



STATE OF KANSAS

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August 6, 1980

ATTORNEY GENERAL OPINION NO. 80- 181

Ms. Mary F. Hope
Shawnee County Election Commissioner
Shawnee County Court House
Topeka, Kansas 66603

Re: Counties and County Officers--County Commissioners--
Change in Number of Districts

Synopsis: When changing the number of county commissioner districts pursuant to K.S.A. 1979 Supp. 19-204(b), the petition submitted by the qualified electors of the county requiring the county commissioners to submit the question of a change in the number of districts to the electorate must be signed by five percent of the electors legally qualified at the time the petition is presented to the board of commissioners.

The election to determine whether the number of districts will be changed is a general election and may not be a primary or presidential preference primary election.

The period in which the county commissioners must reorganize the county into new commissioner districts after approval of a change in the number of districts by the electorate is not specified except that it must be as soon as possible.

The two unfilled commission districts created by the increase in the number of districts from three to five may be filled by appointment by the governor pursuant to K.S.A. 1979 Supp. 25-312. Cited herein: K.S.A. 1979 Supp. 19-202, K.S.A. 19-203, K.S.A. 1979 Supp. 19-204, 25-101, 25-312, K.S.A. 25-3601, K.S.A. 1979 Supp. 25-3602, 25-3901, 25-3902, K.S.A. 77-201, Twenty-Sixth, Kan. Const., Art. 4, Sec. 2.

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Dear Ms. Hope:

You request this office to answer four specific questions. The first three pertain to the procedure for changing the number of county commissioner districts in Shawnee County from three to five under K.S.A. 1979 Supp. 19-204. You also inquire as to the appointment of the two new commissioners to fill the seats thus created.

K.S.A. 1979 Supp. 19-204 is the statutory authority for changing the number of county commissioner districts. The statute first provides for the original division of the county into three commissioner districts. Following this, the procedure for changing the number of districts is set forth in subsection (b):

"The board of county commissioners of any county may, by resolution, divide the county into three (3), five (5) or seven (7) commissioner districts, as compact and equal in population as possible, but no such resolution which would effect a change in the number of commissioner districts shall take effect until it has been approved by a majority of the qualified electors of the county voting thereon at the next general election, following not less than sixty (60) days the adoption of such resolution, in which all the qualified electors of the county are entitled to vote. Upon the presentation of a petition to the board of county commissioners, signed by electors equal in number to five percent (5%) of the qualified electors of the county and verified by the county election officer, requesting that the number of commissioner districts be changed, the board of county commissioners shall cause such proposition to be submitted to the voters of the county at the next general election, following not less than sixty (60) days the presentation of such petition, in which all of the qualified electors of the county are entitled to vote."

The statute then outlines the procedure to be followed in the event that more than one petition for change in districts is presented.

You ask whether the above-quoted statutory provision for a petition signed by five percent of the qualified electors means that the petitioners must be "qualified electors" at the time the petition is filed or at some other time. As noted above, K.S.A. 1979 Supp. 19-204 requires the petition to be signed by "electors."

K.S.A. 25-3601 et seq. outline the requirements for determining the sufficiency of petitions under the laws of Kansas. K.S.A. 25-3601

states:

"Whenever under the laws of this state a petition is required or authorized as a part of the procedure applicable to any county, city, school district or other municipality, or part thereof, the provisions of this act shall apply, except as is otherwise specifically provided in the statute providing for such petition. The sufficiency of each signature and the number thereof on any such petition shall be determined in accordance with the provisions of this act by the county election officer or such other official as designated in the applicable statute."

K.S.A. 1979 Supp. 25-3602 requires that each petition shall

"contain the following recital above the spaces provided for signatures: 'I have personally signed this petition; I am a registered elector of the state of Kansas and of _____ (here insert name of political or taxing subdivision), and my residence address is correctly written after my name.'" (Emphasis added.)

Accordingly, it is necessary that each petitioner must be a registered elector when the petition is presented to the board of county commissioners and at the time the petition is signed.

Your second question concerns the meaning of the words "general election" in K.S.A. 1979 Supp. 19-204. Specifically, you inquire whether the election to determine if the number of commissioner districts is to be changed must be a general election rather than a primary or presidential preference election. K.S.A. 1979 Supp. 19-204 specifically requires this election to be "at the next general election." The term general election is a technical term which is defined several times in Chapter 25 of the Kansas Statutes Annotated; see, e.g., K.S.A. 1979 Supp. 25-101 and 25-3901; see also, K.S.A. 77-201, Twenty-Sixth and Kan. Const., Art. 4, Sec. 2 and Hamilton v. Raub, 131 Kan. 392 (1930); State ex rel., v. Mechem, 31 Kan. 435 (1884). The general election is the election which occurs on the Tuesday succeeding the first Monday in November on even-numbered years. It is clear that the legislature was referring to the November general election, and not to any other general election, since the statute refers to the election "in which all of the qualified electors of the county are entitled to vote," during which election county offices are filled. Thus, the election to determine whether the number of commissioner districts shall be changed may not be a special, primary or presidential preference primary election.

You also inquire as to the time period the board of county commissioners has in which to divide the county into the new number of commissioner

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districts. Unfortunately, this statute is not a model of masterful draftsmanship, and the answer to this question is not clear. We note that the section states:

"If a majority of the electors voting at such election shall be in favor of changing the number of commissioner districts, the board of county commissioners shall provide for the division of the county into commissioner districts as hereinabove provided." (Emphasis added.)

The time period "above provided" is stated as follows:

"The board of county commissioners shall, on the day of the organization of the board or as soon thereafter as may be possible, meet and divide the county into three (3) commissioner districts or such number of districts as is prescribed by resolution of the board. . . ." (Emphasis added.)

Apparently, this means that upon an election in favor of increasing the number of commissioner districts, the board shall adopt a resolution and shall redraw the commissioner district lines as soon as possible. The statute does not specify a number of days within which the reorganization must be accomplished.

Your fourth question pertains to the filling of the two new commissioner positions created by the increase in the number of districts. You ask whether the Governor of the State of Kansas may proceed to appoint an otherwise qualified resident of any new county commissioner district to fill a new position created pursuant to K.S.A. 1979 Supp. 19-204 to serve as county commissioner until the next general election. Here, again, the legislature's intentions are not clearly stated. It is clear, however, that when the number of commissioner districts is increased from three to five and the new district boundaries are drawn, there are two county commissioner positions open. The general rule is that a vacancy is created with the creation of the new position. As stated in 63 Am.Jur.2d Public Officers and Employees, at §133:

"A vacancy may arise in an office newly created. The general rule governing the matter seems to be that when a law establishing an office takes effect, a vacancy in the office at once exists, unless the language of the law imports futurity of selection, or unless other restrictions are imposed. Hence, the term 'vacancy' applies to an existing office without an incumbent, although it has never been filled."

Black's Law Dictionary (5th Ed., 1979), p. 1338, defines a vacancy thus: "A place or position which is empty, unfilled, or unoccupied."

Under K.S.A. 19-203, vacancies in the office of county commissioner are filled in the same manner as are vacancies in seats in the house of representatives. This procedure is set forth in K.S.A. 1979 Supp. 25-3902 for vacancies of positions held by members of a party with a party organization in that district or, as is the case here, in the county. Because these are new positions, there were no previous occupants and there is no party organization to elect the successor for the governor to appoint to the position. In such cases, K.S.A. 1979 Supp. 25-3902 does not apply. However, K.S.A. 1979 Supp. 25-312 provides, in pertinent part:

"All vacancies in any elective state or county office, unless otherwise provided for by law, shall be filled by appointment by the governor, until the next general election after such vacancy occurs, when such vacancy shall be filled by election." (Emphasis added.)

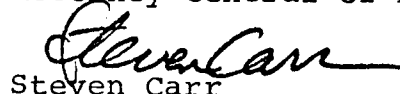
Since the legislature has made no provision therefor in 19-204, and since there is no other provision in Kansas law for the filling of such vacancies upon the creation of new county commissioner positions, it is our opinion that K.S.A. 1979 Supp. 25-312 is therefore applicable. Thus far in Kansas two counties have increased the number of county commission districts from three to five. In both instances the counties have waited to redraw the new district boundaries until such a time that the new positions came open at the same time as a general election is to be held. Such method eliminates the need for appointment because the office becomes vacant directly before a general election.

To summarize, it is our opinion that when changing the number of county commission districts pursuant to K.S.A. 1979 Supp. 19-204(b), the petition submitted by the qualified electors of the county requiring the county commissioners to submit the question of a change in the number of districts to the electorate must be signed by five percent of the electors legally qualified at the time the petition is signed and presented to the board of commissioners. The election to determine whether the number of districts will be changed is a general election and may not be a primary or presidential preference primary election. The period in which the county commissioners must reorganize the county into new commissioner districts after approval of a change in the number of districts by the electorate is not specified except that it must be as soon as possible. The two unfilled commission districts created by the increase in the number of districts from three to five may be filled by appointment by the governor pursuant to K.S.A. 1979 Supp. 25-312.

Very truly yours,


ROBERT T. STEPHAN

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Steven Carr

Assistant Attorney General