

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 12, 1977

ATTORNEY GENERAL OPINION NO. 77- 292

Mr. David E. Retter
City Attorney
613 Washington
Post Office Box 327
Concordia, Kansas 66901

Re: Elections--Notice--Ballots

Synopsis: An election to permit an increased levy for recreation purposes under K.S.A. 12-2904(b) and to authorize improvements of a trafficway pursuant to K.S.A. 12-688 may be held at the same time. Notice provisions of K.S.A. 10-120 do not apply to elections held under K.S.A. 12-1904(b), and the 45-day provision of K.S.A. 1976 Supp. 10-120 is inapplicable to elections to be held under K.S.A. 12-688. Both questions may be submitted on a single ballot.

* * *

Dear Mr. Retter:

You advise that the Concordia Recreation Commission has submitted a budget which requires the levy of .826 mills in excess of the one mill authorized by K.S.A. 12-1904 and -1908(a). The additional levy has been protested by a sufficient petition, and it is proposed to hold a special election on this question, pursuant to K.S.A. 12-1908(b), which states in pertinent part thus:

"If a valid petition is signed, it shall be the duty of the governing body of the city or of the school district to submit the question of levying the tax at the next regular city election or at a special election called for the purpose."

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In addition, you advise, the city has designed a portion of Eleventh Street as a main trafficway pursuant to K.S.A. 12-685, and the conditions precedent as outlined by K.S.A. 12-688 have been met to require an election to authorize certain improvements thereon. That section directs that the "election procedure shall be substantially as provided for bond election in K.S.A. 10-120." This latter election must be held within 90 days after the last publication of the resolution authorized by that section.

It is proposed to hold both elections on the same day, in conjunction with each other, which raises several questions. As you point out, K.S.A. 12-1908(b) prescribes no specific time period within which that election must be held, and you ask whether the time for holding the election is governed by the 90-day provision of K.S.A. 12-688 or the 45-day provision of K.S.A. 1976 Supp. 10-120. The latter provision commences thus:

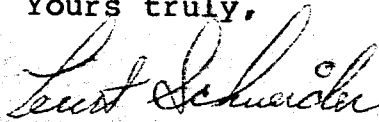
"Whenever an election is required for the issuance of bonds for any purpose by any municipality other than a school district, drainage district or irrigation district, or where a different procedure for giving notice of the election is specifically provided by law, upon compliance with the legal requirements necessary and precedent to the call for such election, the proper municipal officers shall call an election to be held within forty-five (45) days after compliance with the necessary requirements, or within ninety (90) days, should such long period include the date of a general election."

In my judgment, the time for holding the election for the increased recreation commission levy is not governed by K.S.A. 1976 Supp. 10-120 or, of course, by K.S.A. 12-688. The election to authorize trafficway improvements under K.S.A. 12-688 must be held within ninety days of the last publication of the resolution or at the time of a regular city election if it falls within that period. The procedure for giving notice of that election as outlined in K.S.A. 10-120 applies to the K.S.A. 12-688 election, but because the latter statute specifically provides a 90-day period for holding it, the 45-day provision of K.S.A. 10-120 is inapplicable, in my judgment, to elections held under K.S.A. 12-688.

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Secondly, you ask whether the notice requirement for the special election is governed by the more stringent requirements of K.S.A. 10-120, or by the general notice provision of K.S.A. 25-105. In my judgment, notice for the K.S.A. 12-688 election must be given in the fashion prescribed by K.S.A. 10-120, and notice for the recreation levy election should be given pursuant to K.S.A. 25-105. Concerning the form of the ballot, you ask whether one or two ballots should be used, and if only one ballot, whether instructions should be printed before and after the questions submitted. K.S.A. 10-120 and K.S.A. 25-605 both permit more than one proposition to be submitted on a single ballot, and in my judgment, separate ballots are not required for the two propositions. It appears that under *Thomas v. Covell*, 119 Kan. 684, 240 P. 574 (1925), the instructions should appear at the top of the ballot. If, however, further questions remain concerning this question, please feel free to contact us.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj