



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

April 24, 1980

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ATTORNEY GENERAL OPINION NO. 80-97

Robert F. Duncan  
City Attorney  
P.O. Box 349  
Atchison, Kansas 66002

Re: Elections--Sufficiency of Petitions--Abandonment  
of Commission-Manager Form of City Government

Synopsis: A city now operating under the commission-manager form of government may, pursuant to K.S.A. 1979 Supp. 12-1019, abandon such form and return to either a mayor-commission or mayor-council system, depending on the size and class of the city. A move to make such a change is governed by the procedures of K.S.A. 1979 Supp. 12-184, among which is the filing of a petition signed by not less than 10% of the qualified electors of the city. Such a petition must also comply with the requirements of K.S.A. 25-3601 et seq. As the petition presented here does not meet the requirement of K.S.A. 1979 Supp. 25-3602(a) (only a single issue or proposition may be presented), it is insufficient to compel the placement of the change of government question on the ballot at the next election. Cited herein: K.S.A. 1979 Supp. 12-184, 12-1019, K.S.A. 13-708, K.S.A. 1979 Supp. 25-3602.

\* \* \*

Dear Mr. Duncan:

As City Attorney of Atchison, Kansas, you have requested the opinion of this office concerning the validity of a petition which has been submitted by Atchison electors to the county election officer. The petition, which is awaiting verification by that officer, seeks to place before the voters the question of whether the commission-manager form of government now in use in Atchison should be abandoned and replaced with

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the mayor-commission form. Because of the way in which the petition is worded you question whether it is sufficient to compel an election on such a proposal. Accordingly, you wish the input of this office.

You inform us that the petition circulated states that it is signed by "regular, qualified voters of the city of Atchison, Kansas" and that, while the validity of the signatures has not been determined, we may assume that the requisite number of qualified electors have so signed. The petition may be said to have four distinct parts: (1) that the city of Atchison "revert back" to the mayor-commission form of government (thereby abandoning the commission-manager form now in use, although this is unstated in the petition); (2) that there be elected a mayor and three (3) commissioners; (3) that the salary of the mayor is to be \$15,000 per year; and (4) that the mayor be "entitled" to only two (2) consecutive terms, while the commissioners are limited to three (3) consecutive terms. (The length of a "term" is not defined.) Following this recitation appear the signatures, together with each signer's address and the day he or she signed. Finally, each page is signed at the bottom by the person who solicited it, following an affirmation as to the method used in collecting the signatures. This statement is dated and witnessed by a notary.

It is clear from Kansas statutory law that the electors of a city may compel the holding of an election upon the question of whether the commission-city manager form of local government should be abandoned. This is provided for by K.S.A. 1979 Supp. 12-1019, which in part states:

"Any city of the state of Kansas that shall have operated for four (4) years or more under the provisions of this act, may abandon such form of organization as is herein provided for and accept either the provisions of the commission form of government law or the mayor and council form of government law, then applicable to cities of its population. Before such abandonment, a proposition to abandon such form of organization and accept the provisions, either of the mayor and commissioner form of government law, or the provisions of the mayor and council form of government law, must first be submitted to a vote of the qualified electors of such city in the manner provided by K.S.A. 1976 Supp. 12-184."

The procedures to be employed in the holding of such an election are, as indicated by the above statute, governed by K.S.A. 1979 Supp. 12-184. That statute states in pertinent part:

"(a) Whenever any law of this state provides for an election on the question of the adoption or abandonment of any form of city government, such question shall be submitted to the qualified electors of a city upon:

"(1) The adoption by the governing body of the city of a resolution providing for the submission of such question, or

"(2) the certification, as provided in subsection (c) of this section, of a petition requesting the submission of such question, signed by qualified electors of the city equal in number to not less than ten percent (10%) of the qualified electors of the city.

"(b) Upon the adoption of a resolution or the certification of a petition as provided in subsection (a) of this section, the question of the adoption or abandonment of the form of city government shall be submitted to the qualified electors of the city at the next city or state general or primary election following by not less than sixty (60) days the adoption of such resolution or the certification of such petition.

"(c) Any petition requesting the submission of a question hereunder shall be filed with the county election officer of the county in which the city is located. Such petition shall conform to the requirements of article 36 of chapter 25 of the Kansas Statutes Annotated and amendments thereto, and its sufficiency shall be determined in the manner therein provided and shall be certified to the city clerk by the county election officer." (Emphasis added.)

As a result of (c) hereinabove, one must also turn to the general requirements for petitions found at K.S.A. 25-3601

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et seq. It is at this point that, in our opinion, the petition in question here proves to be defective, for at K.S.A. 1979 Supp. 25-3602(a) it is required that "[e]ach petition shall consist of one or more documents pertaining to a single issue or proposition under one distinctive title." (Emphasis added.) As indicated above, the petition here contains four fairly distinct issues, only one of which deals directly with the abandonment of one form of city government and its replacement with another. The other three propositions, relating to the salary, terms and number of the new elected officials, are clearly separate and distinct, and as such cannot be said to constitute a "single issue" with the former question. While no explicit legislative history is available for this section, we assume this requirement was included to reduce the chances that a signer would be confused by the petition, for a popular issue could be used to get other, less-desirable proposals on a ballot at the same time.

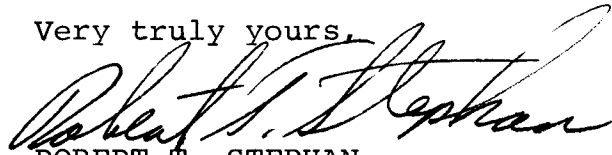
In our opinion the effect of such a defect must be to render the petition insufficient. It has long been held in this state that when the holding of an election depends upon the presentation of a petition to invoke the election machinery, it is necessary that the petition conform to statutory requirements. Greeley County v. Davis, 99 Kan. 1 (1916) and cases cited therein at 5. See also 29 C.J.S. Elections, §69, p. 159. The requirement of K.S.A. 1979 Supp. 25-3602(a) that only a single issue be presented by a petition is mandatory ("each petition shall consist . . ."), not merely a formality which may be disregarded at will, for the failure to do so removes a condition precedent to the holding of the election. Greeley, supra. A petition which is deficient in this respect does not meet the requirements of K.S.A. 1979 Supp. 12-184(c), thereby making it impossible for a question under K.S.A. 1979 Supp. 12-1019 (the abandonment statute) to be submitted to a vote. While the propositions involved here have other defects as well (i.e., a commission consisting of three members, plus the mayor, could only be instituted by charter ordinance, in view of K.S.A. 13-1708), the presence of multiple propositions is sufficient in and of itself to invalidate the petition.

In conclusion, a city now operating under the commission-manager form of government may, pursuant to K.S.A. 1979 Supp. 12-1019, abandon such form and return to either a mayor-commission or mayor-council system, depending on the size and

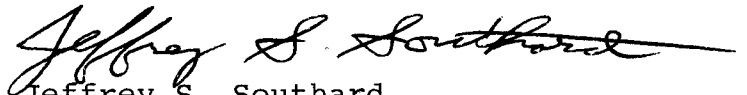
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Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:phf