



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 1, 1978

ATTORNEY GENERAL OPINION NO. 78- 49

Mr. Jerry J. Hess
City Attorney for Westwood
100 Cloverleaf 3 Building
6405 Metcalf
Shawnee Mission, Kansas 66202

Re: Cities--Elections--Primaries

Synopsis: A city may exempt itself from K.S.A. 1977 Supp. 25-2108a, and the requirement therein that a city primary election be held. A charter ordinance which was enacted prior to the enactment of that section and exempts the city from the requirement that it hold a city primary election remains in force and effect.

* * *

Dear Mr. Hess:

In 1968, the legislature enacted a substantial revision of Kansas election laws. Ch. 274, L. 1968. Section 8 of that enactment, thereafter appearing as K.S.A. 25-2108, provided for a primary election of city officers on the Tuesday preceding by four weeks the first Tuesday of April in each year in which the city held a city election. In an opinion dated March 3, 1971, Attorney General Vern Miller concluded that because the 1968 enactment of which this provision was a part did not apply uniformly to all cities, that a city could by charter ordinance in the exercise of its home rule powers under Article 12, § 5 of the Kansas Constitution, exempt itself from the requirement that it hold a primary election.

In 1976, the legislature repealed the former K.S.A. 25-2108, and reenacted its provisions in a separate enactment, ch. 186, L. 1976, which is facially applicable uniformly to all cities. It states thus:

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"(a) There shall be a primary election of city officers on the Tuesday preceding by four (4) weeks the first Tuesday in April of every year that such city has a city election, except as otherwise provided in subsection (b) of this section.

(b) No primary election of city officers shall be held unless by holding such primary one (1) or more persons will be eliminated as candidates for office. In the event there are not more than two (2) candidates for any one office, the names of the candidates for such office shall not appear on the primary election ballots, and there shall be no primary election for such office, but the names of such candidates shall be placed on the general city election ballot."

Despite the facial application of the provision uniformly to all cities, *i.e.*, the lack of any express exception for any particular city or class of cities, the question remains whether the provision is in fact applicable uniformly to all cities.

Cities of the first class which are located in Johnson County, Kansas, declared an urban area pursuant to Article 2, § 17 of the Kansas Constitution, are authorized and directed to hold partisan city elections. K.S.A. 25-2113(b). In those cities, a primary election is required when there are two candidates of the same party for any one office, notwithstanding K.S.A. 1977 Supp. 25-2108(b) provides that there shall be no primary election unless there are three or more candidates for any one office. Manifestly, then, K.S.A. 1977 Supp. 25-2108a does not apply uniformly to all cities, and thus, cities remain empowered to exempt themselves from the requirement therein that primary election be held through the enactment of an appropriate charter ordinance.

You advise that the City of Westwood passed such an ordinance December 12, 1968, which provided, *inter alia*, that a primary election shall not be required. Article 12, § 5(c)(4) states thus:

"Each charter ordinance enacted shall control and prevail over any prior or subsequent act of the governing body of the city and may be repealed or amended only by charter ordinance or by enactments of the legislature applicable to all cities."

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Because of K.S.A. 1977 Supp. 25-2108a, and the enactment of which it is a part, does not apply uniformly to all cities, that ordinance is not affected thereby, and remains in force and effect.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Milford Grassberger
Johnson County Election Commissioner
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Olathe, Kansas 66061