

Chapter 10. THE FORMATION OF A SEWER DISTRICT

This chapter discusses the major organizational structures that can be used to form, build, finance construction, and manage a sewer system. Many of the activities discussed below occur concurrently with the activities in Chapter 8, “Evaluating Alternatives, Conducting the Environmental/Sanitary Survey, Developing the Preliminary Engineering Report, and Choosing the Right Project”. The required steps and procedures outlined below are set forth in statutes, so they are summarized here. For a complete listing of relevant statutes, refer to Chapter 3, Legal Authorities.

The formation of a sewer district in an unincorporated area usually begins when property owners in an area have sewage problems and collectively seek help to solve those problems. Often an unincorporated area is long overdue for an effective sewer system, and in many cases, the County Environmental Health Department has already cited many individual property owners for sewage violations. One economic inducement for property owners to create a sewer district is that it adds infrastructure that improves the value of their property. Moreover, real estate agents will often refuse to represent some properties because leading financial institutions will not lend money to prospective buyers for homes which have inadequate sewage treatment systems.

Sewer district formation requires public support. That statement may seem obvious, but many sorely needed sewer districts never get formed because the organizers behind the formation efforts fail to adequately inform the residents, property owners, and future system users in the proposed sewer district as to why they need it, what it will do for them and what it will cost them. Without good information about the project and why it is needed, property owners and residents are not motivated enough to support sewer district formation.

A. Three Important Points to Remember

1. State statutes require public participation in sewer district formation through petition, public meetings, and public notices of those activities.
2. People affected and involved must be informed in order to make a good decision.
3. People affected and involved must be motivated to try something new. That is the most challenging part of forming a sewer district; the rest is just mechanics.

B. Two Ways to Create a Sewer District

The first way to create a sewer district is to have the Secretary of Kansas Department of Health and Environment or the County Health Officer determine and certify to the Board of County Commissioners that unsanitary conditions which already exist or which are expected to develop may be removed or prevented by installation and utilization of sewers. County Commissioners may be wary of this method in light of the political exposure. In addition, if the district is not formed, the County’s general fund must be used to pay for the unsuccessful effort. The second and most effective way is to gather local support through a petition brought by local property owners who are requesting the creation of a sewer district. The petition is then filed with the Board of County

Commissioners.

1. *Formation of A Sewer District by Survey*

Upon receiving complaints of surfacing wastewater, the Board of County Commissioners may request a survey of the area from the County Health or Environmental Health Department, or by whatever entity in the county is responsible for administration of the county Sanitary Code. See Chapter 8 for a discussion of the Environmental/Sanitary Survey. If the Health Department then determines and certifies to the Board that unsanitary conditions currently exist or are expected to develop, conditions which may be corrected or prevented with the installation and utilization of sewers, then a sewer district may be created by action of the Board of County Commissioners, and no petition is required. If the Board of County Commissioners subsequently determines that such a project is feasible, then any expenses incurred shall be paid from the County's general fund.

2. *Formation of a Sewer District Through the Petition Process:*

A petition to request the creation of a sewer district is filed with the Board of County Commissioners. The petition shall be signed by the owners of at least 51% of the acreage of the land in the proposed district. It shall include the following:

- Boundaries of the district.
- Nature of the improvement.
- Estimated cost.
- Method of assessment.
- Proposed apportionment of any cost between the proposed district and any other sewer district operated and maintained by the governing body.

The petition shall also state that if the Board of County Commissioners determines that the improvement project is not feasible, all costs and expenses incurred during the preliminary planning such as engineering and legal consultation shall be assessed against the property of the persons signing the petition. Moreover, the petition shall be deemed null and void after the Board of County Commissioners has determined not to create the sewer district. Notice of a public meeting need not be given when a petition is signed by 100% of the landowners in a proposed sewer district. The following steps should be followed when forming a sewer district by petition.

- a. The County Health or Environmental Health Department or another county department, first identifies an area experiencing septic tank and lateral system failures. Under the direction of the County Commissioners, the County Environmental Health Department sends an information survey, or a notice of a public meeting, to the area's residents and property owners to determine if there is a desire to form a sewer district.

If there is a desire, an advisory committee is chosen from the area's landowners both to define the boundaries of the proposed district and to assume a leadership role in forming the district. It is advisable to have the results of an environmental/sanitary survey, as well as a financial consultant, to assist in the early stages of the project. They can help by identifying potential construction concerns in the district as well as by insuring that the proposed district is economically feasible.

b. After the approximate boundaries have been decided, a preliminary engineering report and cost estimate should be obtained from a qualified engineering firm. Questions such as collection and treatment alternatives can be considered and selected. Refer to Chapter 8.

c. If the formation of the sewer district has been deemed reasonable and the County, advisory committee, and a majority of landowners have agreed to continue, it is then recommended that the County identify which financial agencies are likely to be involved in the project. See the discussion of the *Kansas Interagency Advisory Committee (KIAC) in Chapter 11*. It is important to have such involvement in the preliminary stages as some programs will either reimburse or pay for the legal and monetary costs involved in the actual formation of the sewer district. In addition, financial agencies can also provide guidance to avoid pitfalls which might endanger potential funding from state or federal sources.

Smaller districts can often rely on volunteers to assemble the legal description of the property and determine legal ownership of the land within the district; larger districts will likely require professional assistance, or county staff to accomplish this.

d. Once the legal boundaries and the approximate cost estimates are obtained, a legal petition must be circulated to all landowners located within the proposed district boundary. The petition must state the following: the nature of the proposed improvements, the estimated costs of construction, the boundaries of the improvement district, and the proposed method of assessment. A detailed legal description of each property must be attached.

A petition must be circulated and signed by the owners of at least 51% of the acreage of the land in the district in order for it to be a valid petition. It is the percentage of land acreage signed by owners that determines the validity--not the percentage of landowners or residents.

e. Upon obtaining the necessary signatures, the advisory committee can now present the petition to the County Commissioners. The Commissioners then have the petition reviewed by their legal counsel to determine whether or not it is valid according to the statutes of K.S.A. 19-27a.

Once the petition's validity is verified, the County is authorized to incur debt on behalf of the district for any legal, financial, or other preliminary work that is necessary to determine the feasibility, type of treatment, approximate size of the sewers and treatment facility, approximate boundaries, and any additional information pertinent to the construction of the

sewer facility. A preliminary engineering report must now be completed. See Chapter 8.

f. The completed engineering report is then reviewed by the district's property owners, the advisory committee, and the County Commissioners in a public meeting. If it is decided that the district is indeed feasible and if it is the general consensus to continue the project, then the County will hold a public hearing in which a notice is published ten (10) days prior to that hearing in the County's official newspaper.

The notice must include the following three items:

- the intent to form a sewer district;
- a description of the area of the proposed district;
- the date and location of the public meeting. A notice of the hearing must also be mailed to all property owners within the proposed district.

g. The County can then pass the official resolution, creating the sewer district at any time within one year from the conclusion of the public hearing.

C. Operation of the Sewer District

Sewer districts have latitude in how they provide sewer services. The district may contract with another entity, such as a nearby city, or it may opt to manage the collection and treatment systems itself. As a general rule, if the proposed sewer district can pay a reasonable fee to another entity's wastewater facility in order to avoid treatment of the sewage itself, then such a strategy would be best, particularly if the area is small.

It's important to remember that there are many possibilities available to an area with sewage problems. All alternatives, including decentralized managed options, should be considered. Refer to Chapter 8 for further discussion. The environmental section of the local county health department that addresses alternatives can also assist a community in forming a district.

The governing body means the Board of County Commissioners of the county in which the sewer district is located. The Board of County Commissioners serves as the governing body of the sewer district with powers and duties. The board shall be the governing body of any sewer district it creates and shall have the power to:

1. create, construct, reconstruct, extend, enlarge, operate and maintain a sewer system in the sewer district;
2. enter into contracts and agreements;
3. combine sewer districts. Create an area wide sewage disposal district to be served by a single sewage system;
4. take any action for a safe, proper and economical operation of any sewer district.

D. Notice of Public Hearing

Prior to the creation of a sewer district, the Board of County Commissioners shall publish a notice of the intent to create a sewer district with the proposed boundaries, so as to advise the landowners within the proposed district. The intent, date, and location shall be published in the local newspaper of general circulation in the county ten (10) days prior to the date of the public meeting. Notice of the public meeting shall be mailed to all landowners within the proposed district fourteen (14) days prior to the meeting. Notice of public meeting may not be needed when a petition is signed by 100% of the landowners in a proposed sewer district.

E. Formation of a Steering Committee (recommended):

During the course of the first few public meetings held regarding the creation of a sewer district, a steering committee consisting of a chairperson or co-chairpersons, secretary, and three members at large should be selected. This committee shall act as a liaison between the proposed district landowners and the Board of County Commissioners.

The County Commissioners may empower the steering committee to advertise for a consulting engineer and financial specialist. However, the County Commission is the governing body and therefore must legally purchase all service in connection to the district formation and operation processes, in accord with the respective County's procurement requirements or with the requirements of federal and state funding sources.

The steering committee should meet regularly, preferably at least every three months, and should report the minutes of those meetings to the County Commissioners. However, no progress or development should occur in the proposed sewer district without the prior approval of the governing body.

F. Information and Education

All matters pertaining to the proposed sewer district are subject to review by the governing body of that proposed district. Public notices of scheduled County Commission meetings shall be made prior to any changes in either policies or boundaries so that the residents of the proposed sewer district may attend. Public notices of scheduled County Commission meetings that address any other aspect of the proposed sewer district should be published in the local newspaper so that all residents of the proposed district may attend. All pertinent information and educational materials should be mailed to residents of the proposed district.

G. Additional Consideration in the Formation of a Sewer District

Upon completion of the project, the governing body of the sewer district shall determine the actual costs of the improvements and the proposed special assessments made against each tract of land within the district. The governing body shall then prepare a proposed assessment resolution

including an assessment roll, which is filed with the County Clerk and which is open for public inspection. The proposed resolution, which fixes the special assessment, shall be published once in a newspaper of general circulation within the county at least ten (10) days prior to the date of the scheduled public meeting.

The proposed resolution shall state the following:

- proposed method of assessment;
- date, time, and place of the public hearing scheduled to consider the proposed special assessment as well as any written or oral objections to the assessment.

The proposed assessment shall be mailed by prepaid, first class mail at least ten (10) days prior to the date of the scheduled public hearing to all landowners responsible for paying the special assessment. The landowners shall be given the opportunity to pay the assessment in full without interest.

H. Resolution And Cost Exceeding Estimate

The Board of County Commissioners may create a sewer district by a resolution passed at any time within one year from the conclusion of the public hearing requirement. If at anytime after the creation of a sewer district but before the letting of contracts for construction, the governing body determines that the cost for the improvement project will be more than ten percent (10%) of the initial estimated cost, then the governing body shall hold another public meeting. Notice of any subsequent hearing shall be made in the same manner as that of the first hearing. Following the hearing, the governing body may cease work on the project, dissolving the sewer district, or approve continuation of the project with any changes it deems necessary.

If the governing body determines that the continuation of the project is not feasible, then all cost and expenses incurred to date shall be assessed against the lots and pieces of property within the district. The special assessment shall be levied as one tax, in addition to other special assessments and taxes.

I. Joint Sewer Districts And Inclusion of Certain Districts:

Subject to the provisions of K.S.A. 1986, supp. 19-270, whenever the Kansas Department of Health and Environment recommends the creation of one or more joint sewer districts, the governing body may adopt a resolution to create the joint sewer district. All outstanding obligations of the existing sewer districts shall remain the obligations of the existing sewer district. The governing body shall levy assessments to the property owners to pay obligations of the sewer district until all or any obligations have been met.

J. Sewage from Other Districts

If the one sewer district accepts sewage from another district, the governing body shall make provisions so the costs of the sewer below a certain elevation will be assessed against the other district proportionate to the amount of sewage received.

K. Enlargement of Boundaries

Upon the presentation of a petition approved by the Kansas Department of Health and Environment, the governing body of the sewer district may enlarge the boundaries of a district by resolution. The petition must be signed by the owners of 51% of the land area who seek addition to the district. Levies shall be made, which will be determined by the governing body, and proceeds shall be credited to the bond and interest fund of the district.

L. Annexation of a District by a City

If, after construction of the sewer district and after issuance of bank notes for the purpose of paying for the costs of the construction, all or part of the sewer district is annexed by a city, then the district shall not be dissolved as the result of said annexation. After said annexation is completed, and boundaries of the annexed area are established, all property owners in the annexed area, will then pay city rates for service and user charges. All outstanding indebtedness shall remain the obligation of the sewer district and property owners in the district. The city may choose to take over the obligations, and make appropriate charges to the property owners.

In accordance with state statutes, any potential user within four hundred (400) feet of an established sewer district must connect to the existing public sewer if economically and physically feasible. Moreover, all users within the district must connect to the district within one year of the establishment of the district, regardless of the status of the existing system.