



STATE OF KANSAS

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April 28, 1981

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ATTORNEY GENERAL OPINION NO. 81-101

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

Re: Cities and Municipalities--Planning and Zoning--
Protest Against Zoning Amendment

Synopsis: In order to identify the owner and property involved, a rezoning protest petition, filed pursuant to K.S.A. 12-708, should contain, on its face, the proper name in which title to the property is held, the address of the property, and the name of any person signing on behalf of a corporation, partnership or other organization. Additionally, the petition should contain some indication of the capacity or authority of a person signing on behalf of a corporation, partnership, or other organization.

Each separate signature on a rezoning protest petition, filed pursuant to K.S.A. 12-708, need not be acknowledged in the form required for the acknowledgment of deeds, so long as there is a sufficient acknowledgment by one of the signers. Cited herein: K.S.A. 12-708.

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Dear Mr. Shortlidge:

You have requested our opinion as to what constitutes a sufficient "signature" of a property owner (other than an individual) upon a rezoning protest petition filed pursuant to K.S.A. 12-708.

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Also, you inquire as to whether the separate signature of each property owner, upon a protest petition, must be acknowledged, or whether it is permissible for one of the signers to "acknowledge" the genuineness of all signatures. You state that your office has reached the following conclusions regarding these questions:

"In summary, our office has concluded that in order for a signature to be counted which purports to commit property owned by a corporation, partnership, or other organization, to a rezoning protest petition filed pursuant to K.S.A. 12-708, the following must appear on the face of the petition:

- "1. Proper name in which the property is held;
- "2. Address of the property;
- "3. Name of the person signing on behalf of the corporation, partnership, or organization; and
- "4. Some indication of the capacity or authority of the person signing to act on behalf of the corporation, partnership or organization (President, Vice President, Partner, Attorney-in-Fact, etc.).

"Further, we have concluded that each separate signature need not be acknowledged so long as one of the signers acknowledges the signatures (as on the City's form petition)."

The portion of K.S.A. 12-708, relating to protests against zoning amendments, provides as follows:

"Regardless of whether or not the planning commission approves or disapproves a proposed zoning amendment or 'fails to recommend,' if a protest against such amendment be filed in the office of the city clerk within fourteen (14) days after the date of the conclusion of the public hearing pursuant to said publication notice, duly signed and acknowledged by the owners of twenty percent (20%) or more of any real property proposed to be rezoned or by the owners of twenty percent (20%) of the total area, excepting public streets and ways, located within or without the corporate limits of the city and located within two hundred (200) feet of the

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boundaries of the property proposed to be rezoned the ordinance adopting such amendment shall not be passed except by at least three-fourths (3/4) vote of all of the members of the council or board of commissioners." (Emphasis added.)

In response to the first question set forth above, it should be recognized that rezoning protest provisions constitute a limitation on the general powers of the municipal legislative body and must be strictly enforced. Kappel v. City of Fairway, 189 Kan. 710, 712 (1962). Therefore, we have no hesitation in confirming that, in order to identify the owner and property involved, a rezoning protest petition should contain, on its face, the proper name in which the property is held, the address of the property, and the name of any person signing on behalf of a corporation, partnership, or other organization. Additionally, we agree that the petition should contain, on its face, some indication of the capacity or authority of a person signing on behalf of a corporation, partnership, or other organization. See Attorney General Opinion No. 78-184 and authorities cited therein; also, see Deligtisch v. Town of Greenburgh, 135 N.Y.S.2d 220 (1954). Some courts, however, have been willing to go beyond the "face of the petition" in judging the sufficiency of a protest. See Town of Alton v. Fisher, 320 A.2d 653, 656 (1974).

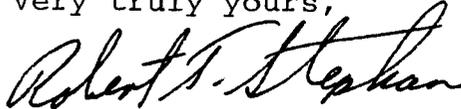
Answering the second question set forth above, the case of Mezel v. Mobley, 170 N.E.2d 595 (Ill., 1960) appears to be directly on point. Said case involved an Illinois statute that required a favorable vote of 2/3 of the aldermen of a municipality (to pass a zoning amendment) where a protest petition, "signed and acknowledged" by twenty percent of the adjoining property owners, was filed with the city clerk. In determining the validity of a zoning amendment which had been protested pursuant to the provisions of the aforesaid statute, the court held that the requirement that a written protest be "acknowledged" did not require that each separate signature be acknowledged in the form required for the acknowledgment of deeds. Rather, the court stated that the purpose of the requirement was to protect against forged signatures, and that an affidavit of one of the signers, attached to the protest, that she knew personally all of the persons who had signed the protest and had witnessed their signatures, that they were all twenty-one years of age or over, that they all owned property adjacent to or across the street or alley from the subject property, and that they all signed voluntarily and freely, was sufficient compliance with the statute.

In our judgment, the requirement that rezoning protest petitions be "acknowledged," as set forth in K.S.A. 12-708, should be

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construed in the same manner as the Illinois zoning statute was construed in the Mezel case. Therefore, it is our opinion that each separate signature on a rezoning petition need not be acknowledged in the form required for the acknowledgment of deeds, so long as there is a sufficient acknowledgment by one of the signers.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm