



STATE OF KANSAS

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**Curt T. Schneider,**  
*Attorney General*

November 20, 1975

ATTORNEY GENERAL OPINION NO. 75- 437

Mr. Clifford L. Bertholf  
Assistant District Attorney  
Sedgwick County Courthouse  
525 North Main Street - 5th Floor  
Wichita, Kansas 67203

Re: Elections--City Elections--Expenses

Synopsis: It is the duty of the Sedgwick County Election Commissioner to conduct an election required by ordinance of the City of Wichita for election of members of Neighborhood Councils in January, 1976, and the direct costs of such election must be reimbursed to the board of county commissioners by the city if the voters in the county are not entitled to vote in one or another election held on that date, said liability being governed by K.S.A. 25-2201.

\* \* \*

Dear Mr. Bertholf:

You inquire whether the Sedgwick County Election Commissioner is authorized or required to conduct an election for the City of Wichita, for the election of members of Neighborhood Councils.

You enclose a copy of an ordinance adopted by the city of Wichita, creating a Citizens Participation Organization, to consist of a number of Neighborhood Councils and a Central Council. Each Neighborhood Council is to consist of nine members elected at large, the first such election to be held the second Tuesday in January, 1976. Thereafter, successors will be elected at the general city election held on the first Tuesday in April in each off-numbered year.

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The Election Commissioner is the proper officer to conduct all city elections. Indeed, K.S.A. 19-3434 provides thus:

"The purpose of this act [providing for county election commissioners] is to take from the county clerks, city, school and township officers, in the counties to which this act applies, all power and authority now exercised by them in relation to the supervision, conduct and control of elections within each county to which this act applies . . . ."

Under K.S.A. 25-2110, all city elections must be conducted by the county election officers of the county in which the city is located. The term "city election" is defined by K.S.A. 25-2103 to mean "the election of such city officers as are provided by law to be elected." Members of the Neighborhood Councils hold positions created by city ordinance, perform duties assigned to them under the terms of that ordinance, and take an oath of office before entering upon their duties. For the purpose of chapter 25, K.S.A., such persons are officers provided by city ordinance to be elected, and the election of such persons must be conducted by the county Election Commissioner.

The further question is raised concerning provisions for payment of the costs of the election. K.S.A. 25-2201(a) commences thus:

"Election expenses of all primary, general and question submitted elections which are township, city, school or community junior college elections shall be paid by the board of county commissioners of the respective counties."

Subsection (b) specifies when reimbursement may be required to the board of county commissioners:

"The direct expenses of any primary, *general* and question submitted elections which are township, *city*, school or community junior college elections, except

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for any such election held on a day when every registered voter in the county is authorized to vote at one election or another, shall be reimbursed to the county by the township, city, school or community junior college district for which such expenses are incurred." [Emphasis supplied.]

Some question arises whether this section is at all applicable, by reason of the definitions found in K.S.A. 25-2102. Subsection (a) thereof defines "general election" as

"the election held on the Tuesday succeeding the first Monday in November of even numbered years, the elections held for officers on the first Tuesday in April, and in the case of special elections of any officers to fill vacancies, the election at which any such officers is finally elected."

No primary elections are held to nominate candidates for election to the Neighborhood Councils. Rather, members are elected directly at each such election, including that to be held the second Tuesday in January, 1976.

Because of the definition found in K.S.A. 25-2201(a), *supra*, the question is raised concerning liability for the costs of the election. The definition found in K.S.A. 25-2102(a) is to be applied in accordance with K.S.A. 25-2101, which states thus:

"As used in this act, the words and phrases set out in sections 2 to 6 [25-2102 to 25-2106] shall have the meanings respectively ascribed to them unless the context requires a different meaning. Words and terms defined in 1968 HB 1708 [terms defined there are found at K.S.A. 25-2501 to -2507] shall have the same meaning in this act as is ascribed thereto in said house bill."

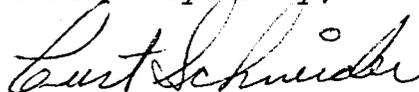
The definition quoted above is not, by the terms of these statutes, expressly applicable to K.S.A. 25-2201 *et seq.*, the provisions governing apportionment of election expenditures. That is to say, the technical definition of general election found at K.S.A.

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25-2102, as including only elections held on the Tuesday succeeding the first Monday in November of even numbered years and elections held for officers on the first Tuesday in April, is not necessarily applicable to the statutes governing apportionment of election expenses, and certainly is not applicable when the context requires a different meaning to such terms as used in the latter act. The purpose of the expenses apportionment statutes is, of course, to provide a statutory direction for the expenses of *all* elections conducted for township, city, school or community junior college elections. There is no canon of statutory construction which compels the use of a definition prescribed for one enactment in the interpretation of another statutory enactment, particularly when to do so would frustrate the purpose of such other enactment. The election which we are considering here is not a primary election at which candidates are nominated, but a general election, *i.e.*, one at which persons are finally elected. It is a city election, and also a general election. Perforce, it is a city general election, and the payment of expenses for elections of members of Neighborhood Councils is governed by K.S.A. 25-2201(b). The direct expenses thereof are to be paid by the board of county commissioners, and reimburses to the board by the city, unless any such election is held on a day when every registered voter in the county is authorized to vote at one election or another. Correspondence which you enclose to the Election Commissioner from the Wichita City Manager, dated September 18, 1975, indicates the city has already acknowledged its responsibility to pay the direct cost of the election to be held in January, 1976, and has agreed to pay those costs. The question remains whether the Sedgwick County Election Commissioner may refuse to conduct the election unless and until the city governing body adopts an ordinance providing for payment of the election expenses. I see no basis for such a refusal. The payment of election expenses is governed by K.S.A. 25-2201, in my judgment, and that liability cannot be altered in any fashion, neither avoided nor confirmed, by the adoption of a city ordinance.

Accordingly, it is my opinion that the Sedgwick County Election Commissioner is authorized and required to conduct the election in question, that the city is liable for the direct expenses thereof, when any such election is conducted on a day other than when all voters of the county are entitled to vote in one election or another, and that the Election Commissioner may not refuse to conduct the election on the condition that the city adopt any ordinance whatever regarding the payment of the costs thereof, that liability being fixed by statute.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General