



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 21, 1975

ATTORNEY GENERAL OPINION NO. 75-301

Mr. Kent Lynch
Legal Intern
Office of the County Attorney
Cherokee County Courthouse
Columbus, Kansas 66725

Re: Taxation--Countywide Retailers Sales Tax--Elections

Synopsis: K.S.A. 10-120 requires that an election be called to be held within 30 days after the filing of sufficient resolutions adopted by city governing bodies requesting an election upon imposition of a countywide retailers sales tax under K.S.A. 1974 Supp. 12-172.

* * *

Dear Mr. Lynch:

You advise that the Board of County Commissioners of Cherokee County are not required pursuant to K.S.A. 1974 Supp. 12-172(b) to submit to the voters the question of imposing a countywide retailers' sales tax, having received resolutions requesting such an election adopted by not less than two-thirds of the membership of the governing bodies of cities within the county which contain not less than twenty-five percent of the entire population of the county. You inquire whether the board must submit the question at a special election prior to the next city election, which will be held in April, 1976.

K.S.A. 1974 Supp. 12-172 is silent as to the time within which an election must be held. Subsection (d) states only thus:

"Any city or county proposing to adopt a retailers' sales tax shall give notice of

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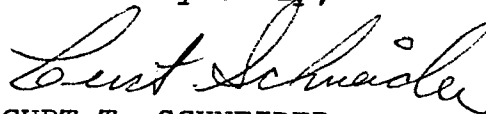
its intention to submit such proposition for approval by the electors in the manner required by section 27 [79-5017] of this act."

The referenced section refers, in turn, to K.S.A. 10-120, which provides in pertinent part thus:

"Whenever an election is required for the issuance of bonds . . . , or where a different procedure for giving notice of the election is specifically provided by law, upon compliance with the legal requirements necessary and precedent to the call for such election, the proper municipal officers shall call an election to be held within thirty (30) days after compliance with the necessary requirements, or within ninety (90) days, should such long period include the date of a general election." [Emphasis supplied.]

Under this section, "upon compliance with the legal requirements necessary and precedent to the call for such election," in this instance, the receipt of sufficient resolutions adopted by city governing bodies, the "proper municipal officers," in this instance, the board of county commissioners, "shall call an election to be held within thirty (30) days after compliance with the necessary requirements." Thus, K.S.A. 10-120 requires that the election be held within thirty days after compliance with all steps necessary and precedent thereto. Under K.S.A. 1974 Supp. 12-172, insofar as pertinent here, the only step necessary and precedent to the election is the filing of resolutions, and that has occurred. It becomes the duty of the board of county commissioners to call an election to be held within thirty days thereafter. There appears to be no basis under this statute upon which the calling of the election may be delayed until the date of city elections in 1976.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj