



STATE OF KANSAS

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December 17, 1980

ATTORNEY GENERAL OPINION NO. 80- 262

The Honorable Kenneth Francisco
State Representative-Elect, 19th District
Box 488
Maize, Kansas 67101

Re: Cities and Municipalities--Public Recreation and Playgrounds
--Time for Holding of Election to Establish Recreation System

Synopsis: If found to be sufficient, a petition submitted pursuant to K.S.A. 12-1904 to the governing bodies of a city and a school district requires those bodies to cause the question of whether to establish a joint recreation system to be submitted to the voters. Such question must be voted on at the next regular or special election of the city or school district which is held more than 30 days after the filing of the petition, with the term "next" meaning the first city or school district election which occurs after that time. Cited herein: K.S.A. 12-1904, 12-1905.

* * *

Dear Representative-Elect Francisco:

As representative-elect for the 19th Kansas House District, which includes the city of Maize, you request our opinion concerning the timing of elections held pursuant to K.S.A. 12-1904, which deals with the establishment of supervised recreation systems. Specifically, you ask if an election which follows the filing of a petition requesting

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such must be held at the earliest possible opportunity or whether there is an element of discretion involved.

As you are aware, a recent opinion of this office, No. 80-255, touched upon other issues arising out of the same set of statutes, and indeed the same circumstances, which involve efforts to create a recreation system to be jointly administered by Unified School District No. 266 (Maize) and the city of Maize. In that opinion it was our conclusion that language contained in K.S.A. 12-1904 prevented an election on the question from being held in conjunction with the general election held on November 4, 1980. Rather, the statute requires the vote to occur "at the next regular or special election of the city or school district to be held more than thirty (30) days" after the filing of the petition. You now inquire whether this language compels the submission of the question at a special election of the school district, which is to be held on February 3, 1981, for the purposes of voting on a school bond issue, or if the matter may be deferred until the regularly scheduled city and school district elections on April 7, 1981.

In our opinion, the wording of K.S.A. 12-1904 leaves no discretion in the hands of the city or school district as to the timing of the election. The key phrase here is "the next regular or special election," and it is a cardinal principle of statutory construction that these words must be given their usual and accepted meanings. Lakeview Gardens Inc. v. State ex rel. Schneider, 221 Kan. 211 (1976), King Radio Corp., Inc. v. United States, 486 F.2d 1091 (10th Cir., 1973). The word "next" is defined by one authority as meaning that which is nearest, closest or immediately following. Black's Law Dictionary, 5th Ed., p. 941 (1979). In this case, it would be the February election, not that in April, which is "next."

Additionally, if the meaning of a statute is unambiguous, the words should not be construed so as to bring about another purpose or meaning. Phillips v. Vieux, 210 Kan. 612 (1972). If in fact the Legislature had intended to give local authorities an option as to the timing of the election, it could have easily done so merely by inserting the word "either" so as to make the phrase read "either the next regular or special election." In the absence of any indication of this result here, however, we are not prepared to so conclude.

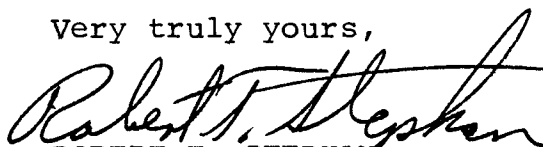
A third and equally important basis for our conclusion lies in the fact that this matter concerns an election, where the question of timing is a matter of substantive concern. Wycoff v. Bd. of County Comm'rs, 191 Kan. 658, 665 (1963), Gossard v. Vaught, 10 Kan. 162, 167 (1872). The petition which called for the submission of this question was

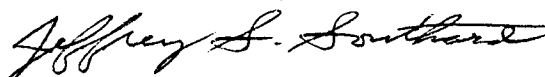
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circulated in March of 1980, with the resolution approving same passed in June. While at the very least a vote on the matter will be delayed until February of 1981 (a delay of 8 months from the time of the resolution), an interpretation of the statute which allows the question to be still further delayed is open to serious question. K.S.A. 12-1904 is clear in its desire to allow the people a voice in the initiation, as well as the ultimate determination, of the issue of whether to establish a joint recreation system. Any construction which would delay this determination, and thus frustrate the wishes of the petitioners, is in our opinion unwarranted by the language present in the statute, from which the legislative intent must be derived. Prout v. Ft. Hays State College, 1 Kan.App.2d 309 (1977).

In conclusion, if found to be sufficient, a petition submitted pursuant to K.S.A. 12-1904 to the governing bodies of a city and a school district requires those bodies to cause the question of whether to establish a joint recreation system to be submitted to the voters. Such question must be voted on at the next regular or special election of the city or school district which is held more than 30 days after the filing of the petition, with the term "next" meaning the first city or school district election which occurs after that time.

Very truly yours,


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RTS:BJS:JSS:phf