



STATE OF KANSAS

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June 25, 1979

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ATTORNEY GENERAL OPINION NO. 79-123

The Honorable Jerry Simpson  
State Representative, Sixty-Eighth District  
422 Beechwood  
Salina, Kansas 67401

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

Synopsis: A proposed ordinance may be submitted by a city's electorate to the governing body of such city, in accord with K.S.A. 12-3013, requesting that the governing body pass an ordinance or submit the same to a vote of the electors. The electors of a county do not possess the same authority. Absent express constitutional or statutory authority a valid, binding election cannot be called by the electorate of a city or county.

\* \* \*

Dear Representative Simpson:

In your letter of March 8, 1979, you requested our opinion as to whether citizens of a city or county can petition their respective governing bodies to place the issue of legalizing the sale of fireworks on a local election ballot.

To address your request a division between city and county must be made. Statutory requirements are different for each of these bodies.

The Honorable Jerry Simpson  
Page Two  
June 25, 1979

Initiative and referendum ordinances for city government are governed by the provisions of K.S.A. 12-3013 et seq. The first of this series of statutes states, in part, that:

"A proposed ordinance, except an administrative ordinance . . . may be submitted to the governing body of any city accompanied by a petition signed by electors . . . .

. . . .

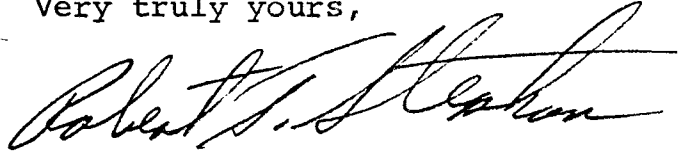
"If the petition accompanying the proposed ordinance is signed by the required number of electors . . . , the governing body shall either (a) pass such ordinance without alteration within twenty (20) days after attachment of the clerk's certificate to the accompanying petition; or (b) if not passed within said twenty (20) days forthwith call a special election, unless a regular city election is to be held within ninety (90) days thereafter, and at such special or regular city election, if one is held, such ordinance shall be submitted without alteration to the vote of the electors of said city."

This office has previously addressed questions regarding initiative and referendum ordinances. In Attorney General Opinion No. 79-61, we concluded that absent express statutory authority, a city governing body may not require a referendum on any matter before the governing body except upon a properly submitted petition. In Attorney General Opinion No. 79-44, this office stated that the county commissioners cannot call a binding election absent express constitutional or statutory authority. This same limitation would apply to the county electorate. Our research has not revealed any general constitutional or statutory provisions by which the county electorate may call for an election. The only available forum for expression of the will of the electorate is at the general election. It is here that the expression of the electorate's

The Honorable Jerry Simpson  
Page Three  
June 25, 1979

desires and preferences may be voiced when casting their votes for the commissioner of their choice. We would refer you to Attorney General Opinion No. 79-110 issued June 8, 1979, a copy of which is enclosed for your convenience.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven R. Wiechman  
Assistant Attorney General

RTS:ALR:SRW:gk  
Enclosure