



STATE OF KANSAS

Office of the Attorney General

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Attorney General

February 4, 1977

ATTORNEY GENERAL OPINION NO. 77- 42

Mr. William H. Yandell
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123 North Bluff
Anthony, Kansas 67003

Re: Cities--Franchises--Petitions

Synopsis: A petition which is filed pursuant to K.S.A. 12-2001, Sixth, requesting an election upon the granting of a franchise must satisfy the requirements of K.S.A. 1976 Supp. 25-3601 et seq. as to form and sufficiency.

* * *

Dear Mr. Yandell:

You inquire concerning petitions which have been filed to seek an election upon the granting of a franchise under K.S.A. 12-2001, Sixth. That section provides that if within sixty days after passage of an ordinance granting a franchise, a petition is presented signed by a sufficient number of electors asking that such franchise ordinance be submitted for adoption to popular vote, a special election shall be called on that question.

Chapter 25, art. 36, K.S.A. deals generally with the sufficiency of petitions. Applicability of the article is fixed by K.S.A. 25-3601, which provides thus:

"Whenever under the laws of this state a petition is required or authorized as a part of the procedure applicable to any county, city, school district or other municipality,

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or part thereof, 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."

On its face, this article in its entirety, including the 1976 amendment to K.S.A. 1975 Supp. 253602, are made applicable to petitions seeking elections upon franchise ordinances which are presented pursuant to K.S.A. 12-2001. This article is designed, in my judgment, to provide a uniform act for determining the sufficiency of signatures upon petitions, and the sufficiency of their form.

As you point out, State ex rel. Griffith v. City of Walnut, 165 Kan. 205, 193 P.2d 172 (1948), does not quite address the question raised here. There, the city urged that the petition was insufficient because it was not verified, although K.S.A. 12-2001 contained no verification requirement. The city argued, however, that the verification requirement in G.S. 1935 12-107, relating to initiative, referendum and recall, should be construed to apply to petitions filed under K.S.A. 12-2001, concerning franchises. The court rejected the argument, and refused to interpolate into K.S.A. 25-2001 the verification requirement in another statute which itself dealt with petitions for specific and other purposes:

"We are unable to agree with defendants' view that section 12-2001, here examined, constitutes, together with the statutes, including G.S. 1935, 12-107, which require verification, such an integrated system of law dealing with the same subject as to require us to read into it a provision for verification of the petition. It is not unambiguous and we find nothing uncertain about it. It deals with a particular subject and that alone. We find nothing in it to indicate a legislative intent that it should be supplemented by supplying, from some other statute, a requirement that the petitions must be verified. To do so, we must conclude, would be an invasion of the legislative function." 165 Kan. at 211.

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Since that time, however, the legislature has indeed spoken. Ch. 25, art. 36, K.S.A., constitutes an act, entire unto itself, addressing the subject of petitions generally, and by necessary implication, the requirements of its provisions must be interpolated into every other statute which prescribes a petition as part of a statutory procedure, to the extent that the provisions of art. 35, ch. 25, do not conflict therewith.

This is no conflict here. K.S.A. 12-2002 is virtually silent as to the form of the petition. Nothing therein conflicts with any of the requirements of article 35, ch. 25, including 25-3602.

Thus, it is my opinion that any petition which is filed pursuant to K.S.A. 12-2001, Sixth, must conform to the formal requirements of K.S.A. 25-3601 et seq., and its sufficiency, as to both form and signatures, must be determined by that article.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj