



STATE OF KANSAS

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December 10, 1980

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ATTORNEY GENERAL OPINION NO. 80-257

Mr. William F. Stahl  
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Junction City, Kansas 66441

Re: General Bond Law--Bond Election--Dual Propositions  
Prohibited

Synopsis: The proposition submitted to the Geary County electors at a special election held on November 4, 1980, calling for the issuance of general obligation bonds of the county to pay for the renovation of the county jail and for the remodeling of the courthouse annex for court facilities and offices, precluded said electors from having a fair opportunity to register an intelligent expression of their will. Because the jail renovation and courthouse annex remodeling are not so related to one another, such that the accomplishment of one would be more or less useless without the other, the question submitted on the ballot contained dual propositions, in contravention of K.S.A. 1979 Supp. 10-120 and well-established case law. A proposition containing a dual purpose promotes confusion and uncertainty among the voters, so that it is impossible to accurately determine the intent of the voters. Thus, since the proposition was stated in equivocal terms, the election is invalid. Cited herein: K.S.A. 10-101, K.S.A. 1979 Supp. 10-120, K.S.A. 19-15,114, 19-15,115, K.S.A. 1979 Supp. 19-15,116.

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Dear Mr. Stahl:

You request our opinion as to the legal sufficiency of the question submitted to the voters pursuant to Geary County Resolution 10-8-80 in accordance with K.S.A. 19-15,114 et seq. and the general bond law, K.S.A. 10-101 et seq. You have informed us that the proposition was affirmed by the Geary County electorate at a special election on November 4, 1980, and that this proposition called for the issuance of general obligation bonds of the county in an amount not to exceed two hundred thirty thousand dollars (\$230,000), to pay for the construction, repair and renovation of the Geary County Jail and the remodeling of the Geary County Annex for court facilities and offices. The proposition, as submitted on the ballot, states:

"Shall Geary County, Kansas issue and sell its general obligation bonds in amount not to exceed Two Hundred Thirty Thousand Dollars (\$230,000.00) to pay the costs of construction, repair and renovation of certain parts of the Geary County Jail, including additional cells to accommodate at least 14 prisoners, and temporary remodeling of the ground floor portion of the Geary County Annex, for court facilities and offices, and all things necessary and incidental thereto under the authority of K.S.A. 19-15,114 et sec [sic] and Article 1 of Chapter 10, Kansas Statutes Annotated?"

The question which you have posed as a result of this situation is whether the ballot improperly combined two separate propositions in contravention of the provisions of K.S.A. 1979 Supp. 10-120. This statute establishes the requirements for an election on the question of issuing bonds for any purpose by any municipality, other than a school district, drainage district or irrigation district, and states in pertinent part:

"If more than one proposition or question be submitted on said ballot the different propositions or questions shall be separately numbered and printed and be separated by a broad, solid line one eighth of an inch wide."

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It is clear from the foregoing that separate propositions are required to be separated on a ballot, so that each may be voted on independent of the others. Such requirements reflect a general principle of law that, where the issuance of bonds requires consent of the voters, "every voter must have a fair opportunity to register an intelligent expression of his will." Leavenworth v. Wilson, 69 Kan. 74, 77, 78 (1904). A further statement of this principle is found in Wycoff v. Board of County Commissioners, 189 Kan. 557 (1962), as follows:

"The election law contemplates that when a special proposition is submitted to a popular vote, the recitals on the ballot shall clearly state the substance of the question the electors are to vote upon; and where that proposition is so obscurely stated that the electors may be misled thereby, the election is vitiated. (Leavenworth v. Wilson, 69 Kan. 74, 76 Pac. 400; Kansas Electric Power Co. v. City of Eureka, 142 Kan. 117, 45 P. 2d 877; and Board of Education v. Powers, 142 Kan. 644, 668, 51 P. 2d 421.)" Id. at 559, 560.

General authorities are in accord with these statements. One such authority expresses the general rule that "elections are invalid where held under such restrictions as to prevent the voter from casting his individual and intelligent vote upon the object or objects sought to be attained." 15 McQuillin, Municipal Corporations, §40.09 (1970). Applying this general rule to bond propositions, such authority states:

"Accordingly, separate, distinct, and independent purposes or objects may not be joined in one proposition for submission to the voter, while united, related, and dependent objects, that together form one general scheme or plan, may be united and submitted as one proposition. But propositions for incurring indebtedness for more than one object or purpose may be submitted at the same election. In such case, however, there must be a separate proposition on the ballot for each distinct, unrelated and independent object or purpose for which indebtedness is contemplated, showing separately the amount desired for each, so that the elector may freely express his choice on each without thereby affecting the other." (Footnotes omitted.) Id.

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It is clear from the foregoing that each distinct, unrelated and independent purpose of incurring indebtedness must be separately stated, in order that each voter may make an intelligent expression of his will. The question, therefore, is how to determine whether a proposition contains a singular purpose.

This question was addressed in Robertson v. Kansas City, 143 Kan. 726 (1936), where the Kansas Supreme Court was dealing with a proposition to vote bonds to raise money for

"improving the public levee of the city by constructing flood protection works, raising the surface thereof, and the construction thereon of docks, wharfs, river and rail terminals and a grain elevator terminal dock and wharf to make the public levee of the city convenient, useable and accessible for use in connection with water transportation on the Missouri and Kansas Rivers adjoining said levee." Id. at 727.

After examining this proposition, the Court concluded that it contained a single purpose, stating:

"[A] mere reading of the election proclamation and of the ballot shows it was intended to improve the public levee by the doing of certain things, all of which were related to one another, and any of which which would be more or less useless without the others." (Emphasis added.) Id. at 730.

By the emphasized portion of the foregoing, the Court has established a test to determine whether the various elements of a proposition submitted for voter approval constitute a single proposition. To satisfy such test, the various elements must be so related to one another that the effectuation of any one of them without the others "would be more or less useless."

Applying this test to the question at hand, we cannot conclude that there is the requisite "interrelatedness" of the jail's renovation and the remodeling of the courthouse annex so as to constitute a single proposition. To the contrary, the information provided us does not reflect that these projects are so related one to another that the

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accomplishment of one such project "would be more or less useless" without the accomplishment of the other. We have been provided no information which would indicate that these projects are but single parts of a common scheme or plan, such that the failure to do one such part negates the usefulness of the other. Rather, as you have indicated, these are two separate buildings, and the information we have obtained indicates that the improvement of one building can, and is intended to be, accomplished independent of the other.

Although you state that the Geary County Board of County Commissioners considers the improvement of these buildings to be a single project, the intent of the county commission is not the controlling factor. Such fact was made clear in Leavenworth v. Wilson, supra, where the Court considered a proposition calling for the issuance of bonds for the purpose of purchasing, procuring, providing or contracting for the construction of a water plant. The election proclamation had indicated that the proceeds of such bonds would be used either for purchasing and procuring an existing water plant or for constructing a new water plant. There, the city contended that, as the people's duly constituted governing body, it was within its discretion to determine whether to buy or build a plant, and that it was incumbent only upon the city to submit to the voters the question of whether to issue the bonds. The Court rejected such contention, stating:

"It is true the mayor and council have a wide discretion in determining how the city shall be supplied with water . . . , and it is true that the people can exercise no part of the authority vested in the governing body of the municipality. But the statute reserves a large and clearly defined discretion in the matter to the people themselves. No plan involving the issuing of bonds can be carried out without their sanction. . . . This discretion of the taxpayer the mayor and council cannot exercise and cannot control." 69 Kan. at 77.

The Court went on to state, as previously noted herein, that the proposition submitted to the voters failed to provide them with a basis for intelligently exercising their will. Such conclusion was further explained, as follows:

"The subject of purchasing a particular water-works plant already in existence is utterly diverse from that of building a new one. It needs neither argument nor illustration to make this plain truth apparent to

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any mind of ordinary capacity. The judgment of the mayor and council upon one of these subjects might well be approved by the people through a majority vote in favor of bonds, although the judgment of the same officials upon the other subject would be overwhelmingly repudiated at a bond election. The ballot required to be used at the election in question obliged the voter to approve bonds for both purposes or to reject bonds for both purposes. If he favored one plan and disapproved the other he was allowed no opportunity to indicate his view. Because of the dual ballot persons adverse to purchase may have voted with persons adverse to building for bonds which, thus supported, carried, although both propositions would have failed ignominiously had they been separately submitted; therefore, the election was not a fair one to the people of the city of Leavenworth." Id. at 78.

At this point, we believe it appropriate to note that the conclusion we have reached from our reading of the cases and authorities previously quoted or cited herein should not be construed as suggesting that every proposition submitted for voter approval must be separated into its last details. "That is not the intention of the law. It intends that a single question as a whole shall be submitted as a whole." Pittsburg Board of Education v. Davis, 120 Kan. 768, 770 (1926).

Therefore, simply stated, it is our conclusion that, applying the test set forth in Robertson for determining a singularity of purpose, the proposition submitted to the Geary County voters does not contain but a single question. The projects proposed therein are not so dependent on each other that the completion of one would be more or less useless without the other. As a result, this proposition does not provide a basis for a true and accurate expression of the voter's will. It creates a situation similar to that addressed in Tyler v. Common School District No. 76, 177 Kan. 387 (1955), where the Court considered a proposition for the issuance of general obligation bonds of the school district. The bonds were to provide funds "'to pay the costs of acquiring a site on the north and immediately adjacent to the site of the present high school building'" and to erect a school building thereon. Id. at 395. In finding that the proposition was dual in character, the Court stated:

"[T]he proposition submitted, in and of itself, is subject to the construction that some electors of the district may have voted for or against the proposition

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submitted on the basis of the particular site to be selected; others may have voted for or against it on the theory the site had already been legally selected; others may have voted for or against it with the belief the proposition submitted was to supply funds for the purchase of a site and the construction of a building thereon; with the site to be subsequently selected in conformity with sections of the statute to which has heretofore been made; and still others may have refrained from voting at all due to the fact they could not make a choice between the two propositions or did not desire to vote for both of them." Id. at 396.

In reaching its conclusion, the Court in Tyler relied upon the Court's prior decision in Kansas Utilities Co. v. City of Paola, 148 Kan. 267 (1938), where the Court considered a multi-purpose bond proposition in light of the then existing provisions of 10-120. The Court found that the purpose of such provisions, substantially the same as the provisions being considered herein, "was to make certain the question or questions to be voted upon should be clearly stated so that the electors might not be misled thereby." Id. at 271. To such end, "the lawmakers contemplated and plainly intended the proposition or propositions should be submitted in such manner as to promote clarity and not confusion and uncertainty." Id. The Court adopted the plaintiff's contention that the proposition in question created confusion for the voters:

"No one can tell what the words really mean. One voter may well have intended by his affirmative vote to authorize the governing body either to purchase or construct distribution lines as in its judgment should be done. Another voter by his vote may well have intended to buy the existing lines and construct additional lines as extensions of the present lines, while another voter may have intended to purchase materials and construct an entirely new line. The ballot was ambiguous and misleading." Id. at 273.

We believe that the proposition submitted to the Geary County electors promoted confusion and uncertainty similar to that receiving the Court's disapproval in the Tyler and Kansas Utilities cases. The Geary County electorate could have been voting for or against either

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the construction, repair and renovation of the Geary County jail or for or against the temporary remodeling of the Geary County Annex, or they could have been voting for or against both, or they could have refrained from voting at all because they could not make a choice between the two propositions or did not desire to vote for both of them.

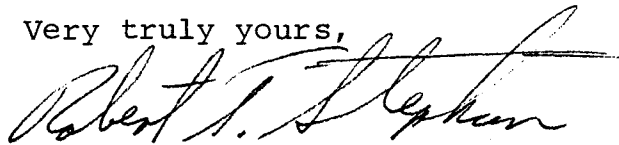
Therefore, it is our opinion that the election held on the question submitted to the Geary County electors is invalid. Since the question on the ballot was stated in equivocal terms, presenting dual propositions for the voters' consideration, "the purpose of the election is vitiated in advance." Kansas Electric Power Co. v. City of Eureka, 142 Kan. 117.

It should be noted, however, that the board of county commissioners would not require the authority of the people by election to issue general obligation bonds to make the improvements to the jail or courthouse, if the cost of either of such projects were not greater than \$100,000. K.S.A. 19-15,115 provides that "[t]he board of county commissioners of any county may when it deems necessary . . . improve any public building," and K.S.A. 1979 Supp. 19-15,116(c) provides in pertinent part:

"The board of county commissioners of any county may for the purposes hereinbefore authorized and provided . . . (c) Issue general obligation bonds of the county; provided, that no bonds for any . . . improvement, the cost which exceeds one hundred thousand dollars (\$100,000) shall be issued until the question of the issuance of such bonds shall have been submitted to a vote of the qualified electors of the county and received the approval of a majority of those voting thereon at a general election or at a special election called for that purpose."

Therefore, in our judgment the improvements may be made to the jail and the courthouse without an election, if such improvements would not require the issuance of general obligation bonds in excess of \$100,000 per project.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



W. Robert Alderson  
First Deputy Attorney General