

Subject

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

December 3, 1974

Opinion No. 74- 381

Mr. James J. Smith
City Attorney
610 Bridge Street
Humboldt, Kansas 66748

Dear Mr. Smith:

You advise that the City of Humboldt has recently completed the various steps required by K.S.A. 1973 Supp. 12-708 for the adoption of a new zoning ordinance for the city, which has been presented to the governing body for approval. At the same time, the City has been completing a codification of its ordinances under K.S.A. 1973 Supp. 12-3015, and the governing body has adopted the zoning ordinance for inclusion within the new codification, replacing the zoning provisions presently in force. Upon receipt of the codification, the city council proposes to adopt the entire codification, including the zoning ordinance, by adoption of the ordinance as provided in K.S.A. 1973 Supp. 12-3015.

You indicate you have been furnished copies of opinions numbered 74-51 and 74-54, concerning the interpretation of K.S.A. 1973 Supp. 12-3009, which provides in pertinent part thus:

"Any city is hereby authorized and empowered to incorporate in an ordinance by reference, in the manner hereinafter provided, any *standard or model* code or ordinance, regulation having the effect of law of a state officer, board or other agency, or statute, or portions thereof on any subject on which a city may legislate, which standard or model code or ordinance or state regulation is available in book or pamphlet form: *Provided*, except that any city may incorporate by reference in conformity with K.S.A. 12-3010 a zoning ordinance or subdivision regula-

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tions in code form as that term is defined in K.S.A. 1968 Supp. 12-3301(c) if all other procedural requirements set forth in K.S.A. 1968 Supp. 12-708 are met." [Emphasis supplied.]

In the opinion no. 74-54, mentioned above, we spoke of this statute thus:

"There exists a misconception that any lengthy proposed code or ordinance becomes a 'standard or model' code or ordinance merely by being printed in pamphlet form. It does not. A standard or model code or ordinance is, at the least, one which is prepared and made available as precisely that, a model or standard code or ordinance made available for consideration and adoption by any legislative body dealing with the subject matter in question. Such a standard or model code generally deals with specific, often technical, subject matter, and is usually prepared and recommended by an organization of national or state-wide prominence having generally recognized expertise or professional competence dealing with the subject matter involved."

Neither of the earlier opinions discussed K.S.A. 1973 Supp. 12-3301(c) which defines the term "code," which may be adopted by cities by reference pursuant to K.S.A. 12-3302, as follows:

"'Code' means any *model or standard* published compilation of rules in book or pamphlet form which has been prepared by a technical association, a federal agency, this state or any agency thereof, *municipalities of this state* or any agency or instrumentality thereof and any metropolitan or regional agency within this state, and such codes may be specifically, but shall not be limited to: Building codes, together with any other code which embraces a subject which is a proper legislative matter." [Emphasis supplied.]

Although the phrase "standard or model" found in K.S.A. 12-3009 is also found in this provision, it is elaborated somewhat by the language following, which indicates that a "model or standard" may be not only one which is prepared by a technical

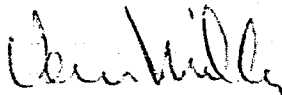
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association and the like, but includes a compilation prepared by municipalities of this state. Technically, of course, it may be argued as matter of strict statutory construction that no ordinance or compilation is a model or standard unless it is proposed as such, or is one which is in general used as such.

However, the purpose of K.S.A. 12-3301 et seq., appears to be to permit the adoption of ordinances which are generally long and of detailed subject matter by reference, rather than by publication of the entire body of the ordinance in the official city newspaper. The requirement that such a compilation by a "model or standard" ordinance is on its face simply too ambiguous to provide precise guidance to city officials in determining whether an ordinance may or may not be adopted by reference. The ostensible purpose of publication, of course, is to provide legal and official notice to the public of enactment. If a proposed ordinance is enacted by reference, and the adopting ordinance is published, the actual notice to the public is neither more nor less effective whether the ordinance so adopted is a standard or model in use elsewhere.

Nonetheless, it is impossible to disregard altogether the "standard or model" language found in the statute, and it is equally difficult to determine with precision what constitutes a "standard or model." A comprehensive zoning ordinance which is developed for the city may be believed to constitute a model zoning ordinance for the community, and if it is denominated as such by the city governing body, this formal designation may constitute compliance with the statute, permitting adoption by reference. As you indicate, the City does want to assure the enactment of a valid and binding enactment. To forestall a technical objection based on the "standard or model" requirement, it may be helpful for the governing body to so designate the ordinance in question. Save for this one suggestion, which you may deem an unnecessary and overly conservative precaution, we concur in your judgment that adoption by reference of the proposed zoning ordinance at the time of adoption of the new codification is authorized by the cited provisions above.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:tp