



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 12, 1978

ATTORNEY GENERAL OPINION NO. 78-184

Mr. Neil R. Shortlidge
Assistant City Attorney
8500 Santa Fe Drive
Overland Park, Kansas 66212

Re: Cities--Zoning--Petitions

Synopsis: The signature of one joint tenant, standing alone, is not sufficient to commit the property in support of a zoning protest petition. If the names of both joint tenants are affixed to the petition by only one joint tenant, without any indication that the signing joint tenant is authorized to act for the other joint tenants, the signatures are insufficient to commit the property in support of the protest.

* * *

Dear Mr. Shortlidge:

I have your letter of June 1, 1978, concerning the validity of petitions which are filed to protest the validity of proposed zoning amendments pursuant to K.S.A. 12-708, which requires that a sufficient protest petition be signed by owners of twenty percent of the real property proposed to be rezoned, or by owners of twenty percent of the total area located within 200 feet of the boundaries of the property proposed to be rezoned. The questions which have arisen concern property owned in joint tenancy, and the manner in which the signatures of owners in joint tenancy must appear. We assume, for the purposes of this opinion, that a property located within two hundred feet of property proposed to be rezoned is owned in joint tenancy by John Smith and Mary Smith.

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Concerning such a circumstance, you inquire, first, whether the signature of John Smith alone is sufficient to commit that property against the proposed rezoning. As you point out, in Opinion No. 75-237, we considered an identical question, although arising under K.S.A. 12-708. The analysis therein is applicable here, however. Citing an annotation at 3 A.L.R.2d 127, and the substantial weight of authority among jurisdictions which have considered the question, we concluded that the signature of one cotenant or joint owner is not sufficient to bring the property on the side of the protest unless the petition itself shows that the cotenant was authorized to sign for the other cotenants or joint owners. Thus, the signature of one joint tenant, standing alone, is insufficient to commit the property against the proposed rezoning.

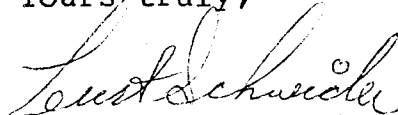
You inquire, secondly, if the protest petition is signed "John Smith and Mary Smith," how such signatures should be regarded. If both signatures were affixed by the same person, e.g. John, the signature of Mary is invalid, and the property must not be considered in support of the protest. If the handwriting of both signatures is sufficiently identical to indicate that they were affixed by the same person, in my judgment the property should not be counted in support of the protest petition. The petition copy you enclose contains at the bottom a verification under oath stating that the "signatures and addresses are genuine." The verification is not absolutely conclusive, in my opinion, and does not flatly foreclose inquiry into the validity of signatures when there is reasonable cause to question the authenticity of any or all signatures on the petition. If the handwriting of the two signatures is not clearly identical, and there is sufficient dissimilarity to indicate that the two signatures were affixed individually by each of the joint tenants, the property should be considered in support of the protest. Obviously, in the case of particular signatures, there may be some question whether the handwriting of the two signatures is or is not sufficiently dissimilar as to support the conclusion that they were affixed by separate cotenants. Each instance can only be determined on a case by case basis, and it is difficult to furnish a helpful generalization to assist in these individual instances.

Lastly, you ask whether a signature "Mr. and Mrs. John Smith" or "John and Mary Smith" is sufficient to commit the property in favor of the protest. In such cases, the surname "Smith" is clearly written by only one of the cotenants. Where the handwriting indicates that both forenames were written by only one person, the property should not be considered in support of the protest. If the forenames were written by separate joint tenants,

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but the surname was written by but one of them, surely an unusual occurrence, the juxtaposition of the separate signatures in this form indicates, in my judgment, that the joint tenant signing the surname was authorized to sign for both cotenants, and the property should be considered in support of the protest.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj