSPORTATION, ECONOMIC DEVELOPMENT AND REGIONAL PLANNING

This section deals with airport authorities, port authorities, industrial districts and regional planning commissions. Both airport and port authorities are involved with transportation facilities and with economic development efforts of the localities they serve. Industrial districts and regional planning commissions likewise play a major role in economic development. Some regional planning commissions have incorporated as not-for-profit corporations and have been designated economic development districts under federal law.

A. Airport Authorities

K.S.A. 3-162 *et seq.*

K.S.A. 27-315 *et seq.*

K.S.A. 27-327 *et seq.*

§13.83 1. *Background and Organization*

Airport authorities may be created under either of two acts contained in Chapter 27 or under an act contained in Chapter 3 of Kansas Statutes Annotated. Authorities created under K.S.A. 27-315 *et seq.* and K.S.A. 27-327 *et seq.* are designed to acquire and manage air bases and other property declared surplus by the United States, the state or any political subdivision. An airport authority created under K.S.A. 3-162 *et seq.* is designed to take over the management of a municipal airport formerly controlled by a city board of park commissioners or the city governing body.

Airport authorities not only have responsibilities regarding the specific operation of airports but also serve as a major vehicle for economic development by leasing, renting or otherwise providing facilities for business and industry.

A surplus property and public airport authority under K.S.A. 27-315 *et seq.* may be created by any city located in a county in which an air base has been declared surplus by the United States or any of its agencies under the federal Property and Administrative Services Act of 1949. An authority is created by the passage of a city ordinance. The authority is considered to be a separate political and taxing subdivision and its boundaries are commensurate with the boundaries of the property acquired. Cities also may transfer any public airport owned by the city to the authority without consideration. Transfer involves the conveyance of all right and title to the property and must be by deed not by a lease agreement. See Op. Att'y Gen. 263 (1979). An authority, if it has been in existence for at least ten years and has no debts outstanding, may be dissolved by the city by passage of an ordinance. A city may not dissolve an airport authority by charter ordinance other than as prescribed by statute since the airport authority is a separate and distinct public corporation not an instrumentality of the city. See Op. Att'y Gen. 262 (1979).

A second airport authority act, K.S.A. 27-327 *et seq.*, applies to any county with a population between 125,000 and 200,000 and an assessed valuation of more than $400 million, and a city of the first class located therein in which the Air Force has declared a base surplus, *i.e.* Shawnee County and the City of Topeka. See K.S.A. 27-328. The authority has been named the Metropolitan Topeka Airport Authority (MTAA). The act required the board of county commissioners to submit the proposition of a countywide airport authority to voters at the 1978 general election. Voters approved, and as result, the act required a countywide airport authority be created as a separate political and taxing subdivision. The authority, if it has no outstanding debts, may be abolished by a two-thirds vote of both the county commission and the city governing body.

The third act, K.S.A. 3-162 *et seq.* applies to the city of Wichita. The act permits the city to create the authority as a body corporate and politic by ordinance.

§13.84 2. *Governing Body-Appointed*

A surplus property and public airport authority, organized under K.S.A. 27-315 *et seq.*, is governed by a five-member board of directors appointed for three-year staggered terms by the city governing body. Directors may not serve for more than eight consecutive years, must be residents of the city, and may not be compensated but may be reimbursed for necessary expenses. See K.S.A. 27-319. A state senator may serve as director of the Salina Airport Authority and not violate the common law doctrine of incompatibility of officers according to the Attorney General. See Op. Att'y Gen. 304 (1979).

The MTAA, organized under K.S.A. 27-327 *et seq.*, is governed by a five-member board of directors appointed for three-year staggered terms. Two members are appointed by the Shawnee County Commission and must live outside the corporate limits of Topeka; three members are appointed by the mayor, subject to the approval of the Topeka city governing body, and must live within the city. Note after December 1, 1980, members of the city or county governing bodies could no longer serve on the airport authority's board of directors. Directors may not serve more than three consecutive terms and are not compensated but may receive reimbursement for expenses. See K.S.A. 27-330. The Attorney General has opined that the MTAA has only those powers expressly granted or necessarily implied by law and therefore may not change its quorum requirement from three to four by amending its bylaws according to Op. Att'y Gen. 174 (1983).

Under K.S.A. 3-162, the city governing body appoints seven of the nine member governing body. The remaining two are appointed by the Sedgwick County Commission. See L. 1991, ch. 7. Members are required to give a $25,000 bond.

Authorities under the three acts may appoint employees as necessary. Further, there is specific authorization for the

appointment of law enforcement officers for airport authorities in counties between 100,000 and 200,000 population. See K.S.A. 3-168 *et seq.*

§13.85 3. *Scope of Powers*

Authorities created under Chapter 27 have the power to buy, hold, sell or lease property; enter into contracts; sue and be sued; adopt bylaws and rules and regulations; and exercise the powers of eminent domain. See K.S.A. 27-320 and 27-331. An authority under K.S.A. 27-315 *et seq.* may exercise the powers of eminent domain only if approved by the city governing body. No such restriction applies to the MTAA. Further, the MTAA may recommend adoption of airport hazard zones to minimize the adverse effects of airport noise and emissions to the local planning commission. Actual adoption of such zones would require approval by the county or city governing bodies.

Authorities organized under K.S.A. 3-162 *et seq.* are granted the same powers that a board of park commissioners or the city governing body has except all general obligation bonds issued and taxes levied must be done by the city governing body. See K.S.A. 3-167.

Authorities created under Chapter 27 have the power to levy taxes, to issue general obligation bonds subject to certain limitations, *e.g.* bonded debt limitations of 3% of the city's assessed valuation and 1.85% of the county's assessed valuation respectively; to issue revenue bonds, industrial revenue bonds; no fund warrants; and borrow money and mortgage property as security. Despite the listing of the power to borrow money, the Attorney General has opined that the MTAA was covered by the cash basis law but fell within an exemption for airport revolving funds. See Op. Att'y Gen. 152 (1982).

Two recent appellate court decisions have dealt with the tax exempt status of real property leased by business enterprises from an airport authority. The court in *Salina Airport Authority v. Board of Tax Appeals*, 13 K.A.2d 80, 761 P.2d 1261 (1988) held that real property leased to business enterprises did not constitute a governmental or proprietary function and therefore did not meet the exclusive use test for a property tax exemption under K.S.A. 79-201a Second. The court further held the State Board of Tax Appeals (BOTA) did not have the authority to order a county appraiser to investigate the use of property that was not the subject of a controversy brought before the BOTA. A similar result was reached in *Tri-County Public Airport Authority v. Board of County Commissioners of Morris County, Kansas*, 245 Kan. 301, 777 P.2d 843 (1989) where the court held that 1336 acres of land leased to private entities for private business purposes, did not qualify for the property tax exemption under K.S.A. 79-201a Second. See L. 1991, ch. 7 which exempts all ad valorem property taxes on all property owned and primarily as an airport by a political subdivision including leased property for tax years 1984 to 1992. all property taxes for the taxable years noted are cancelled. The Attorney General, in Op. Att'y Gen. 4 (1988), said that the MTAA is subject to city special assessments for a water main extension project.

B. Port Authorities

K.S.A. 12-3401 *et seq.*

§13.86 1. *Background and Organization*

Port authorities have been utilized as a vehicle to bring about at least two major projects, having statewide impact, including the purchase of over 400 miles of abandoned track of a bankrupt railroad by the Mid-States Port Authority and the construction of a multimillon dollar General Motors automotive assembly plant in Kansas City. Port authorities are designated as public bodies corporate and politic under K.S.A. 12-3402(a) and have been recognized as independent legal entities by the Kansas Supreme Court. See *Board of Public Utilities v. City of Kansas City*, 227 Kan. 194, 197, 605 P.2d 151 (1980). A lengthy statement of purpose is recited in K.S.A. 12-3402 which declares that the purpose of the port authority law is to promote the general welfare and economic development of the state by fostering intrastate and interstate commerce, to promote the advancement and retention of ports and to encourage the growth of new business and retention of old business. Port is defined broadly in the law to include any water-port facility, airport facility, terminal facility, land transportation facility or industrial use facility. See K.S.A. 12-3401(f).

The validity of the port authority law was upheld against a multiplicity of constitutional challenges in *State ex rel Tomasic v. Kansas City, Kansas Port Authority*, 230 Kan. 404, 636 P.2d 760 (1981), where the public financing of the $750 million General Motors assembly plant was the underlying issue. The court rejected challenges under the uniform and equal assessment and taxation provisions of Art. 11, § 1 of the Kansas Constitution. It was argued those provisions were violated by the fact that the authority does not pay taxes or assessments on property acquired and used by it or on income from bonds issued by it. The court also rejected arguments that the tax exemption provisions in the law improperly interfered with the assessment and collection of taxes for the operation of public schools, that the act constituted an improper delegation of legislative power; and that the act granted port authorities powers beyond powers of local concern permitted, under Art. 2, § 21 of the Kansas Constitution. The court also rejected arguments that the authority as an agent of the state was impermissibly engaging in acts of internal improvement prohibited by Art. 11, § 9 that Art. 2, § 1 requiring all laws of a general nature have a uniform operation was violated, and that equal protection was violated. See also *State ex rel Tomasic v. City of Kansas City*, 237 Kan. 572, 701 P.2d 1314 (1985) where the court rejected a constitutional attack on the property tax exemption provision for facilities built with industrial revenue bonds. At issue again was the construction of the General Motors plant.

Port authorities are created by the passage of an ordinance or resolution of the city or county. The governing body of either the city or county, or both, creating the port authority are required to make a determination that the establishment of a port authority will promote the general welfare and economic development of the locality. Special factors must be considered when agricultural, commercial, industrial or manufacturing facilities not a part of or contiguous to another port facility are

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contemplated. See K.S.A. 12-3401(g). Further, port authority formation must be approved by the passage of a joint resolution of the state legislature. See K.S.A. 12-3402(a). The Legislature may give its approval to the creation of a port authority prior to the actual passage of the local ordinance or resolution creating a port authority. See Op. Att'y Gen. 42,(1991).

A port authority may be dissolved by the city or county or both entities under K.S.A. 12-3402(c). See Op. Att'y Gen. 22 (1986) which stated that the passage of an ordinance by the city of Kansas City was all that was needed to dissolve the Kansas City-Wyandotte County, Kansas Joint Port Authority. The opinion concluded that Wyandotte County if it wanted to continue to operate a port authority would have to go through the process of creating a new authority.

§13.87 2. *Governing Body-Appointed*

A port authority is governed by an appointed board of directors. At least five directors are required if the authority is created exclusively by a city. The number of directors otherwise is left to the county or the city and county if jointly formed. Directors serve four-year staggered terms. Directors elect a chairperson, vice chairperson and other officers as deemed appropriate. See K.S.A. 12-3403.

§13.88 3. *Scope of Powers*

Port authorities have jurisdiction over the territory of the city or county or combination thereof plus any other property outside these boundaries that it owns. See K.S.A. 12-3405 and Op. Att'y Gen. 250 (1979). Port authorities may exercise a number of general powers listed in K.S.A. 12-3406. For example, authorities may purchase, acquire, construct and equip docks, wharves, warehouses, piers, other water-port facilities, airport facilities, terminal facilities, land transportation facilities or industrial-use facilities. An authority also may borrow money and mortgage assets, purchase, sell, lease real and personal property, exercise the powers of eminent domain if approved by the governing body of the city or county creating it, and may promote, advertise and publicize the port and its facilities.

Authorities may levy ad valorem property taxes if approved by voters and may issue bonds if approved by the governing bodies of the cities and counties which comprise the port authority. See K.S.A. 12-3402(b) and 12-3415. A port authority is exempt from taxes and assessments imposed upon any property acquired and used by it or leased to another or upon income derived therefrom. See K.S.A. 12-3418. The latter provision has a curious twist in that property acquired by the port authority is free from taxation only until the calendar year in which it is leased, rented or developed and returns revenue to the authority in excess of the amount necessary to retire obligations of the authority and pay administrative costs.

Competitive bidding is required for construction contracts exceeding $10,000. See K.S.A. 12-3412. A port authority and other political subdivisions may enter into contracts providing for binding arbitration and are bound by the decisions of the arbitrators. See *Jackson Trak Group, Inc. v. Mid States Port Authority*, 242 Kan. 683, 751 P.2d 122 (1988).

Surplus funds of a port authority may be paid into the general funds of the political subdivisions comprising the port authority in proportion to their assessed valuation under K.S.A. 12-3413.

See also K.S.A. 75-5029 and 75-5030 regarding a state created railroad rehabilitation loan guarantee fund and K.S.A. 75-5029 and 75-5031 authorizing the state secretary of transportation to guarantee repayment of a loan refinanced by the Mid States Port Authority not to exceed a principal amount of $7 million. See also Op. Att'y Gen. 40 (1989) and Op. Att'y Gen. 13 (1984).

C. Industrial Districts

K.S.A. 19-3801 *et seq.*

§13.89 1. *Background and Organization*

One of the primary purposes of industrial districts formed under K.S.A. 19-3801 *et seq.* is to encourage the growth of industry in a county by giving certain industrial areas powers to govern themselves as well as to grant industries within the district certain tax breaks.

Owners of 100 or more contiguous acres of land available for industrial development or an industrial community for manufacturing, warehousing or distribution of products of agriculture or industry and located outside a city may petition the board of county commissioners to incorporate an industrial district. The petition must include a statement that all privately-owned land will be used exclusively for industrial establishments and special facilities to serve industry. Publicly owned land may not be included within the district unless the governmental unit owning the land consents. See K.S.A. 19-3802.

The county board is required to hold a public hearing and then may declare the incorporation of the industrial district if it finds the petition is in order. If the proposed district is within three miles of a city, that the city's governing body also must recommend that the district be formed. See K.S.A. 19-3803.

A district may be expanded by the county board following a petition and a public hearing. It may be dissolved by the county board either upon petition by the county attorney if after five years the land within the district is not being used for its intended purpose or upon petition by owners of three-fourths of the land within the district.

The act also allows the district to enter into a renewable agreement of not to exceed 20 years with an adjacent city to stipulate that the city will not annex the district. See K.S.A. 19-3818.

§13.90 2. *Governing Body-Elected*

One of the petition requirements is that five persons who own land within the district or who are officers or stockholders in corporations which own land and who are residents of the county must be designated as the original board of directors. Directors are to be elected every two years thereafter. An amendment in 1975 provided for the election of seven directors following the effective date of the act even though five directors are still listed in several other statutes. Elections are held the

second Tuesday in March by a voice vote in an open meeting. Each owner of real estate and each lessee is entitled to one vote for each $10,000 of assessed valuation owned or leased in the district. The board then elects a president, vice president, a secretary and a treasurer. The directors are paid a salary of $1 per year. See K.S.A. 19-3810 to 19-3814.

§13.91 3. Scope of Powers

Powers of districts parallel many of the powers exercised by a small city. These include the ability to plan, construct and provide storm and sanitary sewers and sewage disposal systems, steam lines, streets and street lighting, waterworks and fire fighting services, incinerating plants, dumps for industrial wastes, administrative offices, first aid facilities, and construct hospitals or contract for hospital facilities. Industrial districts may also contract with any city, township or fire district for auxiliary fire protection; contract for various utility services; exercise the power of eminent domain within the district; purchase, lease, rent or hold real and personal property; enter into contracts; and sue and be sued. See K.S.A. 19-3808.

Financial powers of the district include the ability to levy a general property tax of not to exceed five mills; to issue general obligation bonds in an amount not to exceed 25% of the assessed value of the district and to levy general property taxes to retire bonds; to issue revenue bonds; and to establish charges, fees, or rents for various services including sewage and water. See K.S.A. 19-3808. Property within any industrial district is exempt from the bond and interest levy of any unified school district. The district is responsible, however, to continue paying tax levies for bond and interest of any rural high school district or common school district which was in existence prior to the creation of the industrial district. See K.S.A. 19-3817 and 19-3820.

D. Regional Planning Commissions

K.S.A. 12-716 *et seq.*

K.S.A. 12-2901 *et seq.*

§13.92 1. *Background and Organization*

Regional planning commissions have undergone a metamorphosis over the past 20 years. Originally, these commissions were formed as part of a since repealed federal mandate that a regional body review local applications for various federal grants, *i.e.* the A-95 review process. The governor issued executive order in 1969 designating 12 regions but the order did not mandate that the regional planning groups be formed or that grouping of counties established by the order be followed. Twelve regional planning bodies were formed but they did not encompass the entire state and only roughly approximated the boundaries set out in the governor's executive order.

No two regional planning commissions have performed identical functions as needs of the area as well as commitment to these regional bodies by member cities and counties have varied. Apparently, eight regional planning commissions continue to exist. Regional planning commissions may be organized under either a planning act, K.S.A. 12-716 *et seq.*, or the Interlocal Cooperation Act, K.S.A. 12-2901 *et seq.*

§13.93 2. *Governing Body-Appointed*

Cooperating cities and counties in a regional or metropolitan planning commission under L. 1991, ch. 56 § 4, determine through joint agreement the number and qualifications of the members of the commission.

Regional planning commissions organized under the Interlocal Cooperation Act, K.S.A. 12-2901 *et seq.*, provide by agreement for the governing body of the entity created agreements must be approved by the Attorney General. See K.S.A. 12-2904(f). See Chapter 4 for a more detailed discussion of the Interlocal Cooperation Act.

A study conducted by the 1985 interim Special Committee on Federal and State Affairs revealed that several regional planning commissions had organized under the authority of both statutes. See *Report on Kansas Legislative Interim Studies to the 1986 Legislature*. Proposal No. 33—Regional Planning, pp. 421-7. For a history of regional planning commission development and evolution of their functions, see *Regional Planning Commissions in Kansas*, Nancy McAbe, Kansas Department of Commerce, June 24, 1987.

§13.94 3. *Scope of Powers*

Some regional planning commissions have incorporated as not for profit corporations to facilitate their designation as economic development districts under federal law. Regional planning commissions also engage in such activities as the overall land use planning, transportation, demographic and other types of planning. Some provide administrative support, training, grant writing and advisory services for local government members and are involved in certain emergency medical service activities. By far the most active regional planning group is the bi-state MidAmerica Regional Commission (MARC) formed by Kansas and Missouri local governments in the metropolitan Kansas City area.

§13.95 VIII. MISCELLANEOUS PUBLIC SERVICES AND IMPROVEMENTS

This final category groups together diverse special districts and other legal entities. Included are improvement districts which operate similar to an incorporated village, fire districts which provide fire service as well as emergency medical services in some instances; cemetery districts which operate and maintain cemeteries; community building districts which operate and maintain community meeting halls; public building commissions which provide a vehicle for the financing and construction of public facilities; and business improvement districts and self-supported municipal improvement districts which provide the means to provide capital improvements and enhanced services to business areas within cities.

2-24

A. Improvement Districts

K.S.A. 19-2753 *et seq.*

§13.96 1. *Background and Organization*

Incorporated improvement districts may be formed under K.S.A. 19-2753 *et seq.* to provide a limited number of municipal type services. These entities are the closest thing to an incorporated village that is permitted under Kansas law. Procedures for the incorporation of improvement districts are similar to those required for the incorporation of cities of the third class. A petition signed by a majority of resident property owners and a map of the area must be presented to the county commission. The petition must be signed by a majority of the resident taxpayers of a proposed district or by all owners of property in the district, regardless of the owner's residence. See K.S.A. 19-2755.

The county commission is required to hold a public hearing and consider the proposed improvement district as it relates to several factors, including the population density of the area, the area of platted land relative to unplatted land, the likelihood of significant population growth in the area, and the proximity to an existing city and the past and future growth of any such city. Following the hearing, the county commission must determine whether the formation of the district will be in the best interests of the county. The commission then declares the formation of the improvement district as a public corporation. See K.S.A. 19-2756. Procedures also exist for the expansion and consolidation of improvement districts under K.S.A. 19-2782 *et seq.* and K.S.A. 19-2786a *et seq.*; for the incorporation of an existing drainage district as an improvement district under K.S.A. 19-2786 and for the dissolution of an improvement district under K.S.A. 19-2786g. See Op. Att'y Gen. 106 (1990) for a discussion of dissolution procedures. The effect of a city annexing either all or a portion of an improvement district is dealt with in Chapter.

§13.97 2. *Governing Body-Appointed/Elected*

After the district is formed, the county board is required to appoint three property owners to serve as an interim board of directors until the time when at least 100 qualified electors actually reside within the district. Otherwise, the county commission is required to call an election immediately after incorporation, at which time three directors are selected by taxpayers who must be qualified electors of the district. An apparent anomaly in the law exists where a person who is not a resident may seek and hold office as a director of an improvement district but the same person because of his nonresident status does not meet the qualifications of a district voter. See K.S.A. 12-2758 and Op. Att'y Gen. 211 (1980) and Op. Att'y Gen. 209 (1982).

Directors who are elected serve for two year terms, select a president, secretary and treasurer and also designate one of their members to act as vice-president. The county treasurer is responsible for receiving and paying out the funds of the district. See K.S.A. 19-2763.

§ 13.98 3. *Scope of Powers*

Improvement districts are considered quasi-municipal corporations which possess only those powers expressly authorized by statute or clearly implied therefrom. The Attorney General has said that improvement districts may not restrict the use of streets only to residents of the district or otherwise establish some type of qualification before permitting persons the use of the streets. See Op. Att'y Gen. 40 (1983). In other opinions, the Attorney General has said that districts may not adopt zoning regulations unless specifically authorized to do so (Op. Att'y Gen. 56 (1983)); have no authority to enter into cable television franchise agreements (Op. Att'y Gen. 303 (1979)); may not enforce restrictive covenants (Op. Att'y Gen. 162 (1983)); and may not compel district inhabitants to connect their private sewers to the district's sewage system (Op. Att'y Gen. 279 (1981)).

General powers of a district are listed in K.S.A. 19-2765 and include, among others, the ability to plan, purchase or construct public works or improvements necessary for the public health, recreation, convenience or welfare. The meaning of the term "public works or improvements" was discussed in Op. Att'y Gen. 120 (1989), and the Attorney General concluded an improvement district had the ability to provide and maintain street lights and fire hydrants under this general grant of authority. See also Op. Att'y Gen. 9 (1991) wherein the Attorney General said the construction and maintenance of a public commodity distribution center and a public recreation area was premitted within the meaning of "public works and improvements." Other general powers listed in the law include the ability to buy, sell or hold real and personal property; to exercise the power of eminent domain; to sue and be sued; and to make contracts.

Improvement districts may levy an annual property tax of not to exceed five mills; and may issue general obligation bonds in an amount not to exceed 25% of the district's assessed valuation. See *Lakeside Village Improvement Dist. v. Jefferson County*, 237 Kan. 106, 697 P.2d 1286 (1985) discussing a statute, since repealed, which gave an improvement district the power to issue general obligation bonds of the county. Districts may issue revenue bonds; may levy special assessments; establish sewage disposal charges and rates for other revenue producing services; and certain districts may issue industrial revenue bonds, *i.e.* districts over 2,000 population located in counties over 300,000 population. Various special tax levy provisions also exist. See K.S.A. 19-2765(a)(7).

Resolutions of improvement districts may be enforced by enjoining violations or by prescribing penalties not greater than a class B misdemeanor. See K.S.A. 19-2766a. See Op. Att'y Gen. 55 (1990) which said county prosecutors have the authority and responsibility for prosecuting violations of improvement district resolutions.

Improvement districts that are more than five miles from an incorporated city have certain additional powers listed in K.S.A. 19-2765(b). Such districts have the power to abate nuisances, to remove weeds, grass and other vegetation, to adopt animal control regulations, to preserve the peace, and to assess

unpaid utility charges as a lien against property. Special laws permit an improvement district in Wabaunsee County to adopt zoning regulations under K.S.A. 19-2950 *et seq.* and to adopt speed limits under K.S.A. 8-1338a and 8-1338b. See Op. Att'y Gen. 56 (1983) discussing these powers.

B. Fire Districts

K.S.A. 19-3601 *et seq.*
K.S.A. 19-3613
K.S.A. 19-3624
K.S.A. 80-1512
K.S.A. 80-1524
K.S.A. 80-1540
K.S.A. 80-1547

§13.99 1. *Background and Organization*

The primary function of a fire district is to provide fire protection services for residents and businesses located within the district. Since 1988, any fire district may also provide emergency medical services or ambulance services under provisions of K.S.A. 65-6112 *et seq.*

There are seven fire district laws listed above. Several of these acts apply to only one county, *i.e.* K.S.A. 19-3613 *et seq.* and K.S.A. 80-1547 *et seq.* apply to Johnson County and K.S.A. 80-1524 *et seq.* applies to Wyandotte County. There are three other laws, K.S.A. 31-301 *et seq.*, K.S.A. 80-1922 *et seq.* and K.S.A. 80-1507 *et seq.*, which allow the formation of benefit districts for fire protection within a county or township. In these cases, a township board or the township trustees, if more than one township is involved, or a school district board in certain instances, act as the governing body of the benefit district. These benefit districts have the authority to levy general property taxes and to contract with a city, a township or other persons for fire protection services.

Formation of fire districts, in general, requires a petition signed by a certain percentage of the qualified electors within a proposed fire district, to be presented to the county commission or to the township board. Also required are a public hearing and passage of a resolution by the county commission or township board establishing the district.

Districts formed under K.S.A. 19-3601 *et seq.*, which applies to all counties either at the initiative of the county commission or upon presentation of a petition signed by residents owning more than 60% of the land in the district. See K.S.A. 19-3602 and 19-3603. Petition requirements in the other acts vary considerably.

Statutory provisions exist for the addition or deletion of territory to fire districts. For example, K.S.A. 19-3604 establishes a procedure for raising the issue of inclusion or exclusion of land before the county board by petition of the owners of at least 10% of the area of land to be added or excluded. The Attorney General, in Op. Att'y Gen. 75 (1990), said K.S.A. 19-3604 does not create a right to or require detachment since the decision is a discretionary one vested with the board of county commissioners. For other Attorney General Opinions dealing with detachment or adding lands, see Op. Att'y Gen. 23 (1980), Op. Att'y Gen. 103 (1982), Op. Att'y Gen. 114 (1982), Op. Att'y Gen. 236 (1982) and Op. Att'y Gen. 166 (1987).

When fire districts are formed by township boards, the county commission may act as an appeals forum under K.S.A. 80-1513 for any landowner who does not want to be a part of the district. Note that procedures exist for the inclusion of cities within fire districts organized under several of the acts. See, for example, K.S.A. 19-3605. The formation of a county fire district does not have the automatic effect of terminating a contract for fire protection between a township included within the district and a city according to the Attorney General in Op. Att'y Gen. 82 (1983). The impact of city annexation on fire districts is dealt with in Chapter 2.

§13.100 2. *Governing Body-Set By Law/Appointed*

The board of county commissioners either may serve as the governing body of the fire district or the board may appoint a board of trustees composed of from three to nine members under K.S.A. 19-3601 and K.S.A. 19-3612a. The county commission serves as the governing body of the fire district under K.S.A. 19-3624 *et seq.* The county commission under K.S.A. 19-3613 *et seq.* is required to appoint a three-member governing body. The township board acts as the governing body of fire districts under K.S.A. 80-1514 unless a major portion of the fire district is located within one or more cities, in which case, the county commission appoints a three-member board for three-year staggered terms. K.S.A. 80-1542 requires that the township board(s) shall be the governing body of the fire district unless three or more townships or a third class city is involved, in which case each governing body may designate one of its members to serve on the fire district board. Under K.S.A. 80-1530 the township board governs the fire district. Consolidated fire districts in Johnson County organized under K.S.A. 80-1548 *et seq.* are governed by a seven-member board appointed for three-year staggered terms by the county commission.

Note advisory boards appointed by a board of county commissioners to advise it on matters affecting fire districts has been determined to be subject to the Kansas open meetings law. See Op. Att'y Gen. 84 (1986). Generally, fire district boards serve without compensation although one act, K.S.A. 80-1544, allows limited compensation. Fire districts may employ personnel or organize volunteer fire department members. Note Op. Att'y Gen. 89 (1980) stated that there is no statutory authority under K.S.A. 19-3610 for paying salaries and salary related expenses of fire district personnel and that a county home rule resolution providing for the levy of an additional tax for this purpose was beyond the scope of "county business" and therefore invalid. But see K.S.A. 19-3612d and K.S.A. 19-3612e authorizing tax levies for payment of salaries and compensation for certain fire districts.

§13.101 3. *Scope of Powers*

Fire districts were granted several uniform powers under a 1979 law (see L. 1979, ch. 75) which include the power to enter into contracts; to acquire, operate and maintain fire fighting equipment and buildings; to buy and sell real property; and to exercise the powers of eminent domain.

All fire districts have authority to levy property taxes at varying rates and several acts contain authority for the levy of special assessments.

Districts may issue general obligation bonds and no fund warrants without authorization of the state board of tax appeals. See Op. Att'y Gen. 6 (1980). Districts organized under K.S.A. 19-3601 *et seq.* may establish a special equipment fund for the replacement of fire fighting equipment, apparatus or machinery. See K.S.A. 19-3612c. The fund is not subject to the budget law. See also K.S.A. 19-3623e.

C. Cemetery Districts

K.S.A. 15-1013 *et seq.*

K.S.A. 17-1330 *et seq.*

K.S.A. 17-1342 *et seq.*

§13.102 1. *Background and Organization*

Cemetery districts are the most numerous type of special district government in Kansas. Districts are created to provide a local unit of government devoted exclusively to the maintenance and operation of cemeteries. This need first became evident during the early part of this century due in part to the decline of the rural population in Kansas and the neglect of a number of rural cemeteries. The legislature responded with the first cemetery district law in 1925 and two other laws were enacted in 1941 and in 1953.

A cemetery district is responsible for cemeteries located within its boundaries if the cemeteries have been conveyed to it by individual cemetery associations or if a cemetery is abandoned and the district has voluntarily taken control of it. The mere establishment of a cemetery district does not automatically transfer control of or responsibility for all cemeteries within its boundaries. See Op. Att'y Gen. 168 (1983) and Op. Att'y Gen. 238 (1981).

Under K.S.A. 80-916, a township board is required to care for any abandoned cemetery within its boundaries and may spend an amount not to exceed $500 each year per cemetery. Cemetery districts may also become responsible for an abandoned cemetery through a court proceeding initiated by the attorney general under the provisions of K.S.A. 17-1366 *et seq.*

The most widely utilized law, K.S.A. 17-1330 *et seq.*, requires the formation of a cemetery district when 51% of the qualified electors present a petition to the board of county commissioners. K.S.A. 15-1013 *et seq.* provides for the formation of cemetery districts by townships and certain cities of the third class cities when a petition signed by 51% of the qualified electors is presented to the county commission. K.S.A. 17-1342 *et seq.* provides for the formation of cemetery districts by one or more townships and cities of the second or third class when 60% of the qualified electors who live outside the city present a petition to the county commission.

The Attorney General, in Op. Att'y Gen. 167 (1981), said that counties may exempt themselves from provisions of K.S.A. 17-1330 *et seq.* regarding the formation of cemetery districts under home rule power and provide for the creation of a cemetery district without the circulation of a petition.

In all of the above cases, the board of county commissioners is required to review the petition for the formation of a cemetery district and, if found sufficient, order its formation. The acts contain procedures for the inclusion or exclusion of territory. Districts formed under K.S.A. 17-1330 *et seq.* may annex territory to the district under K.S.A. 17-1335i and may be dissolved or consolidated if approved by a vote of the qualified electors at an annual meeting under K.S.A. 17-1356. See Op. Att'y Gen. 117 (1982) dealing with the transfer of territory from a cemetery district organized under K.S.A. 17-1730 *et seq.* to a township cemetery district. See also K.S.A. 15-1017 and 15-1018.

§13.103 2. *Governing Body-Set By Law/Elected*

Under K.S.A. 17-1333a, a five-member board of directors is elected at annual meetings to serve four-year staggered terms. A president and a secretary-treasurer are selected by the board to serve one-year terms. The board of directors under both K.S.A. 15-1013 *et seq.* and K.S.A. 17-1342 *et seq.* consists of the mayor of the city and the township trustees. If only one township is involved under K.S.A. 17-1342 et seq, the city treasurer is to be the third member of the board. A chairman and a secretary are selected and the city treasurer may serve as treasurer. If a different board member is selected as treasurer, a surety bond is required.

§13.104 3. *Scope of Powers*

Powers of districts include the ability to maintain, operate and regulate cemeteries within the district including abandoned cemeteries; to buy, sell or convey lots and buy additional lands for cemetery purposes; to regain title of lots sold to persons who have abandoned those lots under certain circumstances; and, in selected counties, to maintain and improve roads leading to the cemetery. See K.S.A. 17-1335, 17-1336, 17-1346.

Cemetery districts may levy general property taxes. Their tax authority varies. See K.S.A. 15-1017, 17-1336, 17-1346, 17-1335. Districts organized under K.S.A. 17-1330 *et seq.* and K.S.A. 17-1342 *et seq.* may maintain perpetual care funds and invest these moneys, receive donations and sell burial lots.

D. Community Building Districts

K.S.A. 15-11b01 *et seq.*

§13.105 1. *Background and Organization*

Legislation allowing for the creation of community building districts can be traced to the tornado that struck the city of Udall and caused the death of a number of its residents in 1955. The legislation, K.S.A. 15-11b01 *et seq.*, permits any city of the third class together with an area surrounding the city of not more than six square miles, to be organized as a community building district. Formation requires the presentation of a petition signed by 60% of the qualified electors therein to the board of county commissioners of the county containing the proposed district.

§13.106 2. *Governing Body-Elected*

Each community building district is governed by a seven-member board of directors elected for two-year staggered terms

at the annual meetings of the district. At each annual meeting, a chairman, vice-chairman, secretary and treasurer are elected. The board of directors may appoint and fix the compensation of any employees it deems necessary.

§13.107 3. *Scope of Powers*

Districts may accept the conveyance of an existing building and may maintain, operate, improve and equip the building for use of the district and adopt rules and regulations. The district is authorized to levy an annual property tax of not to exceed 1/2 mill for financing its operations.

E. Public Building Commissions

K.S.A. 12-1757 *et seq.*

§13.108 1. *Background and Organization*

Public building commissions may be formed under K.S.A. 12-1757 *et seq.* by both cities and counties. They are created by the passage of an ordinance or resolution by the respective city or county under K.S.A. 12-1758, and are designated by statute as a municipal corporation. See K.S.A. 12-1757. The primary purpose of these entities is to provide a financing tool for the construction and leasing of public buildings and facilities by the issuance of revenue bonds. These entities provide an alternative for cities and counties to the typical manner in which public buildings and facilities are built, *i.e.* by the issuance of general obligation bonds following approval of the bonds by voters at an election.

§13.109 2. *Governing Body-Appointed*

The ordinance or resolution creating the public building commission is required to specify the number of members, *i.e.* between three and nine members. Note that if the commission is to provide a building which will house offices of a state, city, county or school districts, the Secretary of Administration and the governing bodies of these entities must be represented by at least one member on the public building commission. See K.S.A. 12-1759.

§13.110 3. *Scope of Powers*

Commissions have the power to construct, acquire and equip buildings for use by governmental agencies. See K.S.A. 12-1760. Commissions are given the power to acquire land and facilities adjacent to or near any educational institution governed by the state board of regents and construct and equip facilities and rent or lease these facilities to the educational institution. See K.S.A. 12-1758. Public building commissions may acquire real property by purchase, gift devise or by eminent domain with title taken in the name of the commission. See K.S.A. 12-1764. Further, commissions may issue revenue bonds subject to a protest petition and election procedure. See K.S.A. 12-1761 and 12-1767.

The Attorney General, in Op. Att'y Gen. 152 (1985), said that a city could not provide for a countywide protest petition and election procedure under city home rule power in regard to a revenue bond issue for a county jail facility being constructed by the city-created public building commission. The opinion stated that a city charter ordinance went beyond the scope of "local affairs" as that phase is used in Art. 12, § 5 of the Kansas Constitution. See also Op. Att'y Gen. 139 (1989) where the Attorney General said that the City of Horton could not provide for the construction of a 1,000 bed private prison facility by its public building commission. The opinion said the impact of such a facility would have a substantial impact on residents outside the city and therefore did not fit the "local affairs and government" language of City Home Rule Amendment contained in Art. 12, § 5 of the Kansas Constitution. Both opinions cited above have recognized the nonuniform nature of the public building commission law. See, for example, K.S.A. 12-1761 and 12-1763.

Public building commissions may fix rates, rentals and charges for use of the buildings sufficient to pay operation and maintenance costs and the principal and interest on the revenue bonds. See K.S.A. 12-1762. They may rent all or any part of the buildings or facilities to any federal, state, county or city agency, or any municipal, quasi-municipal corporation, political subdivision or body politic or agency thereof maintaining an office in the county where the commission is located. Space not needed may be rented to other occupants who will serve the convenience and comfort of the government agencies. See K.S.A. 12-1763.

Note K.S.A. 12-1765 grants specific authority to state agencies and to school districts, counties and cities located in the county where a public building commission has been created to enter into leases without regard to the cash basis and budget laws for any time period of not to exceed 50 years.

§13.111 F. Business Improvement Taxing Districts

K.S.A. 12-1781 *et seq.*

K.S.A. 12-1794 *et seq.*

Two laws provide for the establishment of districts to facilitate added services and capital improvements for business areas of cities.

§13.112 1. *Business Improvement District Act*

The business improvement district act, K.S.A. 12-1781 *et seq.*, allows any city to establish by ordinance business improvement districts to provide for the beautification of the district, such as landscaping, fountains, shelters, sculptures and added lighting; the provision of special or added public services such as sanitation, care and maintenance of public facilities, sidewalks and security; the provision of financial support for public transportation services and parking; the development of plans for the general architectural design of public areas and the future development of the district; the promotion of community events; and any other services.

Requirements for the establishment of districts include the appointment of a planning committee, published and mailed notice, a public hearing and the passage of an ordinance creating the district. The ordinance is subject to repeal if a sufficient protest petition is filed. See K.S.A. 12-1785 to 12-1789.

A city operating such a district is authorized to levy annually a business improvement service fee on businesses within the district. The amount of the fee can be based on the amount of space used for business purposes, street front footage, building or land square footage, the number of employees, the type of business or on any other reasonable basis.

An advisory board, representative of businesses within the district, must be appointed to recommend programs of services for districts. The Attorney General has said that a city governing body member may not sit on this advisory board due to the common law doctrine of incompatibility of offices. See Op. Att'y Gen. 77 (1989). Cities may contract with not-for-profit corporations for the provision of specified services. See K.S.A. 12-1790 and 12-1791.

§13.113 2. *Self-Supported Municipal Improvement Districts*

Self-supported municipal improvement districts may be created under K.S.A. 12-1794 *et seq.* to provide a number of capital improvements and added services in the central business districts of cities. Examples of capital improvements that may be provided include water, sewers, street and sidewalk improvements, plazas, parking facilities and landscaping. Services include added sanitation, security, maintenance, financial support for public transportation, plans for future development, promotion of community events and other services. See K.S.A. 12-1795. The city governing body may initiate the formation of a district or may be compelled to start proceedings when an appropriate petition is presented. The planning commission must find that the district formation is consistent with the city's master plan and a public hearing must be held. See K.S.A. 12-1796.

Published and mailed notice to businesses is required. A public hearing also must be held on the advisability of providing any improvement or service.

The city governing body may levy taxes and issue bonds payable from ad valorum taxes or revenues from the district. The bonds are not considered obligations of the city. Local sales tax receipts may be pledged to secure these bonds. See K.S.A. 12-17-101a to 12-17-103. The city governing body may exercise eminent domain powers under limited circumstances on behalf of the district. See K.S.A. 12-17-104. An advisory board composed of representatives of businesses may be appointed for the district. See K.S.A. 12-17-102.

THE LEAGUE
OF KANSAS
MUNICIPALITIES

Municipal Legislative Testimony

AN INSTRUMENTALITY OF KANSAS CITIES 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on Local Government
House Committee on Local Government

FROM: Chris McKenzie, Executive Director

DATE: August 19, 1993

RE: Special District Governments

Earlier this year the League provided you with copies of a 1991 League publication entitled "Local Governments in Kansas--An Inventory of Governmental Taxing Units". That report inventories and explains the functions of the over 4,000 general and special purpose units of government in the state. It reveals that 1,879 of the 4,025 taxing units of government are limited or special purpose in nature, however it includes the 1,414 township governments among the general purpose governments of the state--a classification some would differ with today.

The League report mentioned above indicates that Kansas has the 2nd highest number of general and special purpose governmental units in the nation with direct taxing powers. It is clear that the 1,879 special purpose units of government fill a void in the public service delivery system, but little attention is paid today to whether some of these units of government remain viable.

From time to time conflicts arise between general purpose districts and special purpose districts. I would like to share two such conflicts with your today.

1. Cities versus Drainage Districts. With this summer's flooding we all know how important it is for communities to be able to plan and implement flood protection facilities. Within the past year and prior to the most recent flood, a city manager contacted me about an emerging conflict between the city commission and the local drainage board. K.S.A. 24-402, which was last amended in 1947, provides that a drainage district may include land within the incorporated limits of cities unless the city is located within a county having an assessed valuation in excess of $150 million. In such cases, the consent of the governing body must first be obtained. No mention is made whether the consent is binding upon future governing bodies, but it is presumably because the district has the poser to purchase property, build levees and maintain them, levy up to five (5) mills of property taxes, and issue bonds to pay for certain improvements.

In the city in question the city commission had approached the drainage district about making some flood protection improvements. The district board, consisting of three elderly individuals, resisted the proposals, however. In fact, no improvements of any kind had been made for many years, and the city commission felt the city was still facing potential flooding and wanted action. The board which directs the agency with this main function, including the bonding authority and the taxing power to back it up, refused to act.

In such situations, the city might look for a political remedy to the situation by attempting to persuade the voters of the district that it was time for a change in leadership. Interestingly, K.S.A. 24-410 contains a very limited definition of "qualified elector" for purposes of electing drainage board members. It says in order to vote in drainage district elections you must own land in the district or own tangible

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Attachment 3

personal property in the district and have residence in the district. This is one of the few situations of which I am aware in which the nonresident owners of land are given special voting privileges and the resident owners of tangible personal property (i.e., cars?) are given such narrow voting privileges.

In this instance the legislature has delegated to a special purpose government the power to control the destiny of an urban area, and the right to vote in the election of their officers is limited to particular classes of electors.
While the city may have undertaken its own works of improvement, another unit of government created to supervise such improvements on a drainage basin basis also could proceed to levy taxes on city residents for improvements outside the city.

RECOMMENDATION: We would recommend consideration of amendments to the drainage district statutes to allow the deannexation of incorporated areas at the option of any city, provided that the property in the city remains liable for any bonded indebtedness incurred prior to the separation.

Cities versus Library Boards. About this time of the year the League staff can count on getting numerous calls from city officials complaining about tactics used by Library Boards in reference to their budget. Problem 1. The first problem is related to the fact that state law gives may library boards what appears to be almost unilateral board to force a city governing body to approve a property tax levy for the library as long as it falls under the statutory mill levy rate or one set by the city. For example, K.S.A. 12-1220 states that if approved by the voters the governing body of the city shall "...forthwith establish such library and is hereby authorized and **shall annually levy a tax for the maintenance of such library in such sum as the library board shall determine within the limitation fixed by law.**"

You can imagine the tension that develops in cities when the library board appointed by the mayor and the council, many times at the direct urging of the State Librarian, tells the city council they cannot change the amount of the proposed levy. Furthermore, the Attorney General has advised the State Librarian in AGO 89-130 that certain library boards are able to exempt themselves from the aggregate tax lid, without their governing body's approval, in order to keep the additional tax authority they might have under the individual fund levy limits of prior years. Both of these situations give rise to significant conflict between city governing bodies and an instrumentality of the city.

RECOMMENDATION: We would recommend that library boards either be made independent taxing districts with their own independent elections and procedures, or that elected city governing bodies be given clear authority to limit the tax levies of appointed **city** library boards.

Problem 2. The second problem was caused by a recent Attorney General's opinion in which it was concluded that library boards are not bound by the provisions of the Kansas cash basis and budget laws. That opinion (AGO 93-45) and correspondence between the League and the Attorney General are attached. In a nut shell, the Attorney General said that because library boards do not have independent taxing power that such special units of government are **not** subject to the same legal restrictions concerning finance as their creator or parent organization (i.e., the city).

This interpretation, if correct, would allow library boards, recreation commissions, and other instrumentalities of cities and counties with appointed boards to incur indebtedness in excess of available cash--something their parent can not do and should not be able to do, except when authorized by the legislature. What happens if this does happen? We don't know. Is the parent municipality liable for the debts of its instrumentality? We don't know. Even if the city is not, it is clear that the taxpayers of the city are not protected from future taxes to pay uncontrolled debts.

RECOMMENDATION: The League recommends that the library board statutes be amended to make all tax levies on behalf of libraries subject to scrutiny and modification by the elected city governing body. In the alternative, the city library boards should be made independent taxing subdivisions, directly accountable the voters. Second, we recommend that library boards, recreation commissions and all instrumentalities of city and county government be made subject to the Kansas cash basis law and the Kansas budget law.

Thank you very much for consideration of our views and recommendations.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 5, 1993

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

ATTORNEY GENERAL OPINION NO. 93-45

Robert Beall
Leavenworth City Attorney
117 Cherokee
P.O. Box 69
Leavenworth, Kansas 66048

Re: Cities and Municipalities--Libraries--Bonds and Warrants; Cash-Basis Law; Taxation

Bonds and Warrants--Cash-Basis Law--Libraries

Synopsis: The cash basis and budget laws apply only to subdivisions of the state authorized by law to raise money by taxation. A board of directors of a city library established pursuant to K.S.A. 12-1219 et seq. has no authority to raise money by tax; therefore, the fiscal affairs of such board are not subject to either the cash basis or budget laws. Cited herein: K.S.A. 10-1101; 10-1102; 10-1103; 10-1113; 12-1219; 12-1220; 12-1221; 12-1222; 12-1223; 12-1223; 12-1225; 12-1226; 12-1227; 12-1228; 12-1229; 12-1230; 79-2925.

* * *

Dear Mr. Beall:

On behalf of the board of directors of the Leavenworth public library, you request our opinion concerning the applicability of the cash basis and budget laws (K.S.A. 10-1102 and 79-2925) to the fiscal policies of the library board.

K.S.A. 10-1102 provides that all municipalities are required to pay their indebtedness as provided in the act. K.S.A. 10-1103 prohibits any governing body of a municipality from creating any indebtedness in excess of the amount of funds actually on hand in the treasury at the time for such purpose. K.S.A. 10-1101(a) defines "municipality" as follows:

> "'Municipality' shall be construed and held to mean county, township, city, municipal university, school district, community junior college, drainage district, and any other similar political subdivision or taxing district of the state."

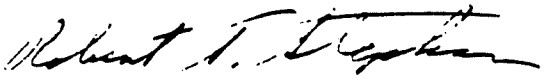
With certain enumerated exceptions not applicable here, the budget law applies to all "taxing subdivisions or municipalities of the state". Although "municipality" is not defined in the budget law, this office has used the definition in K.S.A. 10-1101(a) because both laws were enacted at the same time and have a common purpose. State ex rel. v. Republic County Commissioners, 148 Kan. 376 (1938); Attorney General Opinion No. 82-220. Therefore, resolution of your inquiry turns upon the question of whether the Leavenworth public library is a "municipality".

This office has consistently found that, due to the above quoted statutory definition, the cash basis law applies only to taxing subdivisions or districts. Attorney General Opinions No. 79-126, 77-352, 84-34. These opinions are supported by State, ex rel., v. Board of Education, 137 Kan. 451 (1933) wherein the court concluded that the cash basis law pertains to the indebtedness of subdivisions of the state authorized by law to raise money by taxation which monies are used to perform their respective governmental functions.

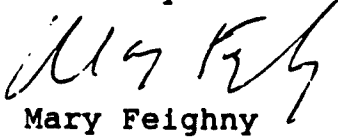
The Leavenworth public library is organized pursuant to K.S.A. 12-1219 which provides that a municipality may establish and maintain a library upon the concurrence of the voters at an election. K.S.A. 12-1220 provides that the municipality is authorized to levy a tax for the maintenance of the library in a sum fixed by the library board of directors. Since the library board does not have the power to raise money by taxation, it is the opinion of this office that it is not a "municipality" under either the cash basis or the budget laws.

It is interesting to note that the budget law, in its genesis in 1933, included "library boards". In Fort Scott Board of Library Directors v. Drake, 147 Kan. 157 (1938), the city library board which was organized under G.S. 1935 12-1202 et seq., the predecessor to K.S.A. 12-1219 et seq.), argued that it had become a "taxing subdivision" and had the power to levy taxes by virtue of its inclusion in the budget law. The court rejected this argument and concluded that the library's status was not changed by virtue of the passing of the budget law and since the library had never been authorized to levy taxes, it was not a taxing subdivision of the state. In 1941 the reference to "library boards" in K.S.A. 79-2925 was deleted which evinces a legislative intent to exclude such library boards in application of the budget law. Consequently, it is the opinion of this office that the board of directors of a city public library established pursuant to K.S.A. 12-1219 et seq. is not subject to the cash basis or budget laws.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Mary Feighny
Assistant Attorney General

RTS:JLM:MF:jm

League
of Kansas
Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

April 20, 1993

The Honorable Robert T. Stephan
Attorney General
State of Kansas
Kansas Judicial Center-2nd Floor
Topeka, Kansas 66612-1597

SUBJECT: Request for Reconsideration of AGO 93-45

Dear General Stephan:

I am writing to respectfully request that you reconsider your opinion in AGO 93-45 which was issued by your office on April 5, 1993. After explaining some of our concerns about this opinion to Ms. Julene Miller, Chief of the Civil Division of your office, she suggested that I outline the League's concerns and the legal basis for this reconsideration request in a letter.

AGO 93-45 discusses the applicability of the cash basis and the budget laws to city library boards organized under K.S.A. 12-1219 et seq. The opinion concludes that neither the cash basis law nor the budget law apply to such entities since a public library is not a "municipality" as that term is defined in K.S.A. 10-1101(a). We respectfully submit this result is incorrect based on the following arguments and authorities:

1. A library created and operated under K.S.A. 12-1218 et seq. is an instrumentality of a "municipality" as that term is used in K.S.A. 10-1101 (a). The conclusion reached in AGO 93-45 is based in large measure on whether the municipal library in question is a "municipality" as that term is used in K.S.A. 10-1101(a). We agree that the library is not a separate taxing subdivision, but it is a part of a taxing subdivision. Under the terms of K.S.A. 12-1218 et seq., the library was created by a taxing subdivision, the city. Its board is appointed by the municipal governing body (see K.S.A. 12-1222)and its operations are financed by the levy of taxes by the municipal governing body for the library (see K.S.A. 12-1220). In fact, most municipal libraries are heavily dependent upon such tax support to operate. In other words, it is a subunit, or instrumentality, of a taxing subdivision and is governed by the same laws as its parent. In addition to the authority listed above, the creating municipality may provide the library building and retain fee simple ownership of such property. In some instances library employees are considered city employees for health insurance and KPERS purposes. Only the municipal governing body may adopt a charter ordinance to exceed the mill levy rate limit for the library fund contained in Article 19 of Chapter 79 of the Kansas Statutes Annotated.

2. K.S.A. 10-1101(a) applies to political subdivisions as well as taxing subdivisions. Considerable emphasis is placed in the opinion on the historic position of the Attorney General's Office that "the cash basis law only applies to taxing subdivisions or districts." (page 2). This statement overlooks the explicit language of the statute which includes "...any similar **political subdivision** or taxing district of the state." (Emphasis supplied). Even if libraries are not

3-7

instrumentalities of the municipal corporations that create them (as we maintain above in No. 1), they would certainly qualify as a "municipality" under K.S.A. 10-1101(a) since they would constitute a political subdivision of the municipality and state of Kansas.

3. The 1941 amendment to K.S.A. 79-1925 did not indicate a legislative intent to exclude library boards from the scope of the budget law. In 1941 the legislature did amend K.S.A. 79-2925 and, in the process, eliminated specific references to counties, cities of the first, second and third class, townships, school districts, rural high-school districts, community high school districts, drainage districts and library boards. Surely the legislature did not intend to exclude all of these entities from the scope of the budget law because it simply substituted the terms "all taxing subdivisions or municipalities of the state" for the enumerated list mentioned above. If this were the case, counties, cities, Washburn, school districts, etc. would not be bound by the budget law since they are not explicitly mentioned.

In addition to the arguments and authorities cited above, there are significant policy reasons for reconsidering AGO 93-45. The cash basis and budget laws are the backbone of the fiscal integrity of local governments in Kansas. A logical extension of the reasoning of the opinion would support the conclusion that recreation commissions, joint city-county health departments (with boards appointed by the city and county), and municipal instrumentalities created under the interlocal cooperation act or by home rule action which rely on local tax support would not be bound by the cash basis and budget laws. In fact, carried to its logical extreme this theory would allow a local government to create an instrumentality for the purpose of incurring indebtedness in excess of the amount on hand in the fund supporting it in order to avoid the restrictions of the cash basis law.

In conclusion, the League respectfully submits a library board created, housed and supported by tax dollars levied by a municipality, in this case a city, is without question an instrumentality of that city and as such is bound by the same rules, regulations and statutes which bind the parent municipality. Thus, it is our conclusion that the cash basis and budget laws apply with equal force to a city governing body and the board of a city library established under the provision of K.S.A. 12-1218 et seq..

Thank you for your consideration of this request. Please feel free to call Don Moler, Senior Legal Counsel, or me if you have any questions.

Sincerely,

Chris McKenzie, Executive Director

cc: Julene L. Miller, Chief, Civil Division
Don Moler, Senior Legal Counsel

MAY 12 1993

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
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May 10, 1993

Chris McKenzie
League of Kansas Municipalities
112 W. 7th
Topeka, KS 66603

Re: Request for reconsideration of A.G. Opinion 93-45

Dear Mr. McKenzie:

At your request we have reconsidered A.G. opinion 93-45 in light of your letter of April 20, however, we decline to revise the opinion.

A library established pursuant to K.S.A. 12-1219 is not a "taxing subdivision" under K.S.A. 79-2925 or a "taxing district" pursuant to K.S.A. 10-1101(a). In Bd. of Directors of the Fort Scott Library v. Drake, 147 Kan. 157 (1938) the court concluded that a library organized pursuant to statutes similar to K.S.A. 12-1219 et seq. was not a "taxing subdivision" because it had no authority to levy taxes and, therefore, was not included in the budget law. You argue that the library is "part of a taxing subdivision" and while this may be true, the case law is clear that the cash basis law only "pertains to the indebtedness of subdivisions of the state authorized by law to raise money by taxation." State, ex rel. v. Board of Education, 137 Kan. 451 (1933). We relied on this case in A.G. opinions 77-352 and 79-126 where we opined that a city or county owned hospital managed and controlled by a board of trustees who adopt a budget and control expenditures but who rely upon the municipality to levy the tax (which supports the hospital) are not covered under the cash basis law because they lack the power to levy taxes. The library board of directors has no power to levy taxes in its own right and, therefore, cannot be a "taxing subdivision" or "taxing district."

Your second position is that if the library isn't a "taxing district" then it is a "political subdivision" in the definition of "municipality" which is defined at K.S.A. 10-1101(a) as a "county, township, city, municipal university, school district, community junior college, drainage district, and any other similar political subdivision." Both the operative word "similar" and the maxim of ejusdem generis support the position that "similar political subdivision" refers to those entities which precede it and all of those entities have the power to levy taxes in their own right while the library board does not. Consequently, the library is not a "similar political subdivision."

While we agree that there may be significant policy reasons for bringing libraries within the ambit of the cash basis and budget laws, we cannot overcome the court decisions cited herein and therefore we believe the legislature must address the issue.

Very truly yours,

Robert T. Stephan

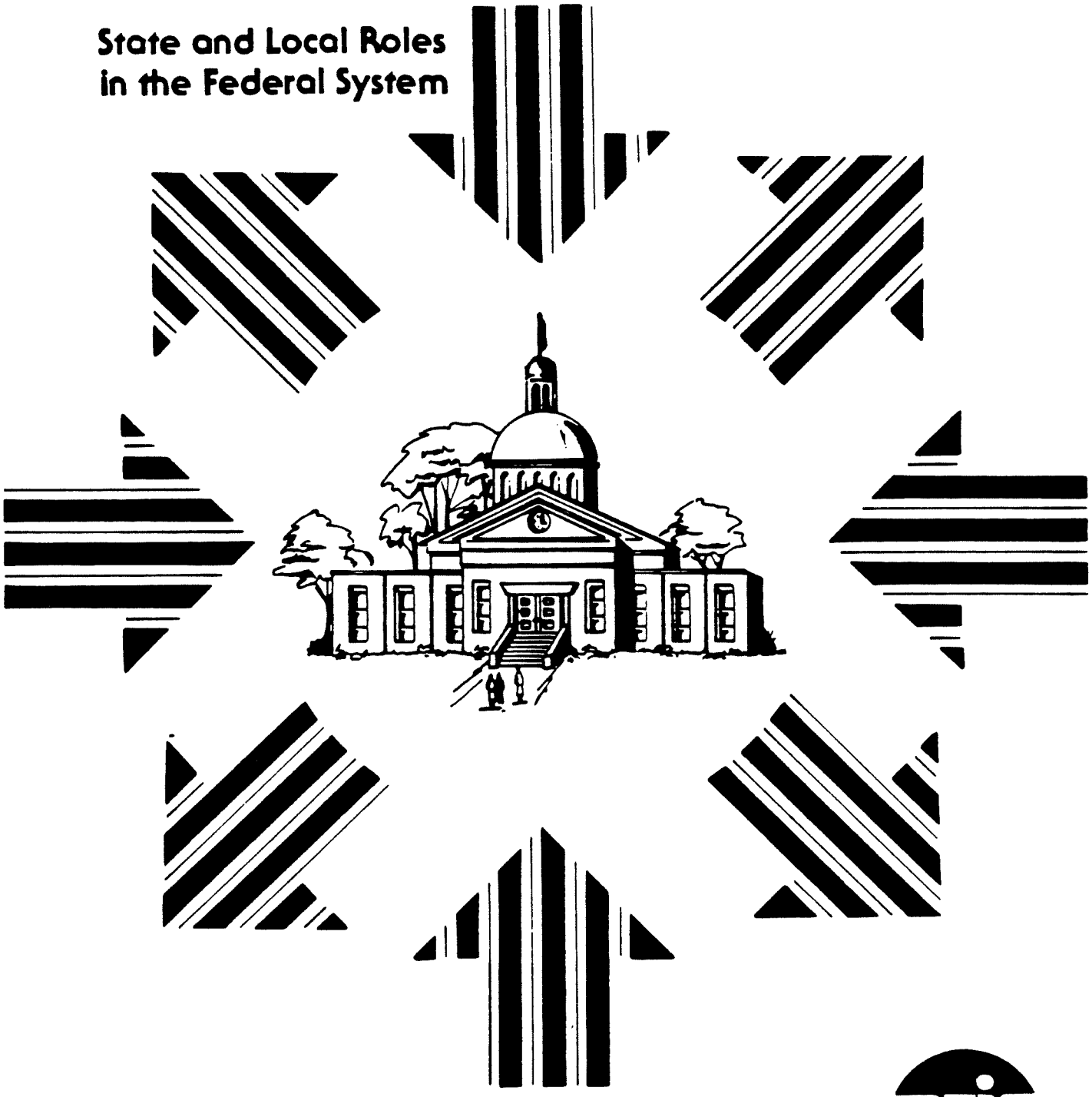
Robert T. Stephan
Attorney General of Kansas

RTS:JLM:MF:jm

Bruce McDowell
ACIR

A COMMISSION REPORT

State and Local Roles in the Federal System



Advisory Commission on Intergovernmental Relations
Washington, D.C. 20575 •
April 1982 A-88

Local Gov't Interim
6-19-93
Attachment 4

less significant system of local government. Nothing could be further from the truth. Low public expenditures in the case of townships is representative of the fact that they are efficient in character and do not create the high administrative costs associated with cumbersome bureaucratic organizations.[80]

SUMMARY

The midwestern rural townships have experienced a steady decline in number from the first Census of Governments in 1942 until the latest in 1977. From 1942 to 1972, they also showed a dramatic decline in their relative importance as units of general local government, measured in terms of expenditures and full-time equivalent employment. The advent of the federal General Revenue Sharing Program in 1972 seems to have had a counteracting effect on this long-range trend. Although objective evidence in the early years was not very clear, fiscal and other data from five years of experience appears incontrovertible. Townships in the rural township states have expanded the scope of their activities; have experienced increases in expenditures and employment at noticeably higher relative rates than other general governments in their states; and have relied on general revenue sharing for a larger share of their total revenues compared to other local general governments. On the basis of these data, therefore, and without reference to other considerations, there seems to be less reason than there was before GRS to anticipate the vanishing of rural township government—assuming that GRS continues the volume and allocational provisions of its first eight years. Even without GRS, the chances of the continuation—if not the flourishing—of rural townships have been enhanced by the establishment of the townships' own organized interest group, the NATT.

SPECIAL DISTRICTS

Special districts are units of local government established to perform a single, or at most a few, specific function(s). They are distinguished from general-purpose units—counties, municipalities, and townships—which are responsible for a broad range of local services.[81] Special districts conventionally are interpreted to exclude school districts, although school districts are a form of special district.[82]

Many of these local units are created by local action pursuant to authorizing state law. Others are established directly by state legislation.

Special districts are the most varied of the five basic types of local government. They are found in the District of Columbia and every state except Alaska. Fourteen states account for more than two-thirds of the total of 25,987 counted by the Bureau of the Census in the 1977 Census of Governments as follows: Illinois, 2,747; California, 2,228; Pennsylvania, 2,035; Texas, 1,425; Kansas, 1,219; Nebraska, 1,192; Washington, 1,062; Missouri, 1,011; New York, 965; Colorado, 954; Indiana, 889; Oregon, 797; Idaho, 612; and North Dakota, 587.

By function, the largest number—4,189—was fire protection units *(Table 100)*. Next in line were water supply, soil conservation, housing and urban renewal, and drainage. Of the total, 24,267 were single-function and 1,720 were multiple-function districts. More than 3,600 special districts are concerned with urban water supply as a sole function or as one of several.

Because of their extremely diverse nature, the Census Bureau considers it meaningless to group special districts by size according to population. It does, however, show the size of financial transactions of some of the very largest districts *(Table 101)*.

Most special districts conduct relatively small-scale operations, however. Thus, in 1976 only 6.2% of the total number had more than 20 full-time equivalent employees, and 67.6% had no full-time equivalent employees. Similarly, in that year only 3.6% of the districts had outstanding debts of $5 million or more and 63.1% had no debt whatsoever.

One-fourth of all special districts serve an area with the same boundaries as those of some other local government—county, city, or township government. Although the vast majority are located entirely within a single county, some 2,630 have territory extending into two or more counties, and 2,449 special districts have an area that includes part or all of a city of 25,000 inhabitants or more.[83]

Special districts are far and away the most rapidly growing of the five types of local government—increasing by 2,075, or 8.6%, from 1972 to 1977, and showing a 41.6% increase in 15 years. Most special districts are outside metropolitan areas (63%), but in the last five years the pace of growth has been far greater inside metropolitan areas (22%) than outside (2%). Use in metropolitan areas is notable in such heavily urbanized states as California, Illinois, and Pennsylvania.

Why Special Districts?

If general-purpose local governments are set up to perform a broad spectrum of functions, and if they col-

A-2

Table 100

NUMBER OF SPECIAL DISTRICTS, BY FUNCTION, 1977

Function	Number	Percent
Total	25,962	100.0%
Single-Function Districts	24,242	93.3
Fire Protection	4,187	16.1
Water Supply	2,480	9.5
Soil Conservation	2,431	9.4
Housing and Urban Renewal	2,408	9.3
Drainage	2,255	8.7
Sanitation, Including Sewerage	1,610	6.2
Cemetery	1,615	6.2
Education (School Building Districts)	1,020	3.9
Irrigation and Water Conservation	934	3.6
Parks and Recreation	829	3.2
Hospital	715	2.8
Flood Control	681	2.6
Highway	652	2.5
Library	586	2.3
Health	350	1.3
Composite Natural Resources	294	1.1
Electric Power, Transit System, and Gas Supply	224	0.9
Other	971	3.7
Multiple-Function Districts	1,070	6.6
Sewerage and Water Supply	1,065	4.1
Natural Resources and Water Supply	71	0.3
Other	584	2.2

SOURCE: U.S. Department of Commerce, Bureau of the Census, Census of Governments, 1977, *Vol. 1, No. 1, Governmental Organization*, Washington, DC, U.S. Government Printing Office, 1978, Table 12.

lectively cover practically every square foot of territory in a state, the question arises as to why special districts are needed at all—to say nothing of why they should expand so rapidly. In its 1964 report on special districts, the ACIR identified a list of factors that influence their creation.[84] Among the financial reasons are: (1) debt and tax limitations on general-purpose local units;[85] (2) the district's suitability for financing services through service or user charges, as opposed to general tax revenues; and (3) the broader financial base which may be available to support a particular service by resort to a special district. Limitations on the powers of general-purpose units are another factor leading to the establishment of special districts. Such limitations include (1) strict construction of powers granted to general purpose governments, (2) lack of power for those governments to establish differential taxing areas within their boundaries, and (3) lack of authority to contract with other local units or to undertake joint responsibility for providing services.

Closely related to these limitations are those imposed by the limited territorial scope of existing units of general local government. City and county areas may be too small for efficient and effective management of certain functions, e.g., air pollution control; or may not conform to the natural boundaries needed for a function, e.g., the water basin needed for water supply.

Political factors are often involved in the creation of special districts. In some parts of the country, for example, a county may have authority to assume responsibility for a needed service or a municipality may have power to extend its territorial boundaries to include areas that need urban services. Nevertheless, those in control

Table 101

SPECIAL DISTRICTS WITH MAJOR FINANCIAL ACTIVITY, 1976–77 (in millions of dollars)

Special District[1]	Total Revenue	Total Expenditure	Outstanding Debt
Arizona:			
Salt River Project Agricultural Improvement and Power District	$232	$413	$1,198
California:			
San Francisco Bay Area Transit District No. 2	144	125	749
Southern California Rapid Transit District	190	195	15
Metropolitan Water District of Southern California	168	174	671
Sacramento Municipal Utility District	107	129	501
District of Columbia:			
Washington Metropolitan Area Transit Authority[2]	625	741	1,024
Georgia:			
Metropolitan Atlanta Rapid Transit Authority	225	248	50
Georgia Municipal Electric Authority	35	351	450
Illinois:			
Greater Chicago Metropolitan Sanitary District	192	219	270
Chicago Transit Authority	330	341	39
Maryland:			
Washington Suburban Sanitary Commission	174	191	615
Massachusetts:			
Massachusetts Bay Transportation Authority	283	306	396
Nebraska:			
Omaha Public Power District	141	274	729
Nebraska Public Power District	220	373	1,165
New York:			
Port Authority of New York and New Jersey[2]	538	611	2,103
Pennsylvania:			
Southeastern Pennsylvania Transportation Authority	239	246	87
Texas:			
Dallas-Fort Worth Regional Airport Authority	57	61	591
Washington:			
Washington Public Power Supply System	98	468	1,989
Chelan County Public Utility District	40	102	825

[1]Units listed in this table had revenue or expenditures of at least $150 million or outstanding debt of $500 million or more
[2]Interstate district.

SOURCE: U.S. Department of Commerce, Bureau of the Census, Census of Governments, 1977, *Vol. 4, No. 2, Finance of Special Districts*. Washington, DC: U.S. Government Printing Office, 1979, p. 5

may be unwilling to assume the responsibility, perhaps for fear of the fiscal consequences or possible alterations in the local political power structure. A related political factor is the belief of some citizens that, by establishing a service in a special district, a community is removing that service from possible influence by the partisan politics that affect their city or county.

Some special districts came into being because of stimulation from the federal government. This occurred initially particularly in the natural resources area, in the establishment of soil conservation, drainage, flood control, and irrigation districts. In later years the federal influence was manifested in housing and urban renewal, airports, sewage disposal, and other environmental control.[86]

Finally, it must be noted that the origins of a few special districts actually antedated general-purpose units. Fire protection originally was provided largely by private and volunteer companies. When a more proficient service was needed, experience with these companies, as organizations distinct from established government—coupled with the widespread public support for continuing with them—influenced the establishment of fire suppression and prevention as a special district responsibility. As another example, the community land grant district in New Mexico is a carry-over of a structure which existed under the Spanish, and later Mexican, occupation of that territory.

The use of special districts is criticized on numerous grounds, including their unaccountability and obstruction of general local government policy.[87] Yet, the continuing expansion in their number is most eloquent testimony to their persisting popularity as a type of local government. Considering that most of the underlying factors responsible for this growth are not likely to vanish soon, chances are that this popularity will continue. As Robert G. Smith put it, the problem with special districts is how to work them "into American federalism without destroying their flexibility, their ability to attract and hold really talented employees, and their obvious capacity to get things done."[88]

SCHOOL DISTRICTS

School districts are the fifth general type of local unit identified by the Bureau of the Census. Although they are a form of special district within the strict meaning of the term, they are counted separately because of their near universality[89] and the importance of the function on the local scene, fiscally and in terms of personnel employed. In FY 1976–77, they accounted for 36% of all local direct general expenditure;[90] in October 1977 they accounted for 46% of total full-time employment equivalents and 45% of the total payroll at the local level.[91]

Although there were 16,548 school systems in the U.S. in 1977, only 15,174 were independent school districts and hence counted by the Census Bureau as units of government (*Table 102*). The other 1,374 were "dependent" school systems, regarded as agencies of other governments—county, municipality, township, or state—and, lacking the necessary ingredient of autonomy, were excluded from the count of local governmental units.

Independent school systems were operating in all states except Alaska, Hawaii, Maryland, North Carolina, and Virginia in 1977, and 13 states had both independent and dependent systems. In only five of these did dependent systems account for a major share of public school enrollment. Hence, in 40 states all or a major fraction of public school pupils were enrolled in independent school districts.

Of the dependent systems, those subordinate to counties were found largely in the southeast. Systems that were adjuncts to townships appeared only in New England and New Jersey. In 14 states and the District of Columbia, dependent systems were operated by municipal governments; but in most of these states, some other pattern predominated.

Whereas special districts have experienced the greatest growth in numbers in recent decades, school disctricts have shown the largest reduction, because of the movement for consolidation and reorganization of mainly small rural districts. Yet, the decline in numbers has diminished in recent years:[92]

School Year	Number of School Districts
1976–77	15,174
1971–72	15,781
1966–67	21,782
1961–62	34,678
1956–57	50,454
1951–52	67,355
1941–42	108,579

Four states with the largest numerical decrease between 1972 and 1977 accounted for nearly 60% of the total decline nationwide: Illinois, a reduction of 114 or 9.7%; Missouri—62 (9.8%); Montana—87 (15.8%), and Nebraska—179 (13.0%). In 1977 four states still had more than 1,000 school districts: Nebraska (1,195), Texas (1,138), California (1,109), and Illinois (1,063). These four accounted for nearly 30% of all school districts in the nation.

Although the school district is a special-purpose en-

ments are the special district, annexation, county modernization, city-county consolidation, and other forms of multijurisdictional organization. In contrast to procedural approaches which merely shift functions or create cooperative approaches between and among existing governments, structural and jurisdictional methods create new forms of governments (as with special districts or city-county consolidations); reorganize existing governments (as with county modernization); or adjust the boundaries of local governments (as happens with annexation).

There are, however, differences among these structural and jurisdictional approaches. Special districts and, at times, annexations have characteristics similar to procedural methods: Both are often ad hoc, haphazard actions reflecting little thought about the most effective functional assignment pattern. County modernization and the more dramatic forms of local governmental reorganization, however, usually reflect a more comprehensive and more carefully conceived approach to service performance.

Special Districts

Special districts are independent, limited-purpose governmental units which exist as separate entities and have substantial fiscal and administrative independence from general-purpose local governments. The great majority of special districts—93.4% in 1977—are responsible for only one function. School districts are one functional type of independent special district, but are excluded from this analysis because of their special fiscal and functional importance. In addition, this follows the classification used by the U.S. Bureau of the Census. Also excluded are county service or taxing areas established to provide specific improvements or services within the county but subordinate to county governments, and dependent special districts that are linked one way or another to general-purpose units.

Special districts are the most varied and least studied type of American local government. Much of the information available is based on each quinquennial Census of Governments conducted by the Bureau of the Census. Although the data include the number, functional distribution, finances, and employment of special districts, in-depth studies are lacking. State governments, which are responsible for creating special districts either through general authorizing legislation or specific statutes, have rarely studied them or even summarized their governmental powers.[148] As early as 1957, John Bollens said, "special districts have been too long neglected in the study of government in the U.S. . . . . They constitute the 'new dark continent of American politics.'" This appellation, once attributed to county governments, is as true of special districts today as it was 23 years ago. Special districts perform even more important tasks now, but many of them operate with little visibility or public scrutiny at the time that they are the most common type of local government. On the other hand, most school districts—the most common of any of the functional districts—operate with an especially high degree of visibility and accountability.

The reasons for special district growth are numerous. As summarized in *Chapter 4*, they may provide: (1) greater financial flexibility than general-purpose local government,[150] (2) a tax base coinciding with the service area, (3) fewer restrictions on functional powers and cooperative arrangements with other governments, (4) the possibility of providing a service on a larger or different territorial scope than is often possible with general-purpose governments, and (5) the opportunity to remove services from the political process and place them in a nonpartisan, managerial environment. Further, in some cases, they have been established through the encouragement of the federal government.[151] In general, though, the overriding reason for establishment of most districts is the need to fit service delivery to the geographic area of service need. Indeed, for service areas embracing parts of two counties, the special district or authority usually is the only legally possible and operationally sensible way of providing the desired service.

SCOPE AND USE

In 1977, 25,962 special districts existed in the nation—an increase of 7,639 (42%) from 1962. No other type of local government increased by that much in those 15 years. In fact, counties, townships, and school districts have all declined during the same period. The only other governmental group to increase is municipalities—and they by only 4.8%. A positive factor in this tremendous special-district increase is that their growth rate is declining. From 1962 to 1967, they increased 16%; 1967 to 1972, 12%; and 1972 to 1977, 8.7%.

Currently, special districts exist in the District of Columbia and in all states except Alaska. Eight states (California, Illinois, Kansas, Missouri, Nebraska, Pennsylvania, Texas, and Washington) accounted for 50% of the total in 1977. (See *Table 153*.) Eight states—Colorado, Illinois, Indiana, Kentucky, Missouri, Nebraska, Pennsylvania, and Texas—also are responsible for 52% of the increase of 4,698 special districts from 1967 to 1977. Four of these—Illinois, Missouri, Pennsylvania, and Texas—are states which currently have a heavy con-

Table 153

NUMBER OF SPECIAL DISTRICT GOVERNMENTS, BY STATE: 1967, 1972, 1977

States	1977	1972	1967
United States, total	25,962	23,885	21,264
Alabama	336	286	251
Alaska	—	—	—
Arizona	106	90	76
Arkansas	424	366	352
California	2,227	2,223	2,168
Colorado	950	812	748
Connecticut	236	231	221
Delaware	127	78	65
District of Columbia	1	2	1
Florida	361	315	310
Georgia	387	366	338
Hawaii	15	15	15
Idaho	612	543	513
Illinois	2,745	2,407	2,313
Indiana	885	832	619
Iowa	334	305	280
Kansas	1,219	1,136	1,037
Kentucky	478	446	273
Louisiana	30[1]	419	334
Maine	178	126	127
Maryland	252	229	187
Massachusetts	328	268	247
Michigan	168	139	110
Minnesota	263	211	148
Mississippi	304	282	272
Missouri	1,007	820	734
Montana	311	258	209
Nebraska	1,192	1,081	952
Nevada	132	134	95
New Hampshire	103	94	89
New Jersey	380	341	311
New Mexico	100	99	97
New York	964	954	965
North Carolina	302	248	215
North Dakota	587	561	431
Ohio	312	275	228
Oklahoma	406	402	214
Oregon	797	826	800
Pennsylvania	2,035	1,777	1,624
Rhode Island	78	73	67
South Carolina	182	182	146
South Dakota	148	136	106
Tennessee	471	457	386
Texas	1,425	1,215	1,001
Utah	207	176	163
Vermont	67	74	72
Virginia	65	58	48
Washington	1,060	1,021	937
West Virginia	258	172	120
Wisconsin	190	121	62
Wyoming	217	203	185

— Represents zero or rounds to zero.

[1] A large number of units in Louisiana were reclassified from independent special districts to dependent agencies of parishes and municipalities for the 1977 census, as a result of the 1974 Louisiana constitution.

SOURCE: U.S. Department of Commerce, Bureau of the Census, *1977 Census of Governments*, Vol. I, No. 1, *Governmental Organization*, Washington, DC, U.S. Government Printing Office, 1978, Table 4, p. 28.

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centration of special districts. Seven states—Delaware, Kentucky, Michigan, Minnesota, Oklahoma, West Virginia, and Wisconsin—increased their special districts by more than 50% from 1967 to 1977. West Virginia went from 120 to 258—up 115%, and Wisconsin from 62 to 190—up 206%. In these ten years, only four states—Louisiana, New York, Oregon, and Vermont—experienced a decline in the number of their special districts. The latter three by a grand total of nine. Louisiana was the only state with a significant drop—304, which occurred because the 1974 Louisiana constitution reclassified many of these units from independent to dependent districts of parishes and municipalities. One state—Hawaii—stayed the same, as did the District of Columbia.

The functions that special districts perform vary greatly. Twenty different functions performed by single-function districts were identified by the Bureau of the Census. These represented over 90% of all special districts, but no particular function was preeminent. Most numerous were fire protection (16.1%), followed by water supply, soil conservation, housing and urban renewal, and drainage districts (between 8% and 10%) (see *Table 100*).

Of the 20 functional types, all but two increased in number between 1967 and 1977. Highway districts declined by 15.7% and soil conservation districts by 5.5%. (See *Table 154*.) Among the single-function units, the greatest increase was in transit districts—from 14 in 1967 to 96 in 1977, an increase of almost 600%. This reflects the continued growth of big metropolitan transportation authorities. Others that grew substantially were housing and urban renewal (53.8%), health (49.5%), libraries (42.9%), parks and recreation (35.2%), and hospitals (33.1%). Multiple-functional districts also grew enormously (279.6%)—largely because of the increase in sewerage and water supply districts (257.3%). At the same time, single-function sewerage and water districts also continued to increase—the former by 30.5%, the latter by 15.8%. In 1977, 5,155 districts performed water or sewerage function, either singly or jointly—19.8% of all special districts. In the decade from 1967 to 1977, they increased 40.4%.

Many of the districts that are increasing in number—most notably transportation and sewerage and water—have characteristics that necessitate a functional authority mechanism, especially in metropolitan areas. River and drainage basin topography and patterns of population density and employment sites dictate service areas that cut across municipal, county, and township boundary lines.

Special districts usualy overlie or overlap general-purpose local government(s), but about one-fourth of the total districts in 1977 had the same boundaries as another local government—county, city, or township. This portion was about the same as in 1967 and 1972. Special districts with boundaries coterminous with counties constituted 12.2% of the total, and those crossing county boundaries 10.1%. These percentages have barely varied from those in 1967 and 1972. The majority of special districts (64.6%), then, serve an area which is composed of more than one local government, but they are not multicounty. This percentage increased slightly from 1967, when it was 52.6%.[152]

Most special districts (63% in 1977) are located in nonmetropolitan areas; but the recent growth in special districts has been greater in metropolitan than outside areas. In the former, special districts increased by 14.2% from 1967 to 1972 and then by 18.9% from 1972 to 1977. In contrast, outside metropolitan areas they increased by 11.3% from 1967 to 1972, but only by 3.4% from 1972 to 1977.[153] Thus, the percentage of special districts in metropolitan areas rose from 33.1% in 1967 to 37% in 1977.

PROS AND CONS

The merits of special districts, in some respects, are evident from the reasons for their establishment.[154] Their major advantage is that they often are the only means by which citizens can obtain a badly needed government service. Because of debt and tax limitations, restrictions on the powers of other local governments to engage in services, and the inability of localities to adjust boundaries to areas needing services, the special district is often the only solution for servicing needs.

But expediency is not the only virtue of special districts: Often they are able to take advantage of economies of scale—especially in capital-intensive, physical development services. This undoubtedly is a factor in the creation of so many special districts for water and/or sewerage services. Furthermore, districts can easily fund services through user fees so only those benefiting from the service pay for it. In fact, special districts are generally able to derive revenue from users of their services. Many also believe that for various reasons, special districts are likely to establish advanced management techniques and are capable of attracting professional personnel resulting in more efficient services. This is a characteristic which is more likely to be true for the larger, urban or regional special districts. Many of the small ones are run by volunteer or part-time appointed or elected officials with little experience.

Finally, some defenders point out that the increase in

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or meetings.[156] Still, the citizen is not totally at fault: The public finds it difficult to monitor the activities of the number of special districts that exist within specific areas.

Another major criticism leveled at special districts is that they do not coordinate their activities with general-purpose local governments. As units with only one functional responsibility, or in some cases two, their concerns are centered on that function rather than the total servicing picture. Since large special districts rarely are required to answer to general-purpose governments—particularly on budgetary matters—they are not part of the process of setting functional priorities for expenditures for the entire metropolitan community.

Other critics contend that special districts have often been financially troublesome. Their projects have sometimes proved more expensive than those of general-purpose governments. By not being part of general-purpose units, they often lose the advantages of centralized administrative services—a problem particularly acute in smaller districts. Frequently, moreover, they are not subjected to adequate financial control—such as audits—by state, county, or city governments.

SUMMARY

Special districts are the most numerous unit of local government, present in almost every state and in most functional areas. Their popularity with the public as a service provider clearly is still unquestioned and they are strongly supported by their respective interest groups. Despite this, they are the unit of government which is responsible for much of the fragmentation of functional assignments. This is especially true in metropolitan areas where regional special districts, rather than serving as coordinating devices, are often in conflict with themselves and local governments. One reason is that most special districts are still unifunctional. Thus, in both metropolitan and nonmetropolitan areas, special districts often are a highly practical means for financing and providing services, although they frequently undermine the responsibilities of general purpose local governments. On balance, it appears that although they comprise an essential segment of local government, their principal difficulty is their failure to forge the necessary policy and budgetary relationships with the overlapping general local government(s).

Annexation

Annexation is one of the oldest methods of adjusting local government boundaries to meet people's needs for government services and fiscal resources. Its use, however, has varied during the nation's history. Large-scale annexations first became prominent in the latter half of the 19th Century. During this period and on into the first two decades of this century, some of the great cities of the Northeast and Midwest, such as Chicago and Cleveland, engaged in extensive annexation of surrounding territory. Moreover, some Western cities, such as Denver and Los Angeles, extended their jurisdiction over what were then large portions of their suburban development. The 1930s and 1940s brought a sharp decline in municipal annexations; but, with the end of World War II, annexation again came into use and numerous cities, large and small, acquired surrounding adjacent territory.

The number of annexations since World War II, however, does not mean that annexation has been a successful tool in solving urban problems or in significantly reducing the fragmentation in local government responsibilities for public services. Only a few large cities, mainly in the South and West, have added sizable population or area. With rare exceptions, annexation today does not appear to be the means to achieve areawide government, a broader base for the delivery of services, or a solution to some of the most pressing urban problems (such as central city and suburban fiscal disparities).

The following summarizes the historical trends, current usage, legal methods and problems, and the areawide and functional implications of annexation.

HISTORICAL USE OF ANNEXATION

The 19th Century was a period of tremendous growth for cities as industrialization and immigration drew many people to the urban centers, particularly in the East and Midwest. Annexation—the territorial acquisition of areas outside municipal boundaries—played a significant role, particularly in the latter half of the 1800s and the first two decades of the 20th Century. Thereafter, the frequency of annexations and the great acquisitions of land and people lessened significantly, thanks in part to the enactment of more "permissive" municipal incorporation statutes.

Some annexation by central cities did occur in the first half of the 19th Century. Many were the result of special acts of state legislatures applicable to a single city. For instance, in 1816, the Maryland legislature compelled Baltimore to annex 12 square miles and in 1836, the Pennsylvania legislature joined Northern Liberties Borough with Pittsburgh without a vote in either jurisdiction.[157]

In contrast, state legislators in the second half of the 1800s gradually relinquished control over annexation

their number is largely misleading and the degree to which they complicate local governmental operations vastly overstated. After all, in 1977 70% of them had no full-time employees. Moreover, they point out some 902 large special districts (3.4% of the total) accounted for over four-fifths of all district expenditures. As some proponents stress, the tiny, part-time employee staffed district—typically found in rural America—is a convenient, inexpensive, collaborative way of getting services that otherwise might not be performed and the big metropolitan authorities are vital and irreplaceable providers of needed regional services. To ignore either of these dimensions of the special district picture, they warn, is to ignore reality and to focus heavily on national aggregates and the traditional antispecial district arguments of political scientists and public administrators.

Critics of special districts single out their lack of accessibility and accountability. Some argue that a reason for this is that many are headed by appointed officials. In 1977, nearly 40% had no elected officials, but were administered by appointed board members.[155] Part of the problem, they concede, lies with citizens themselves, who, even when permitted to elect governing bodies, often don't vote or don't participate in public hearings

Table 154

SPECIAL DISTRICTS, BY FUNCTION: 1967, 1972, AND 1977

By Function	1967	1972	1977	Percentage Increase From 1967–77
Single-Function Districts—Total	20,811	22,981	24,242	16.4%
Cemeteries	1,397	1,494	1,615	15.6
Education (School Building Districts)	956	1,085	1,020	6.6
Fire Protection	3,665	3,872	4,187	14.2
Highways	774	698	652	-15.7
Health	234	257	350	49.5
Hospitals	537	657	715	33.1
Housing and Urban Renewal	1,565	2,271	2,408	53.8
Libraries	410	498	586	42.9
Natural Resources—Total	6,539	6,639	6,595	.8
Drainage	2,193	2,192	2,255	2.8
Flood Control	662	684	681	2.8
Irrigation Water Conservation	.904	971	934	3.3
Soil Conservation	2,571	2,561	2,431	-5.5
Other and Composite Purposes	209	231	294	40.6
Parks and Recreation	613	750	829	35.2
Sewerage	1.233	1,411	1,610	30.5
Utilities Total	2,266	2,488	2,704	19.3
Water Supply	2,140	2,333	2,480	15.8
Electric Power	75	74	82	9.3
Gas Supply	37	48	46	24.3
Transit	14	33	96	585.7
Other	622	861	971	56.1
Multiple-Function Districts—Total	453	904	1,720	279.6
Sewerage and Water Supply	298	631	1,065	257.3
Natural Resources and Water Supply	45	67	71	57.7
Other	110	206	584	430.9

SOURCE: U.S. Department of Commerce, Bureau of the Census, *Census of Governments*, 1967, 1972, 1977, Vol. I, No. 1, *Governmental Organization*, Washington, DC, U.S. Government Printing Office, 1968, 1973, 1978, Table 15 (1972, 1977), Table 12 (1977).

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Figure 2. **Local Governments by State: 1987**

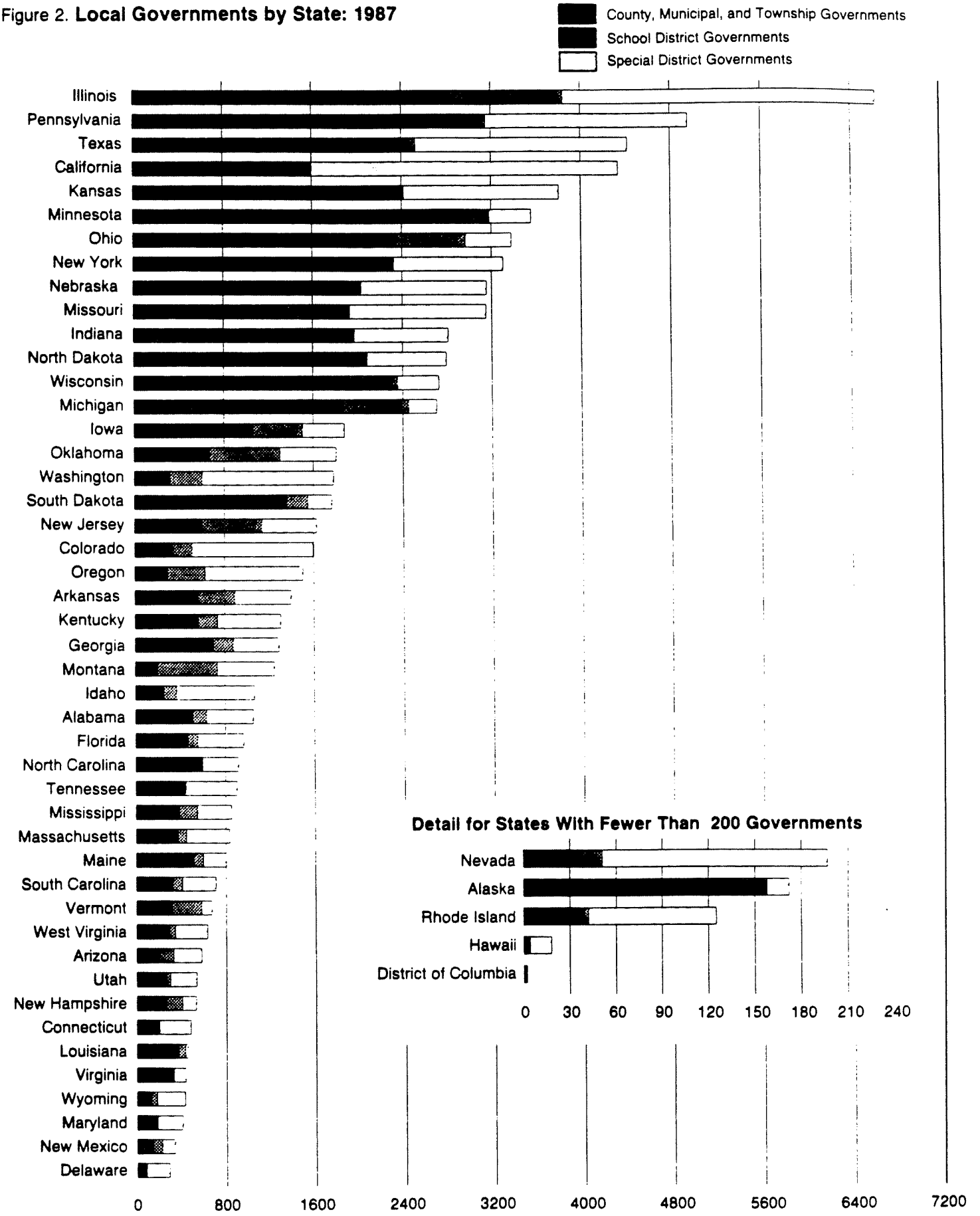

Table 1
Government Units in the United States

Type of Government	1992	1987	1982	1977	1972	1967	1962
Total	86,743	83,217	81,831	79,913	78,269	81,299	91,237
U.S. Government	1	1	1	1	1	1	1
State Governments	50	50	50	50	50	50	50
Local governments	86,692	83,166	81,780	79,862	78,218	81,248	91,186
County	3,043	3,042	3,041	3,042	3,044	3,049	3,043
Municipal	19,296	19,205	19,076	18,862	18,517	18,048	18,000
Township	16,666	16,691	16,734	16,822	16,991	17,105	17,142
School district	14,556	14,741	14,851	15,174	15,781	21,782	34,678
Special district	33,131	29,487	28,078	25,962	23,885	21,264	18,323

Figure 1

Average Population Per Special District by State

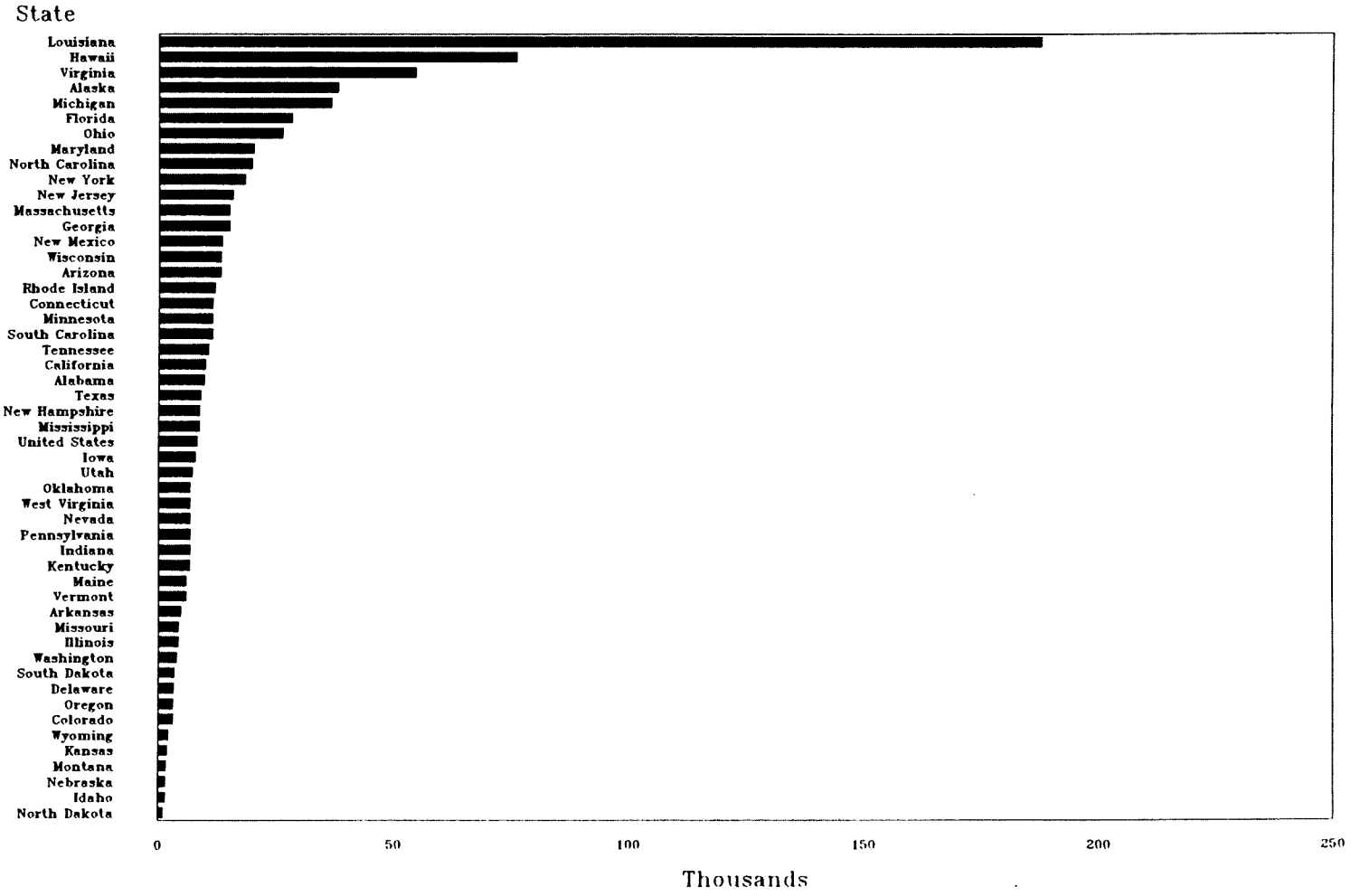

TABLE 1

STATE	TOTAL SPECIAL DISTRICTS	ESTIMATED 1987 POPULATION (000s)	AVERAGE POPULATION PER DISTRICT
Louisiana	24	4,501.3	187,554
Hawaii	14	1,062.3	75,879
Virginia	106	5,786.7	54,592
Alaska	14	533.6	38,114
Michigan	250	9,144.6	36,578
Florida	414	11,674.9	28,200
Ohio	410	10,752.5	26,226
Maryland	223	4,463.3	20,015
North Carolina	321	6,331.6	19,725
New York	978	17,772.1	18,172
New Jersey	486	7,619.6	15,678
Massachusetts	391	5,832.0	14,916
Georgia	410	6,104.3	14,889
New Mexico	112	1,479.8	13,213
Wisconsin	366	4,784.9	13,073
Arizona	253	3,279.7	12,963
Rhode Island	83	975.0	11,747
Connecticut	281	3,188.7	11,348
Minnesota	374	4,213.9	11,267
South Carolina	300	3,375.3	11,251
Tennessee	462	4,802.9	10,396
California	2,734	26,981.0	9,869
Alabama	421	4,052.3	9,625
Texas	1,892	16,682.1	8,817
New Hampshire	120	1,026.9	8,558
Mississippi	307	2,625.5	8,552
United States	**29,531**	**240,411.4**	**8,141**
Iowa	372	2,850.8	7,663
Utah	236	1,665.3	7,056
Oklahoma	498	3,305.6	6,638
West Virginia	290	1,918.8	6,617
Nevada	146	963.2	6,597
Pennsylvania	1,805	11,889.2	6,587
Indiana	836	5,503.6	6,583
Kentucky	569	3,727.9	6,552
Maine	203	1,173.6	5,781
Vermont	95	541.1	5,696
Arkansas	505	2,372.2	4,697
Missouri	1,217	5,066.0	4,163
Illinois	2,783	11,553.2	4,151
Washington	1,177	4,462.5	3,791
South Dakota	212	708.0	3,340
Delaware	202	632.7	3,132
Oregon	876	2,697.9	3,080
Colorado	1,085	3,266.7	3,011
Wyoming	250	507.5	2,030
Kansas	**1,387**	**2,460.4**	**1,774**
Montana	514	818.8	1,593
Nebraska	1,119	1,597.8	1,428
Idaho	705	1,002.5	1,422
North Dakota	703	679.3	966

Table A-3

Number of Special Districts in the United States, by State, 1957-1987

State	1957	1962	1967	1972	1977	1982	1987
Alabama	119	202	251	286	336	390	421
Alaska	–	–	–	–	–	6	14
Arizona	50	52	76	90	106	130	253
Arkansas	254	299	352	366	424	505	505
California	1,650	1,962	2,168	2,223	2,227	2,506	2,734
Colorado	421	566	748	812	950	1,030	1,085
Connecticut	187	204	221	231	236	281	281
Delaware	64	63	65	78	127	139	202
District of Columbia	1	1	1	2	1	1	1
Florida	227	264	310	315	361	417	414
Georgia	255	301	338	366	387	390	410
Hawaii	–	16	15	15	15	14	14
Idaho	431	469	513	543	612	659	705
Illinois	1,800	2,126	2,313	2,407	2,745	2,602	2,783
Indiana	313	560	619	832	885	897	836
Iowa	199	263	280	305	334	361	372
Kansas	808	880	1,037	1,136	1,219	1,370	1,387
Kentucky	157	179	273	446	478	517	569
Louisiana	217	241	334	419	30	39	24
Maine	107	125	127	126	178	195	203
Maryland	155	176	187	229	252	264	223
Massachusetts	205	194	247	268	328	354	391
Michigan	102	99	110	139	168	184	250
Minnesota	92	115	148	211	263	356	374
Mississippi	248	266	272	282	304	315	307
Missouri	827	742	734	820	1,007	1,195	1,217
Montana	174	192	209	258	311	450	514
Nebraska	610	752	952	1,081	1,192	1,157	1,119
Nevada	58	85	95	134	132	134	146
New Hampshire	80	85	89	94	103	113	120
New Jersey	140	295	311	341	380	454	486
New Mexico	112	102	97	99	100	101	112
New York	924	970	965	954	964	923	978
North Carolina	111	126	215	248	302	321	321
North Dakota	168	246	431	561	587	692	703
Ohio	160	177	228	275	312	377	410
Oklahoma	105	124	214	402	406	916	498
Oregon	550	727	800	826	797	825	876
Pennsylvania	34	1,398	1,624	1,777	2,035	2,050	1,805
Rhode Island	51	56	67	73	78	80	83
South Carolina	112	142	148	182	182	242	300
South Dakota	69	80	106	136	148	199	212
Tennessee	195	268	386	457	471	469	462
Texas	645	733	1,001	1,215	1,425	1,681	1,892
Utah	118	142	163	176	207	211	236
Vermont	72	72	72	74	67	83	95
Virginia	40	46	48	58	65	83	106
Washington	745	867	937	1,021	1,060	1,130	1,177
West Virginia	32	55	120	172	258	292	290
Wisconsin	78	68	62	121	190	263	366
Wyoming	133	144	185	203	217	225	250

Source: U.S. Department of Commerce, Bureau of the Census, *Government Organization*, Census of Governments, Vol. 1 (Washington, DC, every 5 years).

Table A-4

Number of Townships in the United States, by State, 1957-1987

State	1957	1962	1967	1972	1977	1982	1987
Connecticut	152	152	149	149	149	149	149
Illinois	1,433	1,433	1,432	1,432	1,436	1,434	1,434
Indiana	1,009	1,009	1,009	1,008	1,008	1,008	1,008
Kansas	1,550	1,546	1,543	1,51,7	1,449	1,367	1,360
Maine	471	470	469	472	475	475	471
Massachusetts	312	312	312	312	312	312	312
Michigan	1,262	1,259	1,253	1,248	1,245	1,245	1,242
Minnesota	1,828	1,822	1,81,7	1,798	1,792	1,795	1,798
Missouri	328	329	343	343	326	325	325
Nebraska	478	478	486	476	471	470	454
New Hampshire	222	221	222	224	221	221	221
New Jersey[1]	233	233	232	232	232	245	247
New York	932	932	931	931	930	928	929
North Dakota	1,392	1,387	1,378	1,368	1,360	1,360	1,355
Ohio	1,335	1,328	1,324	1,320	1,31,9	1,31,8	1,318
Pennsylvania[2]	1,564	1,555	1,554	1,552	1,549	1,549	1,548
Rhode Island	32	31	31	31	31	31	31
South Carolina	2	–	–	–	–	–	–
South Dakota	1,080	1,072	1,050	1,034	1,010	996	984
Vermont	238	238	238	237	237	237	237
Washington	69	66	63	39	–	–	–
Wisconsin	1,276	1,271	1,269	1,268	1,270	1,269	1,268

[1] Because New Jersey state law does not distinguish between townships and incorporated municipalities, some argue that the number of townships in New Jersey should be 0. See Table A-2.

[2] The Bureau of the Census treats townships in New Jersey and Pennsylvania as "townships" because they have no relation to concentrations of population.

Source: U.S. Department of Commerce, Bureau of the Census, *Government Organization*, Census of Governments, Vol.1 (Washington, DC, every 5 years).

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Executive Summary

The initial creation of boundary review commissions in the 1960s reflected an effort by some states to respond to the rapid growth in the number of suburban communities that developed after World War II as a result of massive migration out of the nation's older industrial central cities. This growth gave rise to concerns about unplanned and uncoordinated metropolitan development, local fiscal disparities, territorial disputes, and a proliferation of small local governments lacking viability. Boundary review commissions (BRC), therefore, were seen as a means by which a state could manage metropolitan development in presumably rational ways.

Boundary review commissions now operate in 12 states. Eight states established BRCs between 1959 and 1969 (Alaska, California, Michigan, Minnesota, Nevada, New Mexico, Oregon, and Washington). The other BRCs are in Iowa (1972), Utah (1979), Virginia (1980), and St. Louis County, Missouri (1989).

Most BRCs were established with a set of broad policy goals. In general, BRC missions, as spelled out in legislation, were to (1) encourage orderly metropolitan development and discourage sprawl, (2) promote comprehensive land use planning, (3) enhance the quality and quantity of public services, (4) limit destructive competition between local governments, and (5) help ensure the fiscal viability of local governments.

More specifically, the commissions exercise decisionmaking or advisory authority over the establishment, consolidation, annexation, and dissolution of units of local government, within the framework of state constitutional and legislative provisions. Six BRCs operate statewide (Alaska, Iowa, Michigan, Minnesota, New Mexico, and Virginia); the others operate within particular counties or metropolitan areas. Most BRCs are authorized to consider all types of boundary issues, but three of them (Nevada, New Mexico, and Utah) may consider only annexation. Eleven commissions have authority to approve or deny proposals, subject to judicial appeal or popular referendum. Virginia's BRC has only an advisory role; boundary decisions are made by the state courts.

To determine the current status of BRCs, ACIR interviewed commission staff members and conducted a survey of state associations of municipalities, townships, and counties.

For the most part, the commissions are small and have limited funding. Some BRCs have their own staff, while others rely on part-time staff (usually county employees). Some BRCs receive funding from the state; others rely o local government funds. Some of the commissions are active and influential; ot ers are underutilized or inactive. Basic philosophical differences about local gov-

Local Boundary Commissions: Status and Roles in Forming, Adjusting and Dissolving Local Government Boundaries

U.S. Advisory Commission on Intergovernmental Relations

M-183
May 199

Contents

Local Boundary Commissions

Introduction

The constitutions and laws of the 50 states set the rules for establishing and revising the boundaries of local governments (e.g., counties and municipalities). Consequently, there are many variations in how this function is carried out across the United States. Until the mid-twentieth century, state laws governing local government formation and boundary changes largely provided that local governments, landowners, or citizens initiate proposals to be decided case by case by local governments themselves or by the voters. In some states, the process favored municipal expansion through easy annexation. In other states, annexation was more difficult. In Virginia, for example, with its unique system of city-county separation, such proposals are adjudicated by the courts. Some state legislatures act directly to establish local governments and adjust their boundaries.

After World War II, rapid suburbanization followed by massive migration into the Sunbelt states gave rise to concerns about urban sprawl, unplanned and uncoordinated development, local fiscal disparities in metropolitan areas, territorial disputes, and the proliferation of so-called peanut governments. Numerous proposals were made, therefore, to manage metropolitan and exurban development in presumably rational ways.

In 1959, Minnesota and Alaska established institutions to help with the task of changing local government boundaries. These institutions are referred to, generally, as boundary review commissions (BRCs). Since 1959, ten other states have created similar institutions (California, Iowa, Michigan, Missouri, Nevada, New Mexico, Oregon, Utah, Virginia, and Washington). The federal government also entered the field of local boundary issues through the *Voting Rights Act of 1965* and its amendments. The legislation is intended to ensure that local jurisdictions are not formed or altered in ways that will create or perpetuate racial or ethnic discrimination.[1] As a result, local boundary issues have become intergovernmental issues.

This report updates and elaborates on the Commission's earlier work on boundary review commissions and other boundary issues.[2] The central questions concern (1) the extent of local freedom and flexibility in creating, changing, and eliminating local government structures, powers, and boundaries and

ernment organization have a strong impact on the commissions' functions, as do state laws governing boundary changes and the formation of local governments.

The initially broad purposes of BRCs have changed over time. Today, annexation and mediation of interjurisdictional boundary conflicts top the BRC agendas. Because these issues require different types of analysis and assistance than originally envisioned for BRCs, some commissions have developed new techniques for resolving disputes and negotiating agreements for service delivery and tax sharing. These techniques can help reveal alternatives to annexations and consolidations, such as interlocal agreements and contracts.

Boundary issues are often contentious. In some cases, it appears that BRCs have reduced the number of disputes, although it was not possible to determine whether reduced tension was the result of BRC problem solving or citizen reluctance to raise boundary issues. BRC states do not have obviously better patterns of urban development or fewer contentious boundary disputes than non-BRC states. Although BRCs can provide assistance in dispute resolution, most of them are not empowered to manage growth and boundary changes themselves.

Boundary review commissions inevitably are drawn into controversy when they rule on or attempt to mediate proposals for boundary changes. Sometimes, these issues end up in court, especially in Michigan. In some states, there have been legislative challenges to the BRCs. Oregon abolished one of its three commissions, and Washington limited the role of its BRC. For the most part, the BRCs that have survived these challenges have done so by offering analytical and mediating services not available from other agencies.

The existence of boundary review commissions raises some concerns about citizen self-determination. When the state creates a BRC, citizens, in many cases, can no longer petition the legislature to establish a new unit of government or expand one to meet their needs. Boundary adjustments approved by a BRC usually are submitted to a referendum. When a BRC vetoes a proposal, however, the decision does not go to the voters. Thus, boundary commissions can prevent incorporations even when the electorate favors them.

As such, BRCs may undercut the value of having a variety of local governments that allows citizens to choose the jurisdictions that provide the services and tax rates most closely matched to their preferences. BRCs, it is argued, may interfere with citizen preferences regarding the creation and maintenance of local governments. In particular, BRCs may value large government units more highly than small ones. Those who take this view assume that BRCs generally would oppose new incorporations and favor annexations or consolidations.

However, BRC analyses may not necessarily carry a "bigger is better" bias. The diseconomies of large-scale governments as well as small-scale governments are generally recognized. Legislative direction to BRCs, as well as the analytical criteria they have developed, may guard against bias in either direction. The strongest political value in the local government system is against consolidating existing units. This preference is enforced by state laws that all but rule out municipal consolidation under most circumstances.

In general, BRCs respond to individual proposals for boundary changes rather than formulating broad strategies for metropolitan boundary adjustments. This situation is a disappointment to those who hope for a "rationalization" of local

government patterns and a comfort to those who believe that an electoral-le$_b$ marketplace of boundary decisions is preferable to a centrally planned pattern.

One question that cannot be answered definitively is whether BRCs are effective. No substantive or systematic evidence could be found on whether BRCs effectively assist urban growth management, ease competition for territory and tax base, or protect the public interest and promote fiscal equity. Despite 30 years of experience with BRCs, no comprehensive evaluation of their work or effectiveness could be found.

Nevertheless, most of the BRC staff and local association representatives opposed abolishing the commissions. Several respondents argued that without BRCs boundary issues might become more political and/or litigious. The ability of BRCs to conduct studies and analyses that assist citizens and officials in making boundary decisions was cited as a useful function, as were the mediation and dispute resolution roles.

Table 7 (cont.)

Characteristics of Boundary Review Commissions

State	Agency Title	Statutory Citation	Date Established	State or Local Organization	Membership	Funding	Staff	Type of Boundary Changes Considered	Additional Review or Approval
New Mexico	New Mexico Boundary Commission	N.M.S. Annotated 1978 Section 3-7-1	1965	One statewide board	3 appointed by Governor	State funded per diem and expenses	Staffed by state	Annexation	Appeal to district courts
Oregon	Local Government Boundary Commissions	O.R.S. Chp. 199.410-199.512	1969	Two in metropolitan areas Third abolished 1980	7 or 12 appointed by Governor	Locally funded	Varies by commission	Annexation Incorporation Detachment from cities Consolidation or merger Creation, abolition, or modification of certain special districts including approval of additional functions Extraterritorial extension of sewer or water services by cities or special districts Creation of private sewer and water firms Transfers of territory	Depends on method of initiation Appeal to State Court of Appeals
Utah	Boundary Review Commission	Utah Code Annotated Title 10 Chp. 2 Part 4	1979	County	Varies by commission 7 or 5	County provides space and financing	0	Annexation	Appeal to courts

Table 7 (cont.)

Characteristics of Boundary Review Commissions

State	Agency Title	Statutory Citation	Date Established	State or Local Organization	Membership	Funding	Staff	Type of Boundary Changes Considered	Additional Review or Approval
Virginia	Commission on Local Government	Ch19.1 Title 15.1 Code of VA	1980	One statewide board	5 by Governor	State $460,000 in FY 89-90	7	Incorporation Annexation Consolidation Limited immunization of counties from city annexation Mediation	Courts make initial decisions and hear appeals
Washington	Boundary Review Boards	W.S. Ch. 36.93 R.C.W.	1967	Required for counties over 210,000 population optional in other counties	11 for counties over 500,000 and 5 for all others	County funded	Varies by county	Annexation Incorporation Dissolution of cities and towns Consolidation of cities and towns Creation, consolidation, or abolition of special districts Extraterritorial extension of sewer or water service by a city or special district	Appeal to courts

Table 7
Characteristics of Boundary Review Commissions

State	Agency Title	Statutory Citation	Date Established	State or Local Organization	Membership	Funding	Staff	Type of Boundary Changes Considered	Additional Review or Approval
Alaska	Local Boundary Commission	A.S. 44.47.565-44.47.590	1959	One statewide board	5 appointed by Governor	State funded $266,000	4	Annexation Detachment Dissolution Incorporation Merger or Consolidation	Referendum or legislative review in some instances Appeal to courts
California	Local Agency Formation Commissions	C.G.S. Sections 56000-57550	1963	One for each of 58 counties (except San Francisco)	Varies	Counties legally required to pay expenses	Most are staffed by county employees.	Annexation Incorporation Detachments from cities Creation, reorganization, formation and abolition of special districts and county service areas Determines spheres of influence	Referendum, local government Appeal to courts if discrimination or abuse of power alleged
Iowa	City Development Board	Ch. 368	1972 (compliance mandatory in 1975) 1968 (incorporation and consolidation)	One statewide board	Total of 5 3 by Governor plus 2 local representatives	State funded $45,000	1	Annexation Incorporation Dissolution Consolidation Detachment	Referendum within 90 days Appeal to the courts

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Table 7 (cont.)
Characteristics of Boundary Review Commissions

State	Agency Title	Statutory Citation	Date Established	State or Local Organization	Membership	Funding	Staff	Type of Boundary Changes Considered	Additional Review or Approval
Michigan	State Boundary Commission	Public Act No. 191 (1968) as amended	1972 (Annexation)	One statewide board	3 statewide by Governor 2 by Probate Judge in County	State funded over $220,000	3	Annexation Incorporation Consolidation	Appeal to courts Referendum if area to be annexed has 101 or more persons
Minnesota	Minnesota Municipal Board	M.S.A. Ch. 414 (1988)	1959	One statewide board	3 appointed by Governor	State funded $247,000	4	Annexation Incorporation Detachment from cities Consolidation of municipalities and towns Concurrent detachment and annexation	Appeal to courts. Referenda in some circumstances
Missouri	St. Louis County Boundary Commission	RSMo. 72.403 Ch. 72	1989	One county—St. Louis County	10 nominated by mayors and county council and selected by county executive	County council appropriates funds	Staffed by county employees	Annexation Incorporation Consolidation Transfer of governing jurisdiction	Referendum
Nevada	City Annexation Commission	N.R.S. 268.610-268.670	1967	Counties with population 100,000 or more and less than 250,000	Varies	Operating expenses from county	0 (Inactive)	Annexation	Appeal to courts

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KANSAS
RURAL
WATER
association
Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 913/336-3760 • FAX 913/336-2751

August, 19, 1993

To: Joint Committee on Local Government

Re: Rural Water Districts in Kansas

Our state's modern rural water movement started in the late 1940s, when Mary Mercer of Chicopee wanted to sell Grade A milk from her 27 cow herd to grocers in Pittsburg. She was refused her license because of inadequate water supplies at her farm. Her letter to President Truman and the follow up from the Farmers Home Administration ultimately led to a FmHA loan to the nonprofit Chicopee Cooperative Water corporation which began operating on July 1, 1950, serving 76 farmers and residents. Other rural areas across the state followed their lead and the rest as we say is history. Progress was slow however, due to restrictive laws that were finally changed with the enactment of the Kansas Rural Water District Law in 1957. Today, 290 Rural Water Districts are serving more than 80,000 connections, utilizing an estimated 15,000 miles of waterlines. Additionally, more than 80 cities in Kansas rely at least in part upon RWDs for their water supplies.

Rural Water Districts are organized under KSA 82a-612 et seq. Under this law landowners may petition their county commission for the incorporation of a Rural Water District. These districts are governed by a board of directors which are elected by the participating members at district's annual meeting. These boards typically meet at least monthly to conduct the business of the district. RWD's do not have the authority to levy taxes. Their only source of revenue is from connection fees, and income from the sale of water.

Rural Water Districts by their design, are generally very responsive to the needs of their patrons. The service that they provide is vital to the health and welfare. As a public water supply system, RWDs are required by federal law to meet all of the applicable requirements of the Safe Drinking Water Act of 1974, and it's amendments. The Kansas Department of Health and Environment has the regulatory authority to insure that all systems are in compliance with the Act.

Respectfully Submitted,

Dennis F. Schwartz, KRWA Director

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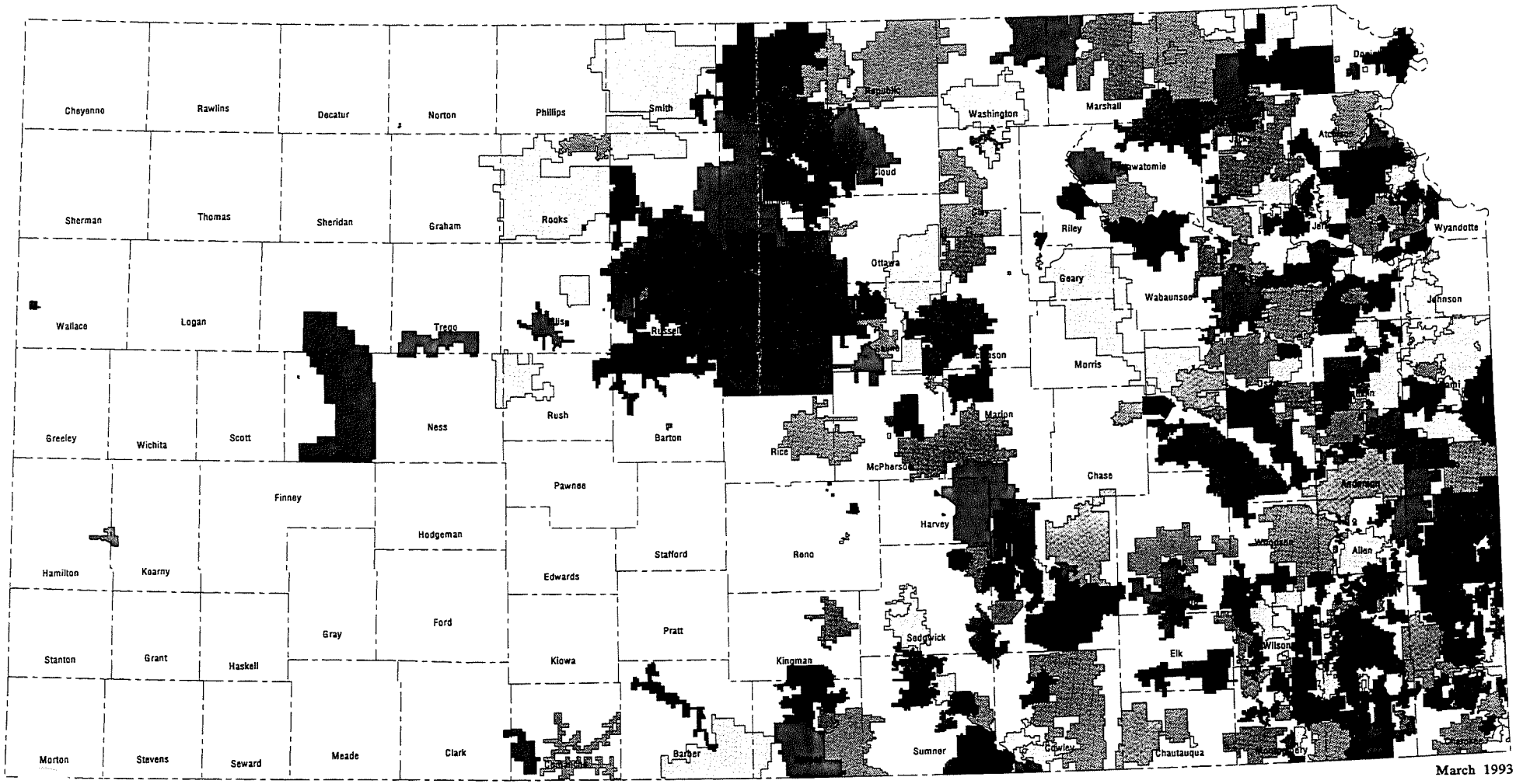
Rural Water Districts in Kansas



March 1993

Kansas Water Office

Kansas Rural Water Association

WATER ASSURANCE DISTRICT

A water assurance district is a body politic and corporate, created by the municipal and industrial water right holders along a regulated river pursuant to K.S.A. 82a-1330 et seq. The principal business of a district is to contract with the State of Kansas (Kansas Water Office) to reserve storage in the reservoir or reservoirs regulating the river to provide for water to satisfy both vested and appropriated water rights during drought conditions or periods of low flow. The powers of the district are enumerated in K.S.A. 82a-1344 of the Act and generally confer upon the district the powers of corporation. The business is conducted by an elected Board of Directors, a President, Vice-President, Secretary and Treasurer. The district negotiates with the Director, Kansas Water Office (KWO), to establish operating parameters of the assurance program and establishes the procedure for management of releases and storage reserved for the program. The district functions as the entity to establish, assess and collect fees from members of the district for payment to the state for the reservoir space reserved for the water assurance district.

The price the district will pay for the storage reserved for the assurance program will be determined by the negotiations with the Director of the KWO. K.S.A. 82a-1345(a) of the Act provides the formula for determining price.

The enabling legislation provides in detail the procedure for creating a water assurance district. Twenty percent (20%) of the combined quantities of all eligible water rights within the proposed district may call for an election to create a district. The group calling for the election is the steering committee. A

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petition to create the district is filed by the steering committee with the Secretary of State and copies shall be furnished each entity eligible for membership and the County Clerk of each county where any part of the proposed district is located. Upon approval by the Secretary of State and the Chief Engineer of the DWR concerning the form and substance of the proposed district, the steering committee will meet to adopt a resolution setting the date and method of voting. The steering committee anticipates that at the time the election is conducted, questions of operating parameters, procedure for management, releases and storage reserved for the program will be resolved so that the proposition may be submitted for a "yes or no" vote.

Only those municipal and industrial water right holders who, in the opinion of the Chief Engineer of the Division of Water Resources, Department of Agriculture, will benefit from participation in a district shall be eligible for membership. All water right holders eligible for membership are eligible to vote in an election to determine whether a district should be formed. If the water right holders vote a majority of the water right quantities in favor of the creation of a district, membership shall be mandatory for those entities found eligible for membership by the Chief Engineer of the Division of Water Resources. While all eligible water right holders (members) may vote, only those members having conservation plans as contemplated by K.S.A. 82a-1348 are eligible to divert assurance water releases. The excluded members are nevertheless liable for their proportional share of the cost of providing the storage.

Once a district is incorporated, additional municipal and industrial water rights shall be eligible for membership in the district only if the Chief Engineer determines that sufficient additional water may be yielded from the reservoirs providing storage is available for the potential new right.

It is important to understand that the district contracts for storage in the federal reservoirs. It does not contract for the actual delivery of water. If the reservoir storage capacity reserved for the water assurance district has been depleted by use and inflows have not replenished the storage, the state is under no obligation to deliver water to the district members.

Areas of concern by Kansas River Water Assurance District No. 1 have been identified as:

- Loss of water right of members
- Needs for future water rights
- Procedures to release members from the assurance district
- Meeting new assurance district members' water needs

We have identified a concept that we call banking water rights within the assurance district to address the above. Over time the water needs of the assurance district members have changed and will continue to change. I give as example:

- Three members of the district have indicated changes in operations which effect the financial stability of the district. The demand for raw water in their process has either diminished or disappeared altogether. Water rights are being abandoned to accommodate these changes.

- Other members' demand are approaching the limit of their water rights. The acquisition of additional rights from DWR will carry junior priority dates.
- Yet other members' water rights may now or in the foreseeable future exceed demand of their needs.

The banking water rights concept, simply stated, would allow unused rights by members to be placed into an account within the assurance district for all members to equally pay for. This account would become available to members of the district to purchase as their demand increases. This would preserve existing water rights and address the financial impact within the district. We recognize that some legislative changes would be necessary to implement a water rights banking system. Further, we recognize that it would only be applicable within an assurance district due to the influence the regulating reservoirs have on the system.

In closing, the assurance district concept works very well. It actually was implemented on the Kansas River in September, 1991 and provided the desired benefits that our members are paying for. The only areas we have concerns are those as expressed in the modification of members' water rights as demands change.

Presentation to the Joint Meeting
of the House and Senate Committees on Local Government

August 19, 1993

by David L. Pope, Chief Engineer-Director
Division of Water Resources
Kansas State Board of Agriculture

Chairpersons Parkinson and Brown, and Members of the Committees, my name is David L. Pope, and I am Chief Engineer-Director of the Division of Water Resources, Kansas State Board of Agriculture. I am testifying today in response to a telephone call from Don Heim in which he indicated your committees were interested in the various types of special water districts organized in the State of Kansas and would appreciate background information about their purpose, the role and responsibilities of our office with respect to these districts and any recommendations we may have regarding any changes that may be deemed necessary to the statutes under which they are organized. Basically, there are eight different types of special water districts that may be organized under state law. Based upon their primary purpose, these may be grouped into three major categories: (1) those dealing with the management of water, (2) those providing water supply to individuals or other entities through a common distribution system, and (3) those districts organized to construct and maintain works of improvement or other facilities primarily designed to control floods or provide better drainage to property.

I. Local Management of Water

A. Groundwater Management Districts

1. Enabling Legislation: K.S.A. 82a-1020 et. seq., enacted in 1972.

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2. Purpose: Proper management and conservation of groundwater, prevent economic deterioration for associated endeavors through the stabilization of agriculture; preserve basic water use doctrine and establish the right of local water users to determine their destiny with respect to the use of groundwater insofar as it does not conflict with the basic laws and policies of the State of Kansas.

3. Role of the Chief Engineer: Assist with boundary determinations and approve petition for organization of district; review and approval of district management program; adoption of rules and regulations recommended by the board; and declare intensive groundwater use control areas, if deemed necessary based on statutory criteria.

4. General Comments: Five districts have been organized (see attached map). District boundaries must comprise a hydrologic community of interest such as one or more common aquifers. Each district is required to develop a management program describing the characteristics of the district and the nature and methods of dealing with groundwater supply problems within the district. The district board of directors has substantial powers which includes the power to adopt, amend, promulgate and enforce reasonable standards and policies related to the conservation and management of groundwater within the district which are not inconsistent with the provisions

of the Kansas Water Appropriation Act. They may also recommend to the Chief Engineer rules and regulations necessary to implement and enforce the policies of the board. The board may also recommend to the Chief Engineer the initiation of proceedings for the designation of a certain area within the district as an intensive groundwater use control area. District operations are financed by water use charges and land assessments. All five districts have a very active management program and rules and regulations for each district have been adopted by the Chief Engineer that establish major criteria for approval or denial of applications for permit to appropriate water and other related matters. Much of the area within these districts is now closed to new appropriations of water. The districts have also been actively involved in other matters including research, education, data collection and the preservation of water quality. Some are also currently exploring new proposed policies to seek long term, more comprehensive solutions to historic groundwater depletion that exists in some districts.

5. Recommendations: None at this time. May wish to consider strengthening statutory authority of these districts relating to water quality matters if deemed necessary in the future.

B. Water Assurance Districts

1. Enabling Legislation: K.S.A. 82a-1330, enacted in 1986

2. Purpose: The purpose of the water assurance program is to provide a mechanism to ensure the availability of water during periods of drought for municipal and industrial water right holders (both surface and groundwater users) that receive a significant benefit from releases of water from upstream reservoirs that supplement the natural flow of the stream. In essence, the assurance district becomes an entity to contract for storage in federal reservoirs through the State of Kansas and allow the operation of multiple reservoirs in a basin as a system to optimize their benefits, for not only a more reliable water supply, but improved water quality and instream flow benefits.

3. Role of the Chief Engineer: The Chief Engineer has significant responsibilities during the organization of such districts to determine which water right holders will benefit from assurance reservoir releases and therefore, must participate in the program if such a district is established. The Chief Engineer also approves the petition for organization of the district. After a district is operational, the Division of Water Resources protects releases of water from unlawful diversion when such releases are made from storage pursuant to contract and operation agreements. Such contracts are entered into between the water assurance district and the

Kansas Water Office. The district repays the State of Kansas for the cost of acquiring space in the appropriate federal reservoir.

4. General Comments: Water assurance districts have been organized in the Kansas River Basin, Neosho River Basin and the Marais des Cygne River Basin. The Kansas River Water Assurance District is fully operational and has assurance storage under contract in Milford, Tuttle Creek and Perry Reservoirs in the Kansas River Basin. The other two districts are in the process of becoming operational for similar purposes in their basins.

5. Recommendations: None at this time. However, the Act currently limits eligible water right holders to municipal and industrial water users. It appears there may be some potential for utilization of the water assurance district concept in at least one other area of the state wherein current irrigation water right holders could benefit from storage releases from a federal reservoir where irrigation is an authorized purpose but where a traditional irrigation district with canals and laterals may not be feasible. If this situation materializes, it may be appropriate to consider such an amendment to the statute.

II. Water Supply Districts

A. Rural Water Districts

1. Enabling Legislation: K.S.A. 82a-601 et. seq. (1941), and K.S.A. 82a-612 et. seq. (1957)

2. Purpose: Districts organized under these statutes basically create a mechanism to provide a public water supply system for rural residents or small communities in much the same way an incorporated city or town would provide water to its citizens.

3. Role of the Chief Engineer: The Chief Engineer has no role during the organization of a district, however, certain information including plans and specifications, budget information and rules and regulations must be filed with the Chief Engineer. The district must comply with the provisions of the Kansas Water Appropriation Act as to any water rights needed and any other applicable state laws, such as obtaining approval of plans for a dam, if used for water supply and approval of a water transfer, if threshold criteria in the Act is met. (Unlikely for a rural water district.)

4. General Comments: A large number of rural water districts have been organized in the State of Kansas and have provided good quality public water supply to a large number of citizens that otherwise would have an

inadequate water supply in either quantity or quality. Districts can develop a raw water supply or contract with other waters users, such as a city or another district, for acquisition of water on a wholesale basis and provide this water to its customers. A district may be organized by petition with the approval of the county commission after a public hearing.

5. Recommendations: None.

B. Water Supply Districts

1. Enabling Legislation: K.S.A. 19-3501 et. seq., enacted in 1951.

2. Purpose: Provide public water supply to a number of individual municipalities that do not have their own water utility. Application limited to Miami, Franklin, Johnson and Wyandotte Counties.

3. Role of Chief Engineer: None other than duties related to the acquisition or administration of water rights under the provisions of the Kansas Water Appropriation Act and any other applicable state laws.

4. General Comments: One such district has been organized, Water District No. 1 of Johnson County. It is currently one of the largest public water supply systems in the state and provides retail water to citizens in most of

the communities in Johnson County plus wholesale water to several other entities.

5. Recommendations: None.

C. Public Wholesale Water Supply Districts

1. Enabling Legislation: K.S.A. 19-3545, et. seq., enacted in 1977.

2. Purpose: Provide an entity to allow two or more individual cities or other public water suppliers to jointly develop a raw water supply for distribution to the member entities on a wholesale basis.

3. Role of Chief Engineer: None other than duties related to the acquisition and administration of water rights under the provisions of the Kansas Water Appropriation Act or and any other applicable state laws.

4. General Comments: Over a dozen public wholesale water supply districts have been organized and are providing water to their member entities or are in the process of developing plans to do so. This type of entity allows for a regional solution to water supply problems for a given area of the state.

5. Recommendations: None.

D. Irrigation Districts

1. Enabling Legislation: K.S.A. 42-701 et. seq., enacted in 1941.

2. Purpose: Provide a special water district to serve as the entity to distribute water made available pursuant to the federal reclamation program and contract for repayment to the Bureau of Reclamation for the cost of constructing dams, reservoirs, canals and other facilities for the distribution of water to individual farms. The district maintains the distribution facilities and actually delivers water to project lands on individual farms.

3. Role of the Chief Engineer: The Chief Engineer is involved in several steps during the organization of an irrigation district. The district must comply with the Kansas Water Appropriation Act and obtain a water right for storage at the reservoir and to allow direct use of the water on district lands.

4. General Comments: Seven such irrigation districts have been organized in the State of Kansas. Of these, the Kansas-Bostwick, Kirwin, Webster and Alamena Irrigation Districts are active although the last three mentioned have suffered extreme water shortages for a number of years up until the recent flood event which generally refilled the corresponding reservoirs operated by the Bureau of Reclamation. The Cedar Bluff Irrigation District

is in the process of being dissolved as no water has been available for release to the district for 15 or 20 years. A portion of the storage in the reservoir has been acquired by the State of Kansas, primarily for recreation purposes. Two additional irrigation districts, Glen Elder below Waconda Reservoir and Kanopolis below Kanopolis Reservoir, were organized but the irrigation facilities were never constructed. However, some of the project lands have been historically irrigated by individual farmers directly from the streams in question, or groundwater sources. These districts represent only about 2% of the irrigated land in Kansas.

5. Recommendations: None at this time.

III. Flood Control and Drainage

A. Watershed Districts

1. Enabling Legislation: K.S.A. 24-1201 et. seq., enacted in 1953.

2. Purpose: Prevent erosion, flood water or sediment damage or other similar problems effecting natural water supplies in Kansas. Watershed districts are empowered to construct, operate and maintain works of improvement designed to carry out those purposes.

3. Role of Chief Engineer: The Chief Engineer has several duties during the organization of watershed districts including determination of boundaries and approval of petitions submitted by the steering committee. The Chief Engineer must also approve the general plan developed by the district setting forth the proposed projects and improvements to be constructed within the district. In addition, specific projects to be constructed by the district must be approved by the Chief Engineer generally based upon the feasibility of the project and the safety and adequacy of the structure, especially as determined through the provisions of the Stream Obstructions Act (K.S.A. 82a-301 et. seq.).

4. General Comments: 104 watershed districts have been organized in Kansas. (See attached map.) Most of these districts are very active and have developed a general plan for the construction of works within the district. Some districts have made application for assistance from the federal government through the Soil Conservation Service under Public Law 566. If approved, the district is eligible for substantial federal assistance (technical and financial) in the planning and construction of watershed projects. These are typically small detention dams designed primarily for flood control but some may include multiple purpose benefits such as recreation and occasionally, public water supply. Watershed districts are also eligible for assistance through the watershed construction program administered by the

State Conservation Commission wherein cost share monies are available for the construction of certain small dams. In some cases, they may also be a sponsor or co-sponsor of a multiple purpose small lake project also administered by the State Conservation Commission. Thus far, approximately 1,000 small dams have been constructed in the State of Kansas through the watershed program with a large number yet to be built as set forth in the general plans of these districts.

5. Recommendations: None.

B. Drainage Districts and Related Statutes

1. Enabling Legislation: K.S.A. 24-401 et. seq., enacted in 1905; K.S.A. 24-501 et. seq., enacted in 1911; K.S.A. 24-601 to 655, enacted in 1911; and K.S.A. 24-656 et. seq, enacted in 1963. See also K.S.A. 24-701 et. seq., enacted in 1907 and K.S.A. 24-801 et. seq., enacted in 1893.

2. Purpose: The purpose of these statutes varies to some degree but generally allow the creation of drainage districts to prevent injury and damage from overflow of some natural watercourse, to increase the drainage capacity of a natural watercourse, or to reclaim and protect land from the effects of water by drainage activities or the construction of levees, drains or other works including detention dams and reservoirs. Article 7 allows petitions

to the District Court for construction of drainage facilities and Article 8 allows petitions to County Commissioners for construction of levees, generally referred to as levee districts. To our knowledge, levee districts have only been organized in Neosho County, all in the late 1800's or early 1900's.

3. Role of Chief Engineer: None during the organization of drainage districts under all of the statutes except K.S.A. 24-656 et. seq., which contains procedures very similar to the organization of watershed districts. In addition, any levees constructed after 1929 in some cases and 1951 in others, are subject to approval under the levee law, K.S.A. 24-126, or K.S.A. 24-105, which also deals with levees, and/or the Stream Obstruction Act, K.S.A. 82a-301 et. seq.

4. General Comments: The three primary statutes used to organize these districts were passed prior to the creation of the Division of Water Resources in 1927. Many of the districts were organized and facilities constructed prior to the enactment of the levee law or the Stream Obstructions Act and were therefore exempt from receiving approval by the Chief Engineer except for approval of repair and maintenance of any levee or other drainage work in existence on May 28, 1929. The majority of these districts have generally performed very well while others are inactive or do not adequately

maintain works previously constructed. Inadequate staff resources and lack of information on drainage district projects, lack of knowledge and funding (for engineering design and maintenance) by district officials and legal restrictions have hindered state oversight and the ability to deal with more comprehensive flood control in many areas.

Drainage districts have a great deal of authority including the "...exclusive control over all natural watercourses..." (K.S.A. 24-407, Fourth), "...to prescribe, regulate and fix the height of superstructures..., the length of all spans and the location of the piers of all bridges..." (K.S.A. 24-407, Fifth), and "...to construct cutoffs, spillways, and auxiliary channels across railways and highways, to compel the adequate bridging of same, and to compel the raising of the grades of such railways and highways..." (K.S.A. 24-512, Seventh).

In the past, drainage districts have constructed channels, levees, straightened streams, drained wetlands and built dams with very little oversight by the state. Though most projects now require approval or permit by the Chief Engineer and all the organic acts of the districts require the preparation of engineering reports and plans (K.S.A. 24-419, K.S.A. 24-513, K.S.A. 24-609), many of the projects historically constructed did not receive review by this office or by an engineer as required by law. The consequence is that

many of the projects built by districts are unknown elements to safety and effect in times of flood or other crisis. Among the problems reported to our agency that seem to characterize many of the districts are:

a. the expenditure of funds for projects without public input or approval,

b. the lack of sufficient funding to maintain or construct works of improvement,

c. the lack of information as to the officers in a district, and

d. the lack of expertise in the districts.

In one situation reported to us, a landowner admittedly within the district was being assessed for many thousands of dollars worth of work done by a contractor who had been appointed district maintenance supervisor on his own property. The complainant did not feel that it was of any real benefit to him and resented being assessed the cost. During the recent flooding, while many drainage district projects functioned well, others did not. In Shawnee County, for instance, our office played a large role in providing technical assistance to protecting a levee owned by a drainage district. Though local landowners were present and actively participated in repairs and remedies being installed by state and volunteer forces, no drainage district official came forward to accept the reins of authority and

responsibility. For projects that are non-engineered and unapproved or unpermitted, little is known as to their safety and capabilities. The failure of levees may be expected when designs are exceeded, but if they are not properly designed, their failure may have an unexpected or unknown impact on flooding.

The Division of Water Resources, in an attempt to discover how many districts might be in existence, conducted a poll of county clerks in 1986 and received information on 96 drainage districts. The poll was not complete, but gives some idea of the number of districts. We are currently planning a series of workshops to be held in the near future to provide information and assistance on regulatory requirements to local officials.

5. Recommendations: The state and federal government may be asked to assist financially with repair of damaged works of drainage districts, even though laws and engineering design are sometimes ignored by drainage districts. The Division feels that though local districts should have independence to run their affairs, they must also operate in a manner that encourages cooperation with other entities, that minimizes adverse impacts of their works, that observes the legal requirements placed upon them, that represents the needs of the majority of landowners in their territorial

boundaries and that takes an active and progressive role in flood control in their community.

Given the volume, complexity and age of these statutes, a detailed analysis of the statutes and the performance of the districts and the works constructed would appear to be warranted. Historically, after each major flood event, many levees are repaired and often attempts are made to build them higher and bigger. This may be an appropriate time to seriously examine these matters, but such an analysis is not a small task.

Our preliminary recommendations for legislative actions:

a. Future drainage districts be formed only under the Act of 1963;

b. The engineer's report required under each organic act be submitted to the Chief Engineer for his approval or disapproval, prior to the beginning of any construction;

c. The results of any elections be filed with some state office, perhaps the Secretary of State, and include the names and addresses of all officers;

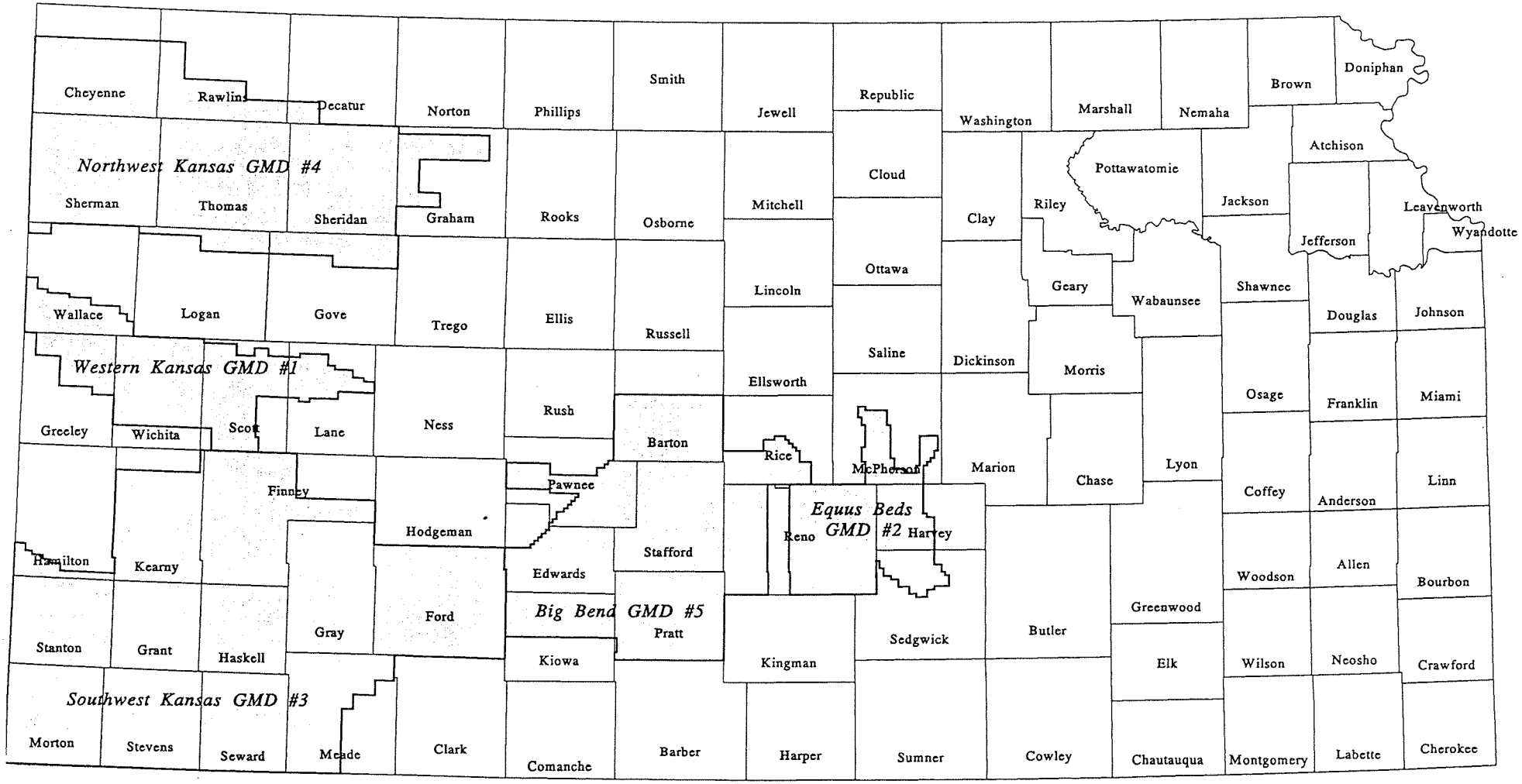
d. The boundaries and any changes in boundaries be filed with the Chief Engineer on all districts; and finally,

e. The removal of any authority not currently being exercised by the districts or in conflict with subsequent legislation.

This concludes my description of the various types of special water districts in Kansas. I would be happy to respond to any questions the Committee has at this time.

7-18

Groundwater Management Districts in Kansas

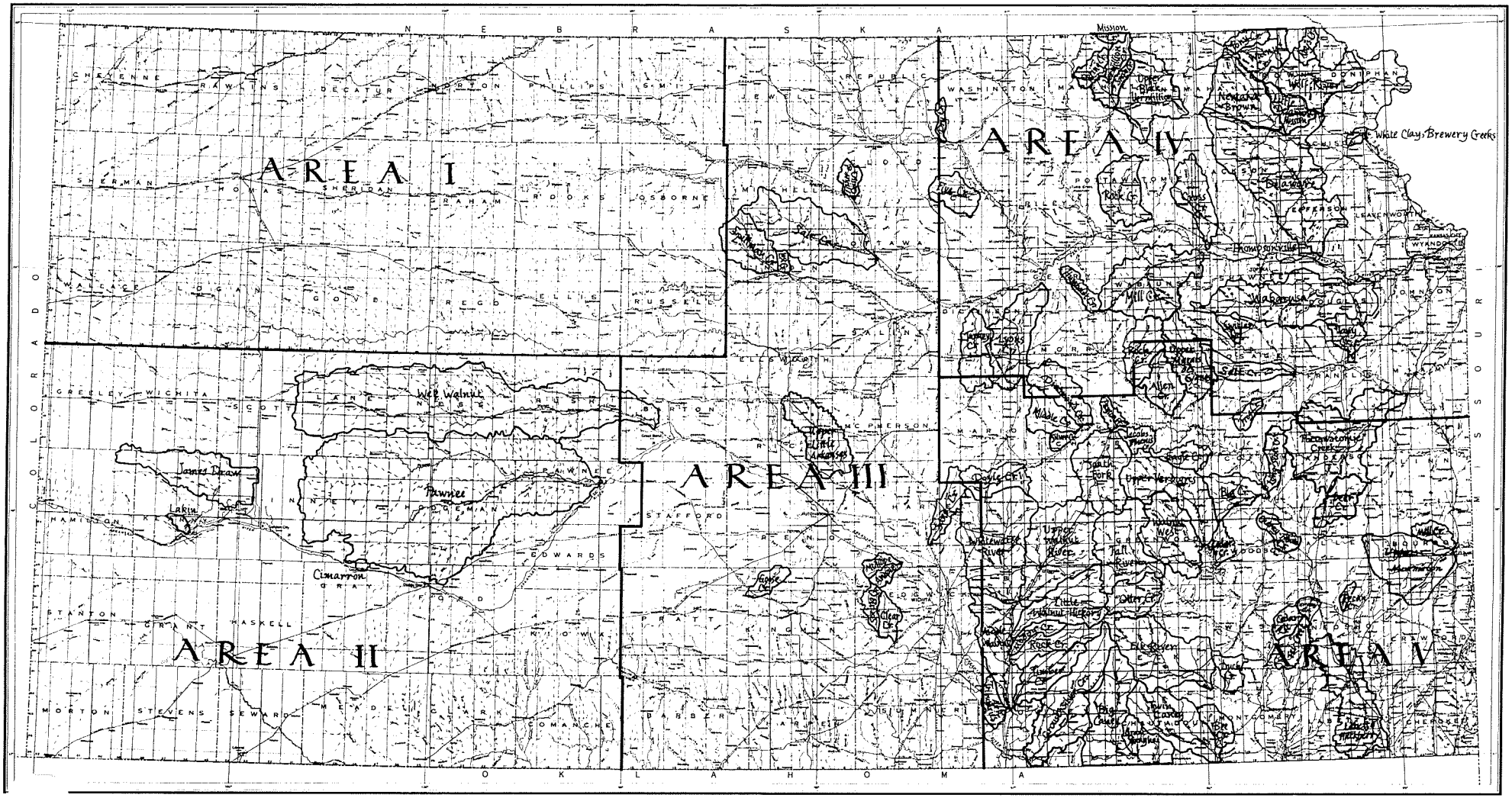


Kansas Water Office

7-19

7-20

STATE CONSERVATION COMMISSION AREAS, COUNTY CONSERVATION DISTRICTS AND WATERSHED DISTRICTS



...ricts are organized and operating in ...unties—boundaries are coterminous.

KANSAS

January, 1992

JOINT COMMITTEE ON LOCAL GOVERNMENT
August 19, 1993
Barbara J. Butts
Municipal Accounting Section

1993 BUDGETS FOR SPECIAL DISTRICTS

Type of District	No.	Budget Amounts	Levy Amounts	Levy Rates
Ambulance	1	60,000	60,000	0.74
Cemetery	538	250 - 237,000	0 - 96,083	0 - 10.48
Community Bldg	1	4,233	795	0.48
Drainage	64	657 -6,185,857	0 - 734,328	0 - 14.18
Fire	230	200 -7,199,140	0 - 5,464,206	0.29 - 18.68
Hospital	30	26,572-6,921,188	21,535 -801,708	1.48 - 24.09
Improvement	25	447 - 451,804	0 - 293,805	0 - 16.18
Industrial	2	48,200 - 170,290	37,591 - 164,585	11.53 -459.65
Irrigation	3	28,950 - 220,514	0	0
Library	27	6,280 -5,329,145	3,885-3,941,053	0.6 - 6.84
Lighting	3	1,800 - 2,230	235 - 3,030	0.9 - 6.18
Recreation	1	6,700	5,435	0.68
Sewer	45	318 - 648,577	0 -251,404	0 - 35.30
Water	4	7,500 - 29,251	0 - 11,617	0 - 18.00
Watershed	75	1,000-34,062,271	0-11,572,052	0 - 10.46
Total	1,049			

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8-19-93
Attachment 8

Budgeting Requirements

The following special districts are currently budgeting:

Ambulance	K.S.A. 65-6113
Cemetery	K.S.A. 17-1330*,17-1342, 15-1013
Community Building	K.S.A. 19-2717*, 15-11b01
Drainage	K.S.A. 24-407, 24-512, 24-618, 24656
Fire	K.S.A. 19-3610*, 80-1514, 80-1546, and others
Hospital	K.S.A. 19-4601, 80-2501
Improvement	K.S.A. 19-2765
Industrial	K.S.A. 19-3808
Irrigation	K.S.A. 42-377
Library	K.S.A. 12-1215, 12-1218, 12-1223, 12-1231, 12-1247,75-2551
Lighting	K.S.A. 19-2717*
Sewer	K.S.A. 19-27a09, 80-2021
Water	K.S.A. 82a-1020
Watershed	K.S.A. 24-1208, 24-1219

* These districts can use the consolidated method.

Each special district must prepare a budget. They have the same requirements as all other taxing subdivisions.

The districts authorized to use the consolidated method prepare a fund sheet for each fund using a special form. They furnish a copy to the county clerk who adds the special districts after the county information on the Certificate and Summary pages. The county publishes the special district budget information as part of the county publication. This procedure saves the special district substantial time and eliminates the cost of publications. In some counties they have saved as much as $1000 on the publications alone.

Many special districts do not have access to persons with knowledge about budgeting. Many times the levy limits are not correctly computed and some budgets do not include all essential information.

Accounting and Auditing Requirements

Special districts must conform to the generally accepted accounting principles for governmental accounting. These are the same requirements as all other municipalities.

They are subject to the statutory audit requirement, K.S.A. 75-1122, for municipalities. The audit requirement is applied to each special district regardless of its relationship to other local municipalities. For example, the audit statute applies to a public library in the same way it applies to a city. However, because the annual gross receipts of most special districts are less than $275,000, the amount which triggers the audit requirement, most are not required by statue to be audited. The audit threshold for recreation commissions was lowered to $150,000 during the 1993 session.

KANSAS GROUNDWATER MANAGEMENT DISTRICTS

District information

- Five regional districts have been established pursuant to the Kansas Groundwater Management District Act, K.S.A. 82a-1020 through 82a-1040.
- Purpose was to develop and implement aquifer management policies and programs that will insure an adequate water supply to meet the present and future needs within each district.
- Groundwater management districts cover 25 percent of the State's surface area and manage 75 percent of the State's groundwater resources.
- Districts are governed by elected Boards of Directors, which represent agricultural (dryland and irrigated), domestic, industrial, and municipal water users.
- All district meetings are open to the public; a part of each meeting is devoted to listening to the public's groundwater resource concerns.
- Employ administrative, professional, and technical staff to manage the day-to-day operations of each district's aquifer management program; administrative offices are located in Scott City, Halstead, Garden City, Colby and Stafford.
- Locally funded through an assessment on land and water use; tracts of land 40 or more contiguous acres in size and not in the corporate limits of a city and groundwater withdrawals of one acre-foot (325,851 gallons) or more each year are assessed.
- Water users are assessed on either a verified (metered) amount of water used or the amount authorized by their water permit.
- Domestic users are not assessed for water use unless domestic usage is verified and reported to the district.
- Maximum assessment rate set by statute is 5 cents an acre for land and 60 cents an acre-foot for water.
- The statutory assessment rate was set by the legislature and has not changed for nearly 15 years.
- The maximum assessment rate levied on a 160 acre tract of land would generate $8 annually and 100 acre-feet of water would generate $60.
- The average annual budget of the five groundwater management districts is $290,000.
- Any person (at least 18 years of age), public or private corporation or municipality is an eligible voter and may vote on District matters if: 1) they own or have interest in land comprising 40 or more contiguous acres within the District boundaries and outside the corporate limits of a municipality, or 2) they withdraw or use groundwater from within District boundaries in an amount of one acre-foot (325,851 gallons) or more per year.
- By statute a district must develop and adopt an aquifer management program that sets forth standards, policies, goals, and objectives by which the Board of Directors manage a district's groundwater resources.
- A district may also recommend to the Chief Engineer, Division of Water Resources a set of rules and regulations necessary to implement and enforce the management policies of the district.

Statutory responsibilities

- maintain and equip an office and employ legal, technical and clerical staff,
- purchase, hold, sell and convey land, water rights and personal property,
- sue and be sued in its corporate name,
- construct, operate and maintain works for drainage, recharge, storage and distribution or importation of water,
- levy water user charges and land assessments, issue general and special bonds and incur indebtedness,
- construct and establish research, development and demonstration projects,
- provide advice and assistance in the management of drainage problems, storage, groundwater

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8-19-93
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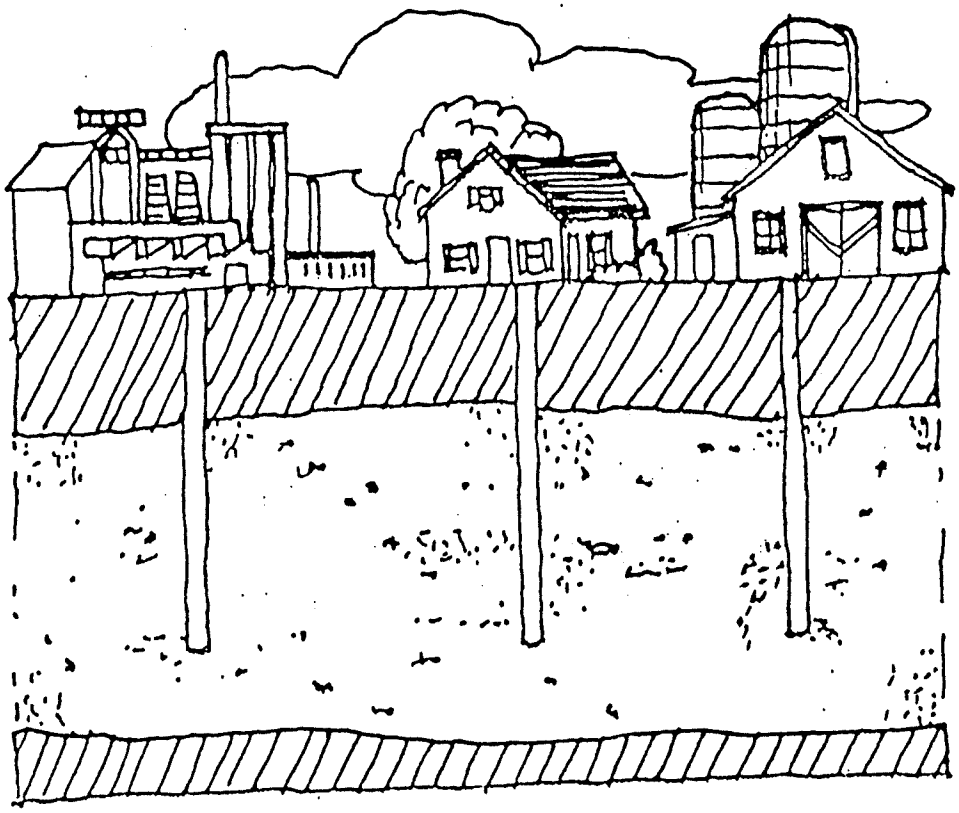
recharge and surface water management,

- seek and accept grants or other financial assistance from public and private sources and/or enter into cooperative agreements with them,
- adopt and administer standards, policies, rules and regulations relating to the conservation and management of groundwater,
- to recommend to the Chief Engineer the formation of an intensive groun[illegible]r use control area,
- install or require the installation of water meters to determine the quantity of water used.

GROUNDWATER MANAGEMENT IN KANSAS



Local Gov't Interim
8-19-93
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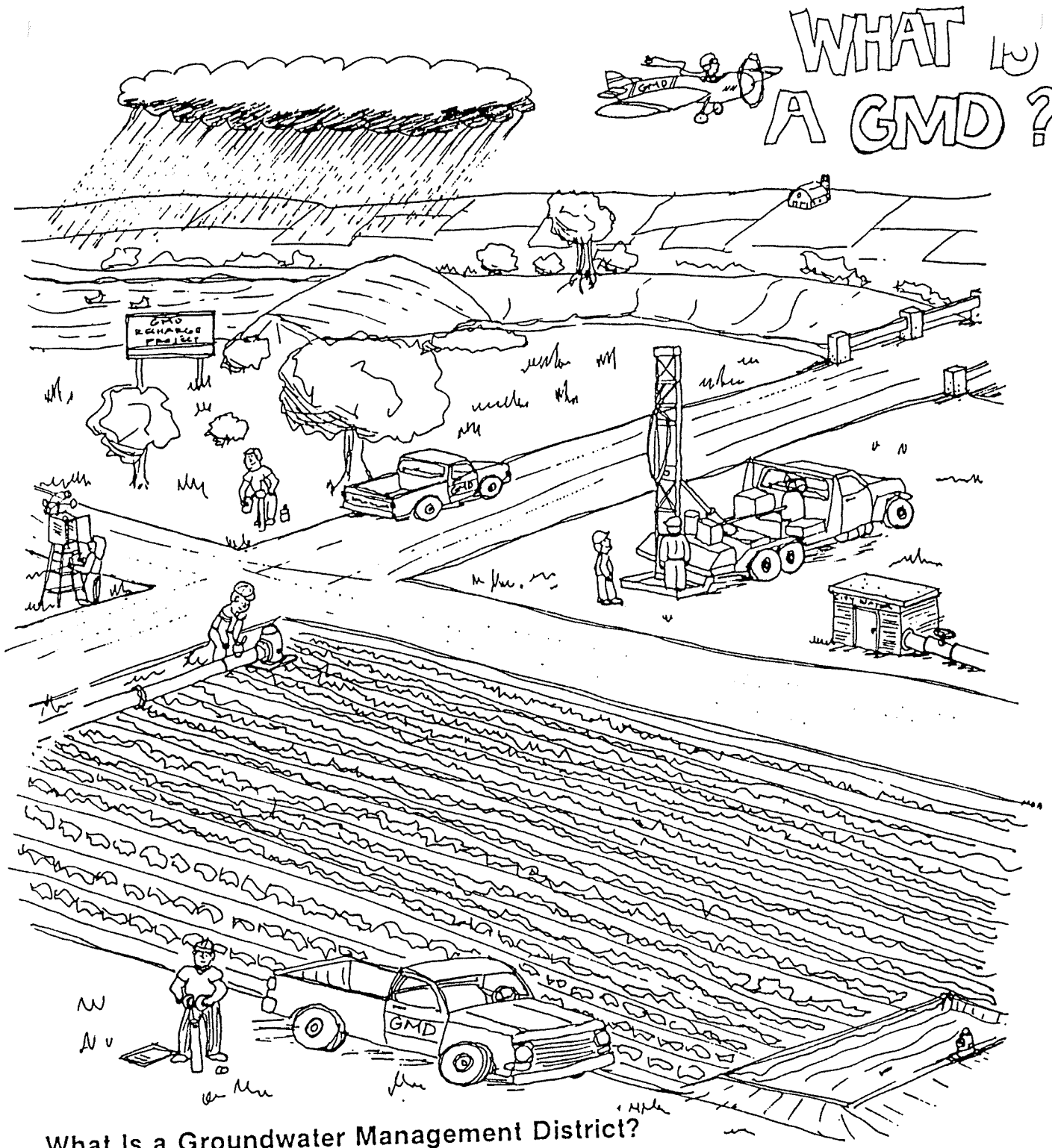
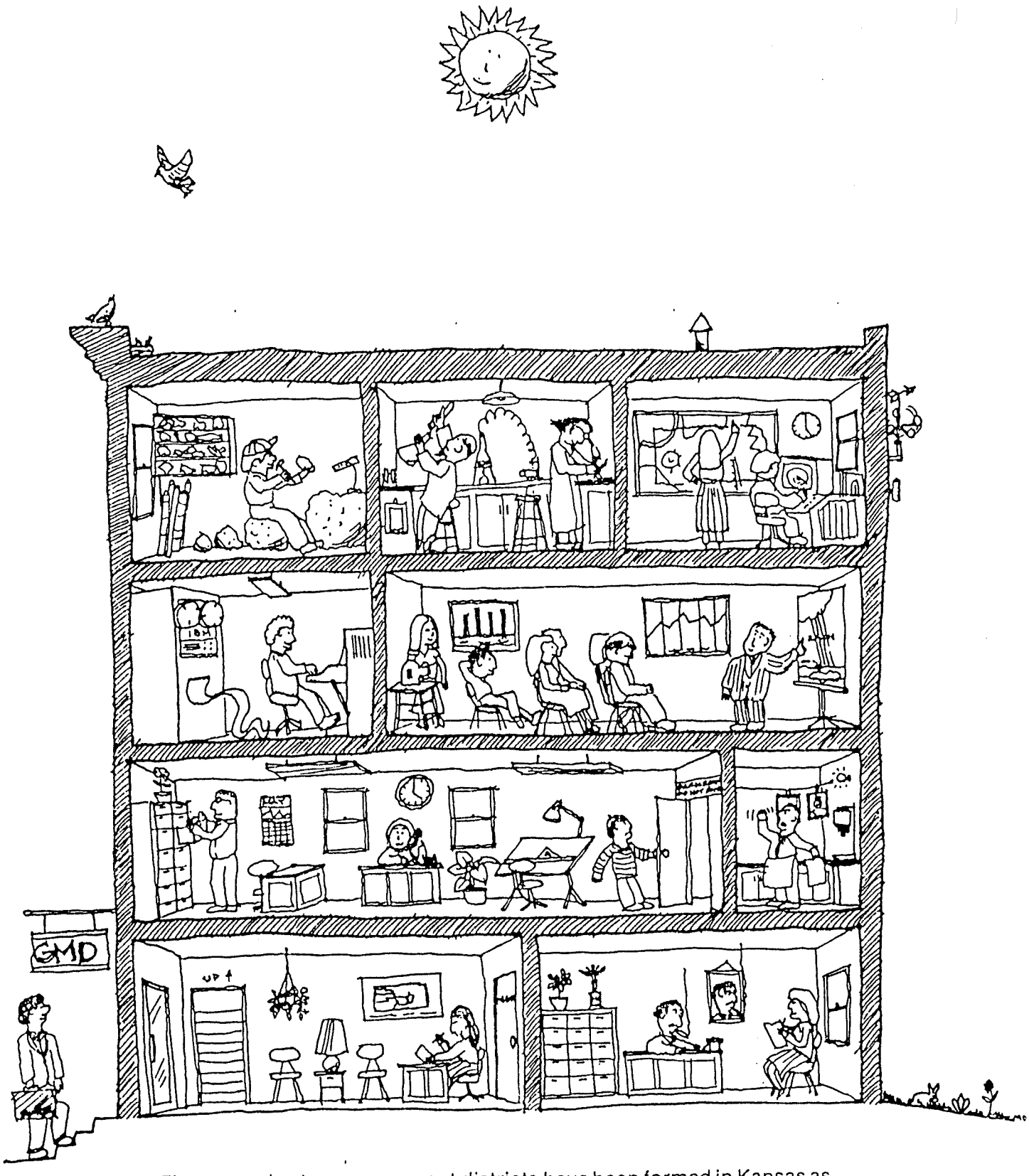


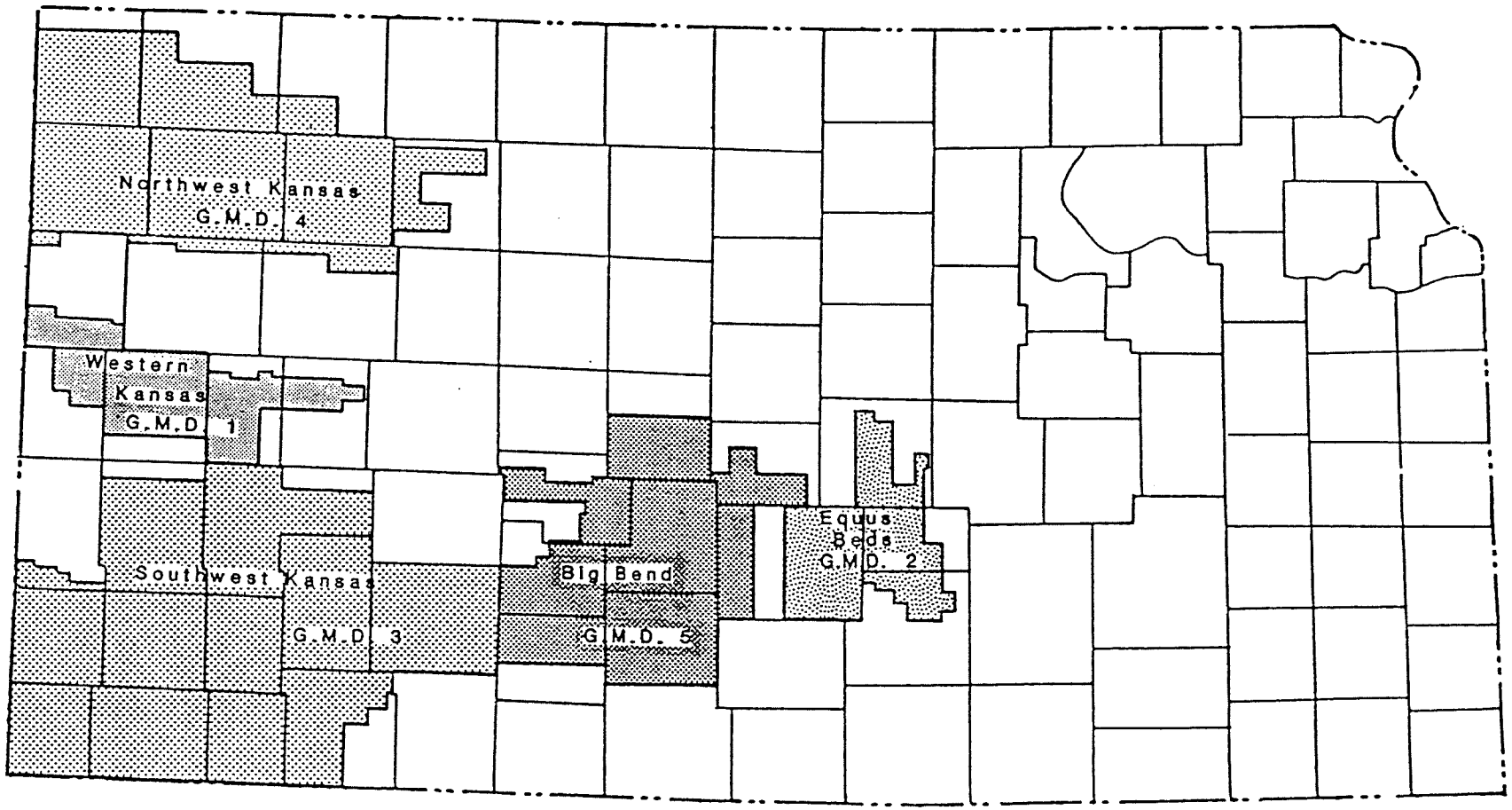
What Is a Groundwater Management District?

In response to the problem of dwindling groundwater supplies in Western Kansas, the Kansas Legislature adopted the **Groundwater Management District Act of 1972.** The act made possible the formation of groundwater management districts in the state, to help control and direct the development and use of our groundwater resources. The 1972 legislature felt effective groundwater management could best be carried out by local water users and landowners. The Groundwater Management District enabling legislation recognized that **local management**, rather than state or federal regulation, was the best approach. Each groundwater management district is a political subdivision of the State of Kansas organized for management of groundwater resources.



Five groundwater management districts have been formed in Kansas as a result of the 1972 act. Each district was voted into existence by the local people. Each district has a locally elected board of directors and is locally funded by land assessments and/or water user charges. **The districts are an excellent example of local government working to solve local problems.**

KANSAS GROUNDWATER MANAGEMENT DISTRICTS - October, 1990



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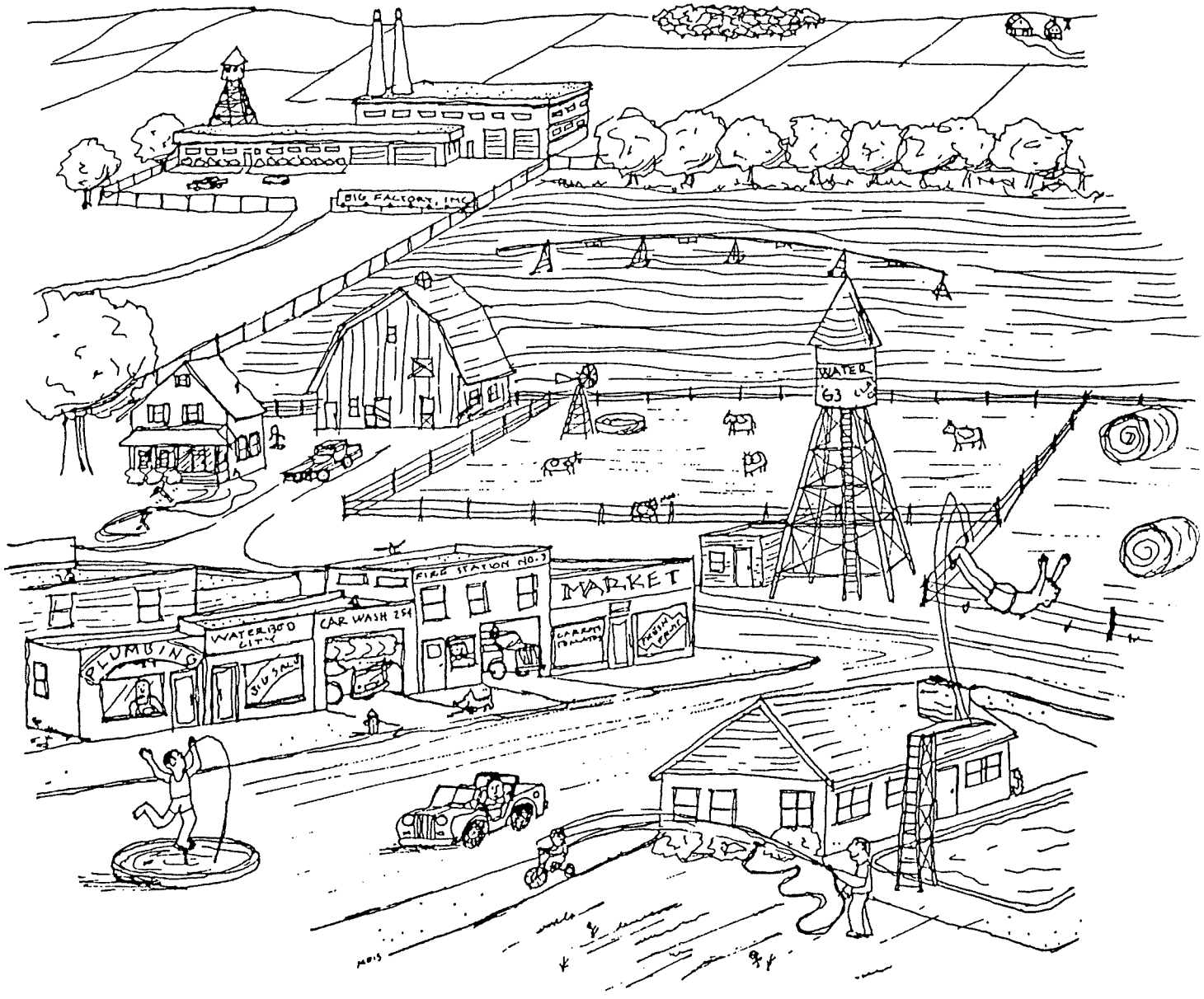
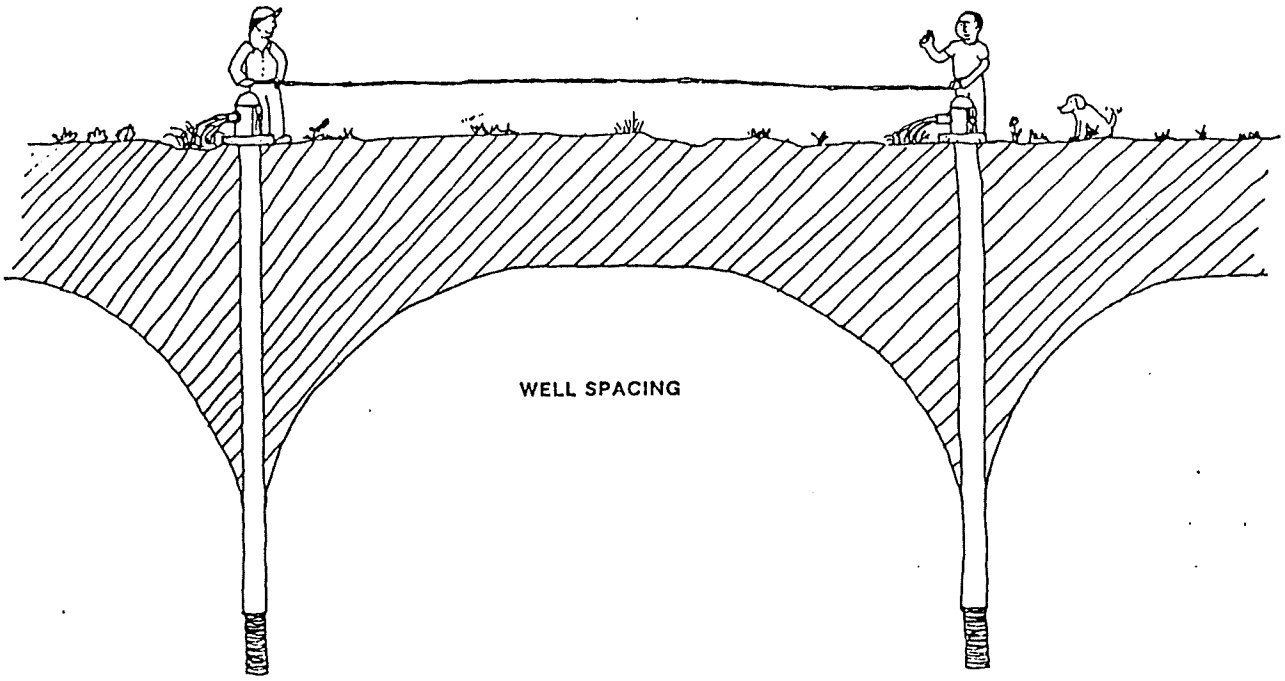


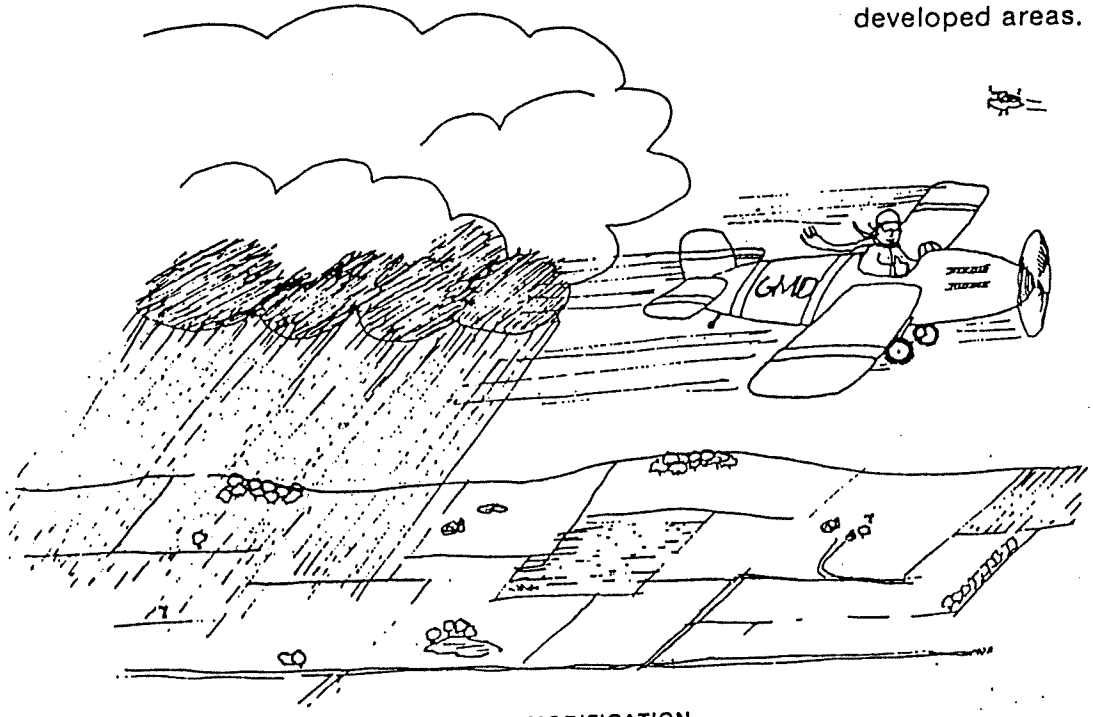
How Can a District "Manage" Groundwater?

Each district is charged with managing the groundwater resources within the boundaries of the district. This management is achieved, in part, through review of all applications for water rights filed with the Division of Water Resources, State Board of Agriculture in Topeka (a requirement for all nondomestic water wells in Kansas since 1978). Each district reviews all applications filed within its boundaries and makes recommendations to the Division of Water Resources to approve, modify, or deny applications to drill wells or use water.

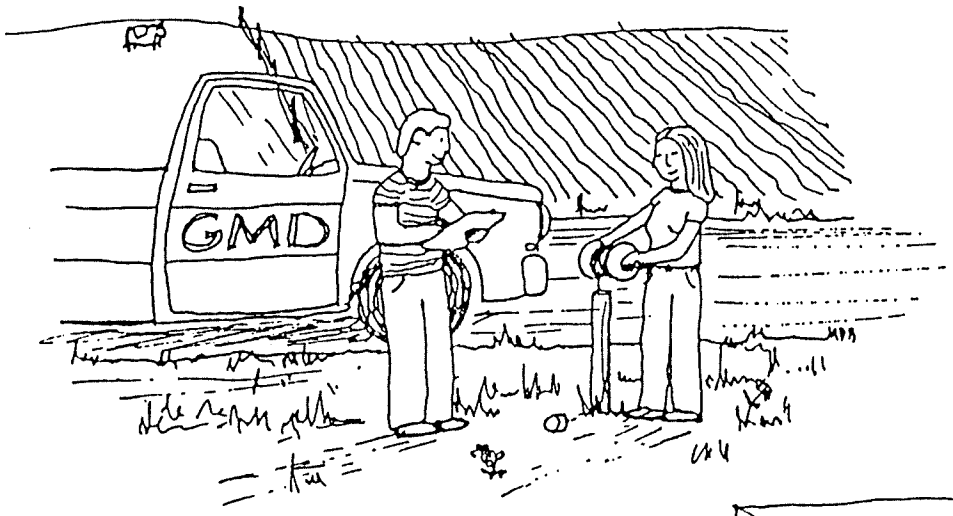


WELL SPACING

This review process allows each district to implement management policies adopted by its board of directors, such as **well spacing**. The review also allows each district to implement aggressive policies that provide for the orderly development of groundwater by **limiting the number of wells** in fully developed or over-developed areas.

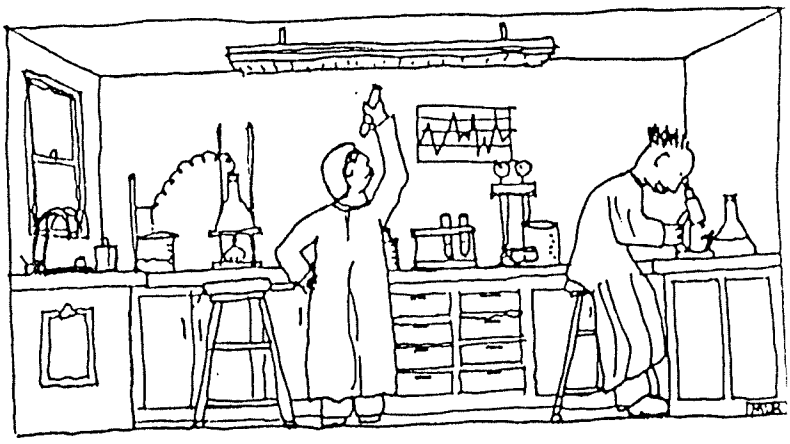


WEATHER MODIFICATION

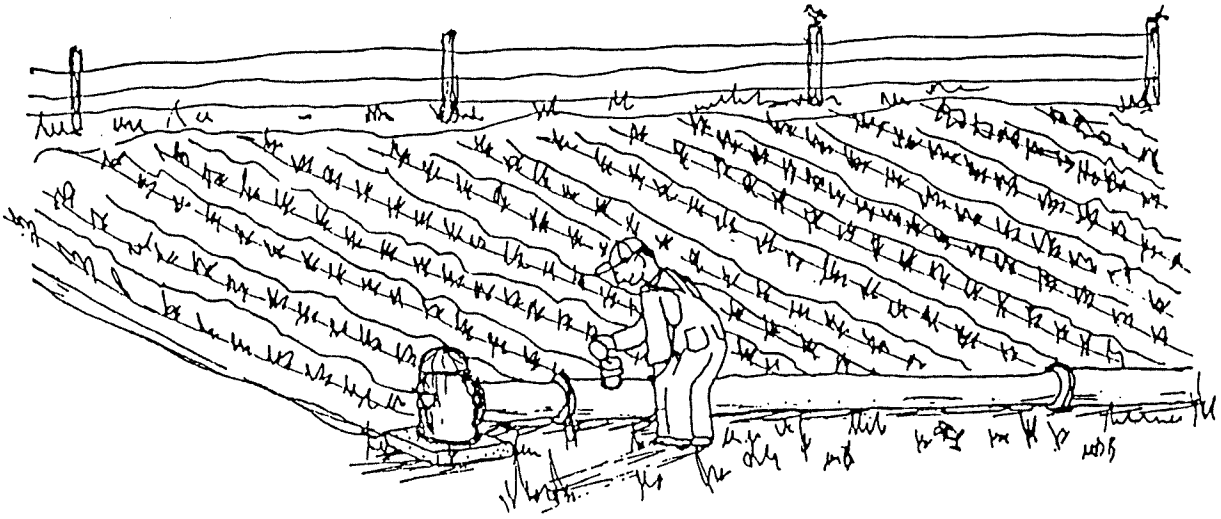


WATER LEVEL MEASUREMENTS

Other management techniques employed by the districts include water level measurements, water quality monitoring, collection of water use data, promotion of water conservation and efficient water practices, general public education, and weather modification (cloud seeding).



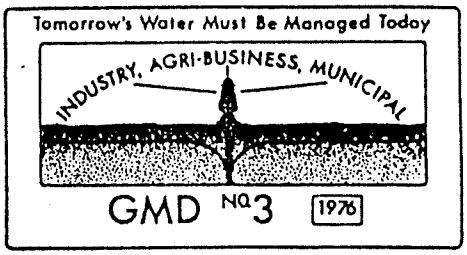
WATER QUALITY MONITORING



COLLECTION OF WATER USE DATA

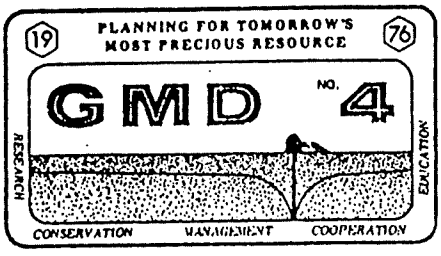
WESTERN KANSAS
GMD #1

EQUUS BEDS GMD #2

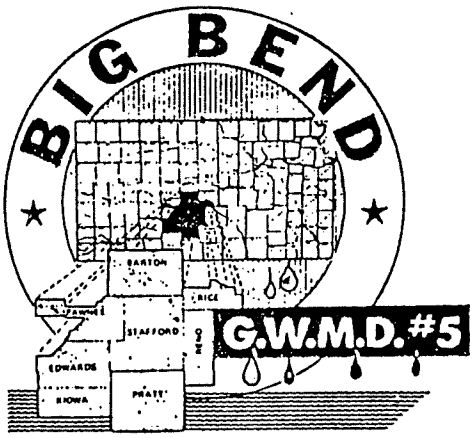


SOUTHWEST KANSAS
GMD #3

Each of the groundwater management districts is a separate political entity. They are local governmental units and, while they work closely with state government, **they are not a part of any state agency.** Let's take a brief look at each of the five groundwater management districts.



NORTHWEST KANSAS
GMD #4



BIG BEND GMD #5

KANSAS
January, 1992

WESTERN KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 1

West HWY 96, PO Box 604, Scott City, Kansas 67871
Phone: (316) 872-5563; FAX (316) 872-7315

CONTACT PERSON: Keith Lebbin, Executive Director

OVERVIEW

LOCATION: Wallace, Greeley, Wichita, Scott and Lane Counties in Kansas.

FORMATION DATE: January 1, 1975 STAFF: 2 Full; 8 Part

FORMATION AUTHORITY: Kansas Statutes Annotated 82a-1020 et.seq.

TYPE OF DISTRICT: Single resource, Groundwater

SIZE: 1.1 Million acres (1800 square miles)

WELLS: Irrigation - 2132; Municipal - 28; Industrial - 14; Recharge - 0; Stockwater - 44

TOTAL WATER AUTHORIZED: 787,000 AF

AQUIFERS MANAGED: Ogallala and Dakota

HYDROLOGY: Average saturated thickness (Ogallala) 44.85 feet. Amount of water in storage 7.9 million AF.

GOVERNING BODY: Locally elected 5 member board

FINANCING: Local assessments and charges - Max. $.05/acre of land and or $.60/acre foot of water rights.

TYPICAL GROUNDWATER BUDGET (ANNUAL): $191,079 - operating; $247,729 - weather modification

POLICIES

NEW WELL DEVELOPMENT: Controls the rate and location of new appropriations.

WELL SPACING: Mandates a minimum spacing for new wells.

ABANDONED WELLS: Mandates the proper plugging of abandoned wells.

WASTE OF WATER: Mandates the proper control of water to insure that a waste of water is not occurring.

CONSERVATION PLANS: Assistance to applicants in the preparation of conservation plans as part of the application process.

CHANGES IN POINT OF DIVERSION: Sets forth the distances for changes in any point of diversion under an existing water right.

PROGRAMS AND RESEARCH

OPERATIONAL WEATHER MODIFICATION: This district has sponsored an annual cloud seeding program since 1975. The purpose is to augment rainfall and reduce hail damage in West-Central and Southwest Kansas.

DATA COLLECTION: Water level, water quality, water rights appropriations, land ownership and meteorological data are the principal data collection programs.

WATER RIGHTS ADMINISTRATION: This includes providing assistance to water users in the filing and processing of applications.

FIELD ASSISTANCE TO WATER USERS: This includes assistance in soil moisture monitoring, well discharge measurements, static water level measurements and the development of conservation plans.

PUBLIC EDUCATION: The district publishes a periodic newsletter, conducts radio and television programs and gives many talks and presentations.

WATER QUALITY MONITORING: The district is in the process of selecting wells to be included in the water quality network.

PUBLICATIONS

MANAGEMENT PROGRAM: Description of the GMD and all district policies, programs and rules and regulations.

NEWSLETTER: WATER NEWS

ANNUAL REPORT: For the weather modification programs for each year of operation.

SPECIAL REPORT: WATER-RESOURCES INVESTIGATIONS 79-105

SPECIAL REPORT: WATER-RESOURCES INVESTIGATIONS 80-91

SPECIAL REPORT: Report to the Ozarks Regional Commission on a cooperative water management demonstration program.

SPECIAL REPORT: Report to the Ozarks Regional Commission on the district's operational weather modification program.

GRANTS OBTAINED IN LAST 5 YEARS

NONE LISTED

POSSIBLE FUTURE PROGRAMS UNDER CONSIDERATION

WATER RIGHT RETIREMENT PROGRAM: This program is being developed to provide a way in which water rights can be protected for a definite period of time in over appropriated areas while not being used on an annual basis.

METERING PROGRAM: The district is developing a program to require the installation of hour meters on each authorized well. In addition, a current well test will also be required.

End K1.doc

KANSAS
January, 1992

EQUUS BEDS GROUND WATER MANAGEMENT DISTRICT NO. 2

313 Spruce Street, Halstead, Kansas 67056-1925
Phone: (316) 835-2224; FAX (316) 835-2210

CONTACT PERSON: Michael T. Dealy, Manager

OVERVIEW

LOCATION: South Central Kansas, including portions of Harvey, McPherson, Reno and Sedgwick Counties.

FORMATION DATE: May 30, 1975 STAFF: 3 Full; 0 Part

FORMATION AUTHORITY: Kansas Statutes Annotated 82a-1020 et seq.

TYPE OF DISTRICT: Natural resource, Groundwater

SIZE: 900,000 acres (1,406 square miles)

WELLS: Irrigation - 1,201; Municipal - 187; Industrial - 140; Other - 32; Recharge - 0.

WATER USAGE: Irrigation - 68,000 af; Municipal - 63,300 af; Industrial - 22,400 af; Other - 3,600 af; TOTAL - 157,300 af

AQUIFERS MANAGED: Equus Beds Aquifer and associated alluvial aquifers.

HYDROLOGY: Unconsolidated deposits of clay, silt, sand or gravel. Saturated thickness - 50 ft. to 300 ft. Depth to water - less than 10 ft. to 110 ft. below land surface. Water table gradient 5-6 ft. per mile. Recharge 6 in. annual average.

GOVERNING BODY: Locally elected nine member board of directors elected for three-year terms.

FINANCING: Special assessment - Max. $.05/acre/yr. for tracts of land 40 acres and larger and/or $.60/acre/yr. for groundwater withdrawals. Also available are no-fund warrants, general improvement bonds and special assessment improvement bonds.

TYPICAL GROUNDWATER BUDGET (ANNUAL): $225,240.00

POLICIES

SAFE YIELD: Balances new appropriations with annual recharge.

WELL SPACING: Establishes minimum spacing between wells.

WASTE OF WATER: Prohibits any person from wasting groundwater.

MAXIMUM USE: Establishes the maximum quantity of water for various uses.

ABANDONED WELLS: Requires that abandoned water wells must be properly plugged.

INACTIVE WELLS: Requires non operational water wells to be properly constructed and marked.

UNAUTHORIZED DIVERSIONS: Requires that all water appropriations, except domestic, obtain a water permit.

METERING: Requires the installation of water meters on all new wells, replacement wells and backup wells.

PROGRAMS AND RESEARCH

DATA COLLECTION: Maintains data bases for groundwater levels, water quality, precipitation, water use and water rights.

PUBLIC INFORMATION: Provides information to the general public and district water users; publishes a quarterly newsletter; issues press releases to the area news media; sponsors information workshops; and publishes technical reports, illustrations and maps.

WATER RIGHTS ADMINISTRATION: Assist water users with various state water permit and chemigation applications and provides non legal consultation to water users.

RESEARCH: Conducts, encourages or sponsors hydrologic and geologic studies and demonstration projects.

SPECIAL MANAGEMENT AREAS: Manages three water management areas established due to either declining groundwater levels or water quality contamination.

REMEDIATION: Contracted with a state agency to design, construct and operate a five-year groundwater clean-up project for the purpose of removing oil field brine from the aquifer.

PUBLICATIONS

MANAGEMENT PROGRAM: Description of district and all policies and regulations.

NEWSLETTER: GROUNDWATER NEWS - Quarterly newsletter with 5,400 circulation.

SPECIAL REPORT: SUMMARY OF 1988 WATER USE AND RELATED WATER LEVEL DATA FOR THE MCPHERSON INTENSIVE GROUNDWATER USE CONTROL AREA, MCPHERSON COUNTY, KANSAS.

SPECIAL REPORT: ANNUAL REPORT FOR THE HOLLOW-NIKKEL GROUNDWATER CLEANUP PROJECT - February 16, 1990.

GRANTS OBTAINED IN LAST 5 YEARS

ENVIRONMENTAL PROTECTION AGENCY: Inventory of Class V underground injection control facilities within two miles of all public water supply wells within the district.

ENVIRONMENTAL PROTECTION AGENCY: Inventory of Class II injection control facilities within two miles of any public water supply water well within the district.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT: Groundwater clean-up project to remove oil field brine from the lower portion of the Equus Beds Aquifer.

POSSIBLE FUTURE PROGRAMS UNDER CONSIDERATION

URBAN STORM RUNOFF: Study to determine the impact of disposing urban storm runoff in unlined retention pits in areas having shallow water tables (less than 50 feet).

FATE OF AG CHEMICALS: Study to determine the fate of agricultural chemicals in the unsaturated zone in areas having shallow water tables (less than 50 feet).

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KANSAS
January, 1992

SOUTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 3

409 Campus Drive, Suite 106,
Garden City, Kansas 67846
(316) 275-7147; FAX

CONTACT PERSON: Steve Frost, Executive Director

OVERVIEW

LOCATION: Finney, Ford, Grant, Gray, Hamilton, Haskell, Kearney, Meade, Morton, Seward, Stanton and Stevens Counties, Kansas.

FORMATION DATE: March, 1976 STAFF: 6 Full; 0 Part

FORMATION AUTHORITY: Kansas Statutes Annotated 82a-1020 et.seq.

TYPE OF DISTRICT: Single resource, Groundwater

SIZE: 5,722,000 acres (8940 square miles)

WELLS: Irrigation - 9980; Municipal - 234; Industrial - 250; Recharge - 0; Recreation - 22; Multiple - 37; Stockwatering - 266.

WATER USAGE: Irrigation - 3,677,000 af; Municipal - 41,000 af; Industrial - 48,000 af; Recreation - 2,800 af; Multiple - 5,400 af; Stockwatering - 20,000 af; TOTAL - 3,794,200 af.

AQUIFERS MANAGED: High Plains, Dakota and Alluvial Aquifers.

HYDROLOGY: Saturated thickness (Ogallala) 50'-600'. Water table ranges from 15' to 370' below land surface.

GOVERNING BODY: Locally elected 15 member board

FINANCING: Local assessments and charges - Max. $.05/acre of land and or $.60/acre foot of water rights.

TYPICAL GROUNDWATER BUDGET (ANNUAL): $357,000

POLICIES

NEW WELL DEVELOPMENT: Unconsolidated aquifer: New appropriations are allowed where calculated rate of depletion is less than 40% in 25 years and well spacing is met. In consolidated aquifers new appropriations need only meet well spacing.

WELL SPACING: Unconsolidated aquifers: Ranges from 1300' to 2300' depending on quantity of water. In consolidated aquifers spacing is also quantity-dependent and ranges from 2300' to 2 miles.

ABANDONED WELLS: Cooperates with the Kansas Department of Health and Environment for the proper plugging of abandoned wells. Also the district works with local environmental and non-point source programs.

WASTE OF WATER: Mandates the control of irrigation runoff and other wastes of water.

WELL CONSTRUCTION: Promotes proper well construction as defined by existing Kansas regulations.

CONSERVATION PLANS: Requires conservation plans on all new appropriations and for certain changes to existing appropriations.

WATER DIVERSIONS: All groundwater diversions must have a valid water appropriation number.

METERING: Mandates flow meters on all wells by July 1996.

KANSAS
January, 1992

NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 4

1175 South Range, PO Box 905, Colby, Kansas 67701-0905
Phone: (913) 462-3915; FAX (913) 462-2963

CONTACT PERSON: Wayne Bossert, Manager

OVERVIEW

LOCATION: All or parts of Cheyenne, Rawlins, Decatur, Sherman, Thomas, Sheridan, Graham, Wallace, Logan and Gove Counties, Kansas.

FORMATION DATE: March 1, 1976. STAFF: 4 Full; 0 Part

FORMATION AUTHORITY: Kansas Statutes Annotated 82a-1020 et seq.

TYPE OF DISTRICT: Single resource - groundwater.

SIZE: 3.11 million acres (4852 square miles).

WELLS: Irrigation - 3520; Municipal - 35; Industrial - 12; Other -2.

WATER USE: Irrigation - 890,000 AF; Municipal - 25,000 AF; Industrial - 1,500 AF; Other - 250 AF. Figures are appropriated amounts.

AQUIFERS MANAGED: Ogallala, Dakota and local Alluvial Formations.

HYDROLOGY: Average saturated thickness (Ogallala) - 80 feet. Average water table is 100 feet below land surface.

GOVERNING BODY: Locally elected 11-member board from the eligible voters.

FINANCING: Local assessments and charges. Current assessments are $.05/acre of land ($.05 maximum) and $.097/acrefoot of water right ($.60 maximum).

TYPICAL GROUNDWATER BUDGET (ANNUAL): $213,000.00

POLICIES

NEW WELL DEVELOPMENT: Controls the rate of new appropriations. All new water rights now must satisfy a zero depletion criteria before approval.

ZERO DEPLETION: Sets the district long-term goal of no groundwater declines and sets forth the procedures of where, when and how the goal will be achieved.

WELL SPACING: Mandates minimum distances new wells can be drilled from existing wells.

ALLUVIAL CORRIDORS: Designates which water ways have mandatory no-development corridors and the distance of the set-back restrictions.

ABANDONED WELLS: Mandates proper handling of abandoned wells within the district and sets technical criteria for remediation.

IRRIGATION RUNOFF: Mandates control of irrigation runoff and, if feasible, its re-use.

WELL CONSTRUCTION: Mandates proper well construction within the district.

RESOURCE DEVELOPMENT PLANS: Requires irrigation efficiency plans on all new and certain changed water right applications and all existing water rights with chronic water control problems.

WATER DIVERSIONS: Requires that all groundwater diversions from within the district be made according to all state and local statutes, rules and regulations. This policy is the foundation of the district's local enforcement.

ALLOWABLE APPROPRIATIONS/REASONABLE USE: Set the quantities of water authorized to be appropriated.

CHANGES IN POINTS OF DIVERSION: Covers the criteria for changing any point of diversion under an existing water right.

METERING: Mandates meters on all new applications and certain change applications. The district is now working on an enhanced policy of mandatory water measurement for every well in the district.

NON-COMPLIANCE: Sets forth procedures for correcting violations of district policies and regulations. This policy strongly favors local vs. state enforcement.

ABANDONED USTs: Allows the GMD to issue a district order to any tank owner whose abandoned UST contains any product.

PROGRAMS AND RESEARCH

WATER QUALITY MONITORING: Selected wells (approximately 65) monitored annually for a wide range of constituents

PUBLIC EDUCATION: Newsletter published 6 times annually. Intermittent radio and television and newspaper coverage and many talks and presentations

DATA COLLECTION: Water level, bedrock, water quality, water rights appropriations and landownership are the districts major data collection efforts

WATER RIGHTS ADMINISTRATION: Assist public with water rights work and processing applications. This work includes help with all water users including cities, irrigators, industry, etc.

NITRATE STUDY: Study of slightly elevated nitrate levels within a small area of the district

ENVIRONMENTAL PLANNING: GMD4 is currently under contract to the Northwest Local Environmental Planning Group (NWLEPG) to house its staff and provide day-to-day staff supervision. The NWLEPG is a 14-County organization set up to provide comprehensive environmental planning for the region.

ATTAINING ZERO DEPLETION: The board on May 3, 1990 decided it wanted to achieve zero depletion within the next 10-20 years. Staff will be developing this program for the 1991 Revised Management Program. In the interim, all new, permanent water rights are subject to an approval moratorium in effect since February, 1990.

ABANDONED WELLS: Field survey designed to locate all abandoned wells and cause their remediation. As of October, 1990, the program has located 2,150 wells, remediated 1,850 and is actively working on final 300 wells.

CHEMIGATION: Jointly operate a chemigation enforcement program with state Board of Agriculture, allowing KSBA to use GMDs local enforcement program if desired.

PUBLICATIONS

MANAGEMENT PROGRAM: Description of the district and all policies, programs and regulations. Updated as necessary - current program dated May 1, 1987.

NEWSLETTER: THE WATER TABLE - Published 6 times annually with a circulation of approximately 4,600.

ANNUAL REPORT: Annual meeting report produced for the membership covering the upcoming annual meeting. It includes the annual meeting agenda; previous year's expenditures and annual meeting minutes; next year's proposed budget and a report of previous year's activities.

SPECIAL REPORT: A REGIONAL GROUNDWATER QUALITY MONITORING NETWORK FOR NORTHWEST KANSAS, dated 1980.

SPECIAL REPORT: WELL EFFICIENCY TESTING PROGRAM REPORT, February 1, 1982.

SPECIAL REPORT: NORTHWEST KANSAS ABANDONED WELL PROGRAM FINAL REPORT, dated 1990.

BROCHURE: AN INTRODUCTION TO NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 4. Covers district location, purposes, organization, funding, problems, services, regulations and public information.

GRANTS OBTAINED IN LAST 5 YEARS

KANSAS DEPARTMENT OF HEALTH & ENVIRONMENT: $10,000 - for abandoned well remediation work.

KANSAS DEPARTMENT OF HEALTH & ENVIRONMENT: $20,375 - to inventory Class V injection wells within GMD4.

KANSAS CORPORATION COMMISSION: $6,520 - to produce a prototype wellhead protection strategy for a NW Kansas community and to inventory Class II injection wells within the district.

POSSIBLE FUTURE PROGRAMS UNDER CONSIDERATION

AGRICULTURAL CHEMICALS: Development of BMPs for locally used ag chemicals

SALT WATER DISPOSAL AND HANDLING: Development of a more complete monitoring program for salt water

End K4.doc

KANSAS
January, 1992

BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. 5

125 S. Main, PO Box 7, Stafford, Kansas 67578
Phone: (316) 234-5352; FAX (316) 234-5352

CONTACT PERSON: Sharon Falk, Manager

OVERVIEW

LOCATION: Stafford, Pratt, Edwards, Pawnee, Barton, Reno, Rice and Kiowa Counties, Kansas.

FORMATION DATE: March, 1976 STAFF: 5 Full; 0 Part

FORMATION AUTHORITY: Kansas Statutes Annotated 82a-1020 et seq.

TYPE OF DISTRICT: Single resource, Groundwater

SIZE: 2.5 million acres (3906 square miles)

WELLS: Irrigation - 4412; Municipal - 149; Industrial - 137; Other - 83; Recharge - 0

WATER USAGE: Irrigation - 760,000 af; Municipal - 20,000 af; Industrial - 19,514 af; Other - 7,500 af; TOTAL - 807,014 af

AQUIFERS MANAGED: Alluvial, Pleistocene and Dakota

HYDROLOGY: Average saturated thickness - 100'; Average water table - 5' to 100' below land surface.

GOVERNING BODY: Locally elected 9-member board

FINANCING: Local assessments and charges - Max. $.05/acre of land and/or $.60/acre foot of water right

TYPICAL GROUNDWATER BUDGET (ANNUAL): $235,000.00

POLICIES

NEW WELL DEVELOPMENT: Controls the rate of new appropriations

WELL SPACING: Mandates minimum distances new wells can be drilled from existing wells

ABANDONED WELLS: Cooperates with the Kansas Department of Health and Environment for the proper handling of abandoned wells within the district

IRRIGATION RUNOFF: Mandates control of irrigation runoff and, if feasible, its re-use

WELL CONSTRUCTION: Promotes proper well construction within the district

RESOURCE DEVELOPMENT PLANS: May require conservation plans in water short areas and for chronic water control problems

WATER DIVERSIONS: Requires that all groundwater diversions from within the district be made according to all state and local statutes, rules and regulations

GROUNDWATER PROTECTION: protection of the unconsolidated aquifer from cathodic boreholes

PROGRAMS AND RESEARCH

WATER QUALITY MONITORING: Extensive monitoring network of over 150 wells. Samples periodically taken for a wide range of constituents.

PUBLIC EDUCATION: Newsletter published 4-6 times annually. Intermittent radio and television and newspaper coverage and many talks and presentations.

DATA COLLECTION: Water level, bedrock, water quality, water rights appropriations and others.

WATER RIGHTS ADMINISTRATION: Assist public with water rights work and processing applications.

NITRATE STUDY: Study of elevated nitrate levels within a small area of the district.

RECHARGE ASSESMENT: Extensive study to assess recharge to aquifer.

METER PROGRAM: Metering of all permitted wells - designed to obtain better water use data.

PUBLICATIONS

MANAGEMENT PROGRAM: Description of the district and all policies and regulations.

NEWSLETTER: GROUNDWATER HI-LITES - Published 4-6 times annually.

GRANTS OBTAINED IN LAST 5 YEARS

KANSAS DEPARTMENT OF HEALTH & ENVIRONMENT: $35,000 - for abandoned well remediation work.

POSSIBLE FUTURE PROGRAMS UNDER CONSIDERATION

WATER BUDGET: Determine water budget for district through further research from water level, recharge and bedrock data.

End K5.doc

KANSAS RECREATION AND PARK ASSOCIATION

700 JACKSON, SUITE 705
TOPEKA, KANSAS 66603

(913) 235-6533
Laura J. Kelly, Executive Director

TO: Joint House and Senate Committees on Local Government

BY: Laura Kelly, Executive Director, Kansas Recreation and Park Association

DATE: August 19, 1993

RE: Special Districts RECREATION COMMISSIONS

Madam Chair, members of the joint committee, I appreciate the opportunity to come before you today to discuss recreation commissions. Also with me today are Steve Friend, Superintendent of the Burlington Recreation Commission; Jim Rice, Superintnendent of the Chanute Recreation Commission and David Saueressig, Superintendent of the Turner Recreation Commission.

KSA 12-1901 et. seq., enacted in 1945 authorizes the establishment of recreation systems by cities, school districts or both. Between 1945 and 1986, the statutes were amended numerous times leaving the laws confusing and difficult to interpret. In 1986, an interim study on Recreation Commissions was conducted and the laws were recodified in 1987. Last session, HB 2226 was passed which amended the statutes to clarify and strengthen the accountability of Recreation Commissions.

Any city or school district or both can create a recreation commission and levy a tax not to exceed 1 mill if a petition signed by a minimum of 5% of the qualified voters requests the governing body to do so. Or the city and school district can adopt a joint resolution to establish a recreation commission. In either case, the question is put before the qualified voters of either the city or the school district (whichever has the larger assessed valuation, generally the school district).

If approved by the voters, the governing body (school district, city or both) appoint recreation commission members (a total of 5 (some commissions with more than 5 members were grandfathered in when the statutes were revised in 1987): 4 from the city or school district; those 4 then appointing a 5th; or in the case a joint city/school district system, 2 from the school district, 2 from the city who in turn appoint a 5th. Terms are staggered and run 4 years. A commissioner can be removed from the commission in the same manner as an appointed officer of the city or school district.

The commission elects a chair and a secretary. The treasurer of

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Attachment 11

the tax-levying body serves in an ex-officio capacity on the commission.

Initially, recreation commissions (through the city or school district) can levy not more than 1 mill for general operating purposes. The maximum levy is 4 mills and increases to the levy can never exceed 1 mill per year. To increase the levy, the recreation commission asks the city or school district to adopt a resolution. If no protest petition is filed, the increase takes effect. If a protest petition is filed, the issue is submitted to the voters.

Recreation commissions are also authorized to levy a separate amount to cover liability insurance and specific employee benefits: social security, worker's comp, health and unemployment insurance, retirement. This amount can never exceed 1 mill.

The statutes allow for the reduction of the mill levy by petition and election. Likewise, recreation commissions can be dissolved if so desired by the majority of voters

Recreation commissions are required to prepare and publish budgets annually, announce and hold public hearings regarding their budgets and certify their budgets to the city or school district.

Prior to this fiscal year, recreation commissions were required to submit budgets to the city or school districts. Commissions with budgets over $300,000 were required to submit annual audits to the city or school district. HB 2226 lowered the audit limit to $150,000 and required recreation commissions to submit budgets and audits to the city or county clerk.

Recreation commissions have policy making authority. They can employ staff, enter into contracts, enter into lease agreements for real and personal property not to exceed 10 years subject to the approval of the city or school district, receive and administer grant money, sue or be sued, purchase personal property, own real property that is given to them.

Recreation commissions cannot purchase real property.

Currently, Kansas has 170 recreation commissions. The vast majority (151) are school based; 19 are city-based. Given that we know of 203 total recreation "systems" operating in Kansas (50 municipal departments usually combined with the parks departments, 1 county (Lyon) and 1 special district (Johnson County) it is clear that recreation commissions play a major role in the provision of services to Kansans.

Recreation commissions were established to provide leisure services in a cooperative arrangement with cities and school districts. The cities and school districts own the land and build the facilities. Recreation commissions plan and execute the programs in those facilities.

One of the issues that comes up repeatedly when recreation commissions are discussed is that of accountability. Upon of review of the statutes it is clear that the governing body, the city or the school district has the authority to appoint members to the recreation commission and the responsibility to oversee their performance. If the appointee is not representing the governing body well, they need not be reappointed or, with cause and due process the appointee can be removed.

Levying authority is strictly limited initially and throughout the duration of the recreation commission.

The public also plays a major role in holding recreation commissions accountable. Recreation commissions programs are uniquely visible and accessible to the public. Recreation commissions market their services to increase participation since tax dollars are heavily supplemented by user fees. An unhappy public decreases participation which decreases income.

And, as mentioned before, at any time, Recreation Commissions can be dissolved by the same voters who asked that they be created.

Thank you.