



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

January 20, 1975

Opinion No. 75- 13

Mr. D. H. Corson, Jr.
Attorney at Law
434 Brotherhood Building
Kansas City, Kansas 66101

Dear Mr. Corson:

K.S.A. 12-1027 states in pertinent part thus:

"Any such city which has authorized the appointment of a city manager as in this act provided may abandon such city-manager plan at any time after any such city has elected to come under the provisions of this act, and on the filing of a petition with the city clerk at least ten days prior to the next ensuing general city election, said petition being signed by not less than twenty-five percent of the total number of legally qualified electors voting for mayor at the last preceding general city election, requesting an election for the purpose of voting on the question of the abandonment of this act, there shall be submitted at the next general city election the question of abandoning such city-manager plan."
[Emphasis supplied.]

As attorney for the City of Bonner Springs, a city of the second class with a mayor-council-city manager form of government, you inquire concerning certain questions which may arise upon the filing of a petition requesting an election under this section.

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First, as the underscored language indicates, a petition filed thereunder must be signed by "not less than twenty-five percent of the total number of legally qualified voters voting for mayor at the last preceding general election." We understand that records of the 1973 Bonner Springs city general election in the custody of the Wyandotte County Election Commissioner have been misplaced or inadvertently destroyed, and that it is therefore impossible to prepare a list of all those persons who voted for mayor at the last Bonner Springs city general election. You point out that although K.S.A. 12-1027 require that the petition be signed by the specified percentage of voters, and inquire whether this requirement mandates that the petition be checked to determine whether the signers are indeed "legally qualified electors" prior to the 1973 city general election.

K.S.A. 25-3601 provides in pertinent part thus:

"Whenever under the laws of this state a petition is required or authorized as a part of the procedure applicable to any . . . city . . . , the provisions of this act shall apply, except as is otherwise specifically provided in the statute providing for such petition. The sufficiency of each signature and the number thereof on any such petition shall be determined in accordance with the provisions of this act by the county election officer or such other official as designated in the applicable statute."

You enclose a copy of the opinion of December 19, 1974, issued by Mr. Lysaught, Wyandotte County Counselor, to Mr. Bradish, county election commissioner, who concluded that in view of the inability to furnish the records of the 1973 city election, it was sufficient that the petition be signed by twenty-five percent of the presently qualified electors of the city, even though they did not vote in the last city election.

The requirement that the petition bear a prescribed number of signatures, in terms of a percentage of electors of the city voting at the last city general election, requires, in our judgment, some determination of the sufficiency of the petition by the county election officer under K.S.A. 25-3601. In view of the impossibility of determining precisely the number of persons voting for mayor at that election, and in view of the unavailability of the records of that election we cannot but concur with Mr. Lysaught that appropriate measure of the sufficiency of the signatures upon such petitions by the number of electors presently qualified to vote in the city.

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Lastly, you point out that K.S.A. 12-1027 provides that upon the filing of a petition at least ten days prior to the next ensuing general city election, which is found to be sufficient, the question of abandoning the city manager plan shall be submitted at the "next general city election." It may very well be that if the petition is submitted ten days prior to the city general election, that there will be insufficient time to permit the county election officer to determine the sufficiency of the petition, to prepare the necessary machine labels, and to program the voting machines to submit the question to the electors. In the event the necessary steps cannot be accomplished, you question whether the question may be later submitted at a special election, or whether it must await submission at the next ensuing general city election. K.S.A. 12-1027 makes no provision for a special election at which the question may be submitted. Under this provision, it would, in the eventuality that the necessary steps cannot be accomplished in the time required to permit the question to be submitted at the 1975 city general election, it is necessary that the question be presented at the next general city election thereafter.

If further questions arise concerning this matter, please feel free to call upon us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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