



STATE OF KANSAS

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January 30, 1976

ATTORNEY GENERAL OPINION NO. 76- 34

The Honorable Elwaine F. Pomeroy
State Senator
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Cities--Initiative and Referendum--Charter Ordinances

Synopsis: The procedure for adoption of a charter ordinance by Kansas cities is prescribed solely and exclusively by article 12, § 5(c) of the Kansas Constitution. A proposed charter ordinance may not be submitted to the electorate upon an initiatory petition filed pursuant to K.S.A. 12-3013.

* * *

Dear Senator Pomeroy:

As chairman of the Senate Committee on Local Government, you advise that the committee has before it Senate Bill No. 662, a bill which would authorize cities to adopt a new, additional form of government. In consideration of this bill, you advise, the question has arisen whether K.S.A. 12-3013, relating to initiative and referendum elections authorizes the electors of a city to compel submission of a proposed charter ordinance to an initiative election upon the filing of a sufficient petition therefor.

Article 12, § 5 of the Kansas Constitution prescribes the manner in which a charter ordinance may become effective. Under subsection (c) (2), it

"shall be so titled, shall designate specifically the enactment of the legislature or part thereof made inapplicable to such city by the

adoption of such ordinance and contain the substitute and additional provisions, if any, and shall require a two-thirds vote of the members-elect of the governing body of such city." [Emphasis supplied.]

Upon adoption, it must be published once each week for two consecutive weeks.

A charter ordinance may be submitted to the electorate in one of two ways. First, if a sufficient petition is filed within sixty days of its final publication demanding that it be submitted to a vote of the people, it shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon. If such a petition is filed, the governing body must pass an ordinance calling the election and fixing the date thereof.

A charter ordinance may be submitted to the voters by the governing body without the filing of a petition demanding a referendum vote thereon. Subsection (c)(3) provides in pertinent part thus:

"The governing body may submit any charter ordinance to a referendum without petition by the same publication of the charter ordinance and the same publication of the ordinance calling the election as for ordinances upon petition and such charter ordinance shall then become effective when approved by a majority of the electors voting thereon."

Thus, at the time of publication of the charter ordinance, the governing body may publish an ordinary ordinance calling an election on the charter ordinance. However, inasmuch as the charter ordinance itself is not published until it has been adopted by a two-thirds vote of the members-elect of the governing body, the governing body may not publish an ordinary ordinance calling an election upon a proposed charter ordinance, but only upon a charter ordinance which has been officially adopted by the required number of members-elect of the governing body.

K.S.A. 12-3013 provides in pertinent part thus:

"A proposed ordinance, except an administrative ordinance or an ordinance relating to a public improvement to be paid wholly or in

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part by the levy of special assessments or *an ordinance or other proposition which is or may be subject to referendum or election under another statute*, may be submitted to the governing body of any city accompanied by a petition . . . containing a request that the governing body pass the ordinance or submit the same to a vote of the electors" [Emphasis supplied.]

Under this provision, only two kinds of ordinances are eligible for submission to the electorate upon the filing of a sufficient petition, first, a "proposed ordinance," and secondly, an "ordinance or other proposition which is or may be subject to referendum or election under another statute."

Article 12, § 5(c) provides the sole and exclusive manner by which a charter ordinance may be adopted and may become effective. The method of adoption is constitutionally fixed and may not be altered by legislative action. Under subsection (c)(2), it must first be approved by a two-thirds vote of the members-elect of the city governing body. As a mere technical matter, once it is thus adopted, such a charter ordinance is not a "proposed ordinance" which may be submitted under K.S.A. 12-3013, but an officially adopted ordinance. Similarly, a charter ordinance, whether merely proposed, adopted but not yet effective, or adopted and fully effective, is not an ordinance or other proposition which "is or may be subject to referendum or election under another statute" than K.S.A. 12-3013, for charter ordinances are subject to referendum or election only under the cited constitutional provision.

It is not necessary, however, to rely upon these technical distinctions of charter ordinances from those propositions which are permitted by K.S.A. 12-3013 to be submitted to initiative or referendum elections, sound though those distinctions are, because, as stated above, the manner of adoption of charter ordinances is constitutionally fixed. The legislature may not amend article 12, § 5(c) by subsequent statutory enactments, obviously, and that constitutional provision contains no reference to K.S.A. 12-3013 or to any other statute antedating the 1961 adoption of the home rule amendment, by which those prior statutory enactments are incorporated therein by reference or otherwise.

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Accordingly, it is my opinion that a charter ordinance may not be submitted to the electorate by a petition filed under the provisions of K.S.A. 12-3013.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

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