



STATE OF KANSAS

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April 14, 1981

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ATTORNEY GENERAL OPINION NO. 81-92

Neil R. Shortlidge  
First Assistant City Attorney  
City of Overland Park, City Hall  
8500 Santa Fe Drive  
Overland Park, Kansas 66212

Re: Cities and Municipalities--City of Overland Park--  
Veto Power of Mayor

Synopsis: The attempted veto of a resolution by the mayor of Overland Park, after the resolution has been approved and published, is ineffective and invalid.

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Dear Mr. Shortlidge:

You request our opinion as to the effectiveness of an attempted veto of a resolution by the mayor of the city of Overland Park. You advise that Resolution No. 1613 (copy attached hereto as Appendix A) was adopted by a vote of six to four at the regular meeting of the Overland Park City Council on March 16, 1981, and that the Mayor was present at said meeting. Following the meeting, the city clerk presented the resolution to the Mayor, the Mayor signed it, and it was published for the first time on March 20, 1981. You also state that subsequent to the signing and first publication of the resolution, the Mayor became aware, for the first time, that, pursuant to Charter Ordinance No. 4 of the city of Overland Park, he had the power to veto a resolution before the first regular meeting of the Council following adoption of the resolution. He then attempted, on March 26, 1981, to veto Resolution No. 1613. The second publication of the resolution occurred on March 27, 1981, and the first regular meeting of the

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City Council, following adoption of the resolution, took place on April 6, 1981. In this factual context, you ask our opinion as to whether the Mayor's signing of the resolution on March 16, 1981, precluded the exercise of his veto power on March 26, 1981.

Section 1 of Charter Ordinance No. 4 of the city of Overland Park provides, in part, as follows:

"The Mayor shall be the titular head of the City and shall preside at all meetings of the Council. He shall sign all ordinances and resolutions passed by the Council: Provided, That he shall have the power to veto any ordinance or resolution passed by the Council, except the Mayor shall have no power to veto a Charter Ordinance, or appointments by the Council for vacancies on the Council. Any ordinance or resolution vetoed by the Mayor may be passed over the veto by the vote of two-thirds of the whole number of the Councilmen-elect, notwithstanding the veto; and if the Mayor has failed to sign or veto such ordinance or resolution by the first regular meeting following the adoption of such ordinance or resolution, the same shall take effect without his signature." (Emphasis added.)

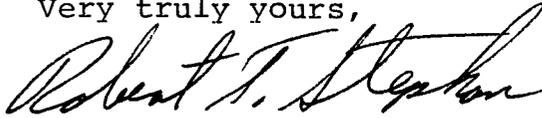
The power of the Mayor to veto resolutions under the underscored portion of the above-quoted charter ordinance is, in some respects, similar to the gubernatorial veto power over legislative bills. In this regard, it was stated in The State v. Whisner, 35 Kan. 271, 281 (1886), that once a bill is approved and signed by the governor, and is deposited with the secretary of state, it has passed beyond the control of the governor, and its status is fixed and unalterable. This rule has been applied in other jurisdictions to the mayoral veto power, so as to render ineffective a mayor's attempted veto of an ordinance previously approved by him. City of Atlanta v. East Point Amusement Co., 152 S.E.2d 374 (Ga., 1966). The rule has not been applied, however, to certain administrative and judicial orders. See Trans World Airlines v. Civil Aeronautics Board, 184 F.2d 66, 71 (1950).

In our judgment, the Whisner and Atlanta cases, supra, are dispositive of the question you have raised. The Mayor's purported veto of Resolution No. 1613, after he had signed it and it had been published for the first time, is, in our judgment, ineffective

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and invalid. The fact that the mayor was unaware of his veto power, at the time he signed the resolution, is immaterial and of no consequence. After a resolution is signed and published, citizens are entitled to act in reliance thereon, and the executive approval cannot be withdrawn because of "ignorance of the law."

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm