



STATE OF KANSAS

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September 30, 1982

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ATTORNEY GENERAL OPINION NO. 82-217

F. L. "Mac" McGinley  
Sherman County Attorney  
1015 Main  
Goodland, Kansas 67735-0919

Re: Cities and Municipalities -- City Manager Plan --  
Governing Board Under Commission-Manager Plan

Synopsis: The provisions of K.S.A. 12-1005h, which provide for an election on the question of increasing the number of city commissioners from three to five, apply only to cities operating under the commission-manager form of government and having a population of 8,000 or more.

Pursuant to the provisions of K.S.A. 12-1006, the governing body of a city of the second class operating under the commission-manager form of government consists of three city commissioners. However, at any time subsequent to adoption of the commission-manager plan, a city may, pursuant to home rule powers granted by Article 12, Section 5 of the Kansas Constitution, vary the size of the governing body through the adoption of a valid charter ordinance. The adoption of such a charter ordinance would be subject to the provisions of the Home Rule Amendment relating to protest and referendum. Cited herein: K.S.A. 1981 Supp. 12-184, 12-1003, K.S.A. 12-1005g, 12-1005h, 12-1006, 12-1008, K.S.A. 1981 Supp. 12-1018, K.S.A. 14-1101, 14-1204, Kan. Const., Art. 12, §5.

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Dear Mr. McGinley:

You request our opinion as to two questions related to the adoption of the commission-manager form of government in the

city of Goodland. You indicate that a majority of the electors of said city voted to abandon the mayor-council form of government, and adopt the commission-manager form, at an election held March 9, 1982, and you ask whether the provisions of K.S.A. 12-1005h may be utilized to increase the number of city commissioners from three to five. Additionally, you request an opinion as to whether the city council may, prior to the time the commission form of government "becomes effective," adopt a charter ordinance changing the number of city commissioners from three to five.

In regard to your first question, we note that K.S.A. 12-1005h is part of a 1957 act (L. 1957, ch. 103) which authorizes certain cities operating under the commission-manager form of government to increase the number of commissioners comprising the governing body in such cities. The first section of said act, K.S.A. 12-1005g, restricts its application as follows:

"Any city operating under the commission-manager form of government having a population of eight thousand (8,000) or more and having three (3) commissioners may increase the number of commissioners to five (5) in the manner provided by this act." (Emphasis added.)

As the population of the city of Goodland does not fall within the prescribed parameters, it is our opinion that the provisions of the 1957 act, including K.S.A. 12-1005h, may not be used to increase the number of city commissioners from three to five.

In response to the second question posed above, it should first be noted that, under the commission-manager form of city government, the governing board consists "of the number of commissioners now provided for the several cities by the various commission government acts." K.S.A. 12-1006. The commission government act relating to cities of the second class (which class includes the city of Goodland), K.S.A. 14-1101 et seq., provides for a three-member board. K.S.A. 14-1204. Thus, in the absence of a valid charter ordinance providing otherwise, the governing board of the city of Goodland would consist of three city commissioners.

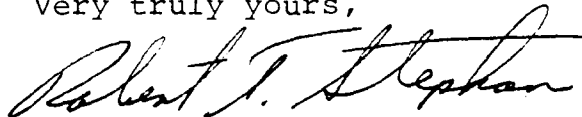
While state statutes applying to the city of Goodland provide for a three-member board, the city of Goodland may, pursuant to home rule powers granted by Article 12, Section 5(c) of the Kansas Constitution, elect to exempt itself from non-uniform enactments of the legislature. In this regard, K.S.A. 12-1006, which applies only to cities adopting the commission-manager form of government, is nonuniform in its application to cities. This statute was enacted in 1917

(L. 1917, ch. 86, §4) and has not been amended since its enactment. Section 6 of that act (K.S.A. 12-1008) was non-uniform at the time of its enactment (and has remained so) in prescribing compensation for commissioners of the various classes of cities. Hence, the entire 1917 act was non-uniform in its application to cities. See, City of Junction City v. Griffin, 227 Kan. 332 (1980). Likewise, K.S.A. 14-1204, which applies only to second class cities operating under the commission form of government, does not apply uniformly to all cities. Therefore, in our opinion, the city of Goodland may, by charter ordinance, exempt itself from said statutes, and provide substitute provisions relating to the number of commissioners comprising the governing body in said city.

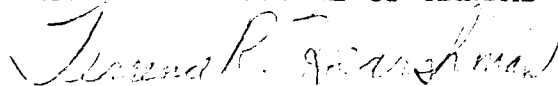
Additionally, in our judgment, the Goodland city council may adopt such a charter ordinance prior to the first election of city commissioners. The provisions of the commission-manager act, including K.S.A. 12-1006 (which statute prescribes the size of the city governing body, as noted above), apply to a city upon approval by the qualified electors in the manner prescribed by K.S.A. 1981 Supp. 12-184. K.S.A. 1981 Supp. 12-1018. Although the change in the form of government does not actually occur until the next annual or regular city election (see K.S.A. 1981 Supp. 12-1018), the commission-manager act applies to the city upon approval by the city's electors. Further, such application is not illusory or a fiction, because the act has the immediate effect of requiring the election of commissioners at the next annual or regular city election following voter approval of the new form of government.

Thus, in our judgment, the provisions of K.S.A. 12-1006 applied to the city of Goodland following the election held on March 9, 1982, and the city governing body could, at any time subsequent thereto, adopt a charter ordinance exempting the city from the provisions of said statute. Of course, if a protest petition were filed in the manner prescribed by Article 12, Section 5(c)(3) of the Kansas Constitution, any such charter ordinance, prior to taking effect, would have to be submitted to and approved by a majority of the city's electors.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Terrence R. Hearshman  
Assistant Attorney General