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ATTORNEY GENERAL OPINION NO. 82- 231

Perry Warren
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P. O. Box 57
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Re: Cities and Municipalities--City Manager Plan--
Governing Board Under Commission-Manager Plan

Synopsis: Where the commission-manager form of city government has been adopted by a city of the second class having a population of 8,000 or less:

- (1) a mayor is not elected, but the chairman of the city commission assumes the title of mayor;
- (2) a primary election is conducted, if required by the provisions of K.S.A. 25-2108a (as amended by L. 1982, ch. 157, §5), according to the procedures prescribed by K.S.A. 25-2101 et seq.;
- (3) the term of office of commissioners first elected is two years, and thereafter commissioners are elected for four-year terms;
- (4) the commissioner assuming the title of mayor serves as the official head of the city on formal occasions, performs the legislative duties of a commissioner, and signs all ordinances of the city;
- (5) city commissioners do not have titles, except as the board organizes itself for business; and

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(6) the nomination and election of commissioners is governed by the election laws applicable to city primary and general elections. Cited herein: K.S.A. 12-1005c, 12-1006, 12-1007, 12-1014, 12-1017, K.S.A. 1981 Supp. 12-1018, K.S.A. 12-1020, 12-3003, 14-1204, K.S.A. 1981 Supp. 14-1806, K.S.A. 25-2101, 25-2108a, L. 1982, ch. 157, §5.

* * *

Dear Mr. Warren:

You request our opinion concerning several 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 that the present governing body is submitting a charter ordinance, whereby a five-member commission would be elected, to the city electors on November 2, 1982. Your questions are as follows:

- "1. Do we elect a mayor, and if so, by what method?
- "2. Do we have a primary, and if so, how is the primary conducted?
- "3. What is the term of office of the commissioners?
- "4. What are the duties of the Mayor?
- "5. Do the commissioners have specific titles?
- "6. By what method do we elect the commissioners?"

Our responses to your questions are set forth below.

- "1. Do we elect a mayor, and if so, by what method?"

K.S.A. 12-1006 provides as follows:

"The governing board shall consist of the number of commissioners now provided for the several cities by the various commission government acts. No distinction shall

be made in title or duties among these commissioners, except as the board shall organize itself for business. Qualifications, terms of office, oaths and bonds of commissioners shall be those provided in the acts herein referred to. Vacancies shall be filled in the manner already provided for by law."

K.S.A. 12-1007 prescribes that the commission "shall choose its own chairman annually" and that the chairman "shall have the title of mayor during the year of his or her office, to the end that the city shall have an official head on formal occasions."

In accordance with the above-quoted statutory provisions, it is our opinion that the city of Goodland, in the absence of a charter ordinance providing otherwise, must elect three city commissioners, said number being the board size which is prescribed by the commission government act relating to cities of the second class. See K.S.A. 14-1204. A mayor would not be elected, but the chairman of the commission would assume the title of mayor. K.S.A. 12-1007.

"2. Do we have a primary, and if so, how is the primary conducted?"

K.S.A. 25-2101 et seq. prescribe procedures for city elections. K.S.A. 25-2108a (as amended by L. 1982, ch. 157, §5) provides for primary elections as follows:

"(a) There shall be a primary election of city officers on the Tuesday preceding by five weeks the first Tuesday in April of every year that such city has a city election, except as otherwise provided in subsection (b) of this section.

"(b) No primary election of city officers shall be held unless by holding such primary one (1) or more persons will be eliminated as candidates for any one office. In the event there are not more than two (2) candidates for any one office, the names of the candidates for such office shall not appear on the primary election ballots, and there shall be no primary election for such office, but the names of such candidates shall be placed on the general city election ballot."

"3. What is the term of office of the commissioners?"

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K.S.A. 12-1006 provides, in part, as follows:

"Qualifications, terms of office, oaths and bonds of commissioners shall be those provided in the acts herein referred to."
(Emphasis added.)

Two sections of the commission-manager act refer to the commission government acts for the three classes of cities in Kansas. K.S.A. 12-1017 provides, in part, as follows:

"Except as herein provided, the general laws establishing and relating to the commission form in cities of the first, second and third class shall govern cities adopting this act." (Emphasis added.)

A second section of the commission-manager act, K.S.A. 12-1020, provides, in part, as follows:

"When any city operating under the mayor and council form of government shall adopt the provisions of this act such city shall be deemed to have adopted the commission form of government as qualified by this act as well as the provisions of this act, and such city shall thereafter be governed by the provisions of the laws relating to the government of the cities of the same class under the commission form of government as qualified by this act."
(Emphasis added.)

It should be noted that the commission government act relating to cities of the second class (which class includes the city of Goodland) prescribes a four-year term for city commissioners. See K.S.A. 14-1204. However, another statute, K.S.A. 12-1005c, provides, in part, as follows:

"In cities having a population of eight thousand (8,000) or less at the time such cities adopt the city-manager plan the terms of office of the commissioners first elected shall be two years."

Since K.S.A. 14-1204 and K.S.A. 12-1005c relate to the same subject (i.e., terms of office of city commissioners in cities operating under the commission-manager form of government), said

statutes are in pari materia. See Claflin v. Walsh, 212 Kan. 1, 8 (1973). It is a well-settled rule of statutory construction that all provisions of statutes in pari materia must be construed together with a view of reconciling and bringing them into workable harmony, if it is reasonably possible to do so. Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973). Applying said rule, it is our opinion that K.S.A. 14-1204 and K.S.A. 12-1005c can be reasonably harmonized by giving effect to the two-year term of office for commissioners first elected (as prescribed by the former statute), and also giving effect to the four-year term of office (as prescribed by the latter statute) at all elections subsequent to the first election. Therefore, it is our opinion that, in the absence of a charter ordinance providing otherwise, the term of office of commissioners first elected in the city of Goodland is two years, and thereafter commissioners are elected for four-year terms.

"4. What are the duties of the Mayor?"

The chairman of the commission, who assumes the title of mayor, serves as the official head of the city on formal occasions. K.S.A. 12-1007. He or she also signs all ordinances of the city, but has no power to veto an ordinance. K.S.A. 12-3003. The assumption of the title of mayor does not affect the legislative duties of the chairman, State, ex rel. v. Jacobs, 135 Kan. 513, 515 (1932), and the city commission has the duty to adopt ordinances promoting the welfare of the city. K.S.A. 12-1010. The commission appoints a city manager, K.S.A. 12-1011, who is responsible for the administration of all of the affairs of the city. K.S.A. 12-1014.

"5. Do the commissioners have specific titles?"

K.S.A. 12-1006 provides that "[n]o distinction shall be made in the title or duties among these commissioners, except as the board shall organize itself for business." Thus, under the commission-manager act, there is no statutory distinction between the commissioners as to duties or titles, but each elected city commission may, in organizing itself for business, assign titles or duties to the individual commissioners. In assigning any such duties to commissioners (in the process of organizing itself for business), any duties assigned by the commission may not interfere or conflict with the duties of the city manager under K.S.A. 12-1011 and 12-1014, or with any other statute applicable to the commission-manager form of government.

"6. By what method do we elect the commissioners?"

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Pursuant to the provisions of K.S.A. 12-1005c, all commissioners are initially elected for a term of two years. Additionally, K.S.A. 1981 Supp. 12-1018 prescribes that the nomination and election of commissioners is governed by the election laws applicable to city primary and general elections.

Finally, we note that Section 3 of the charter ordinance which will be submitted to a referendum on November 2nd provides as follows:

"That the City elects to exempt itself from K.S.A. 14-1204 which relates to the election of a mayor and commissioners in cities of the second class."

As we noted in Kansas Attorney General Opinion No. 82-217, K.S.A. 14-1204 applies to a city operating under a commission-manager form of government in the sense that it establishes the number of commissioners comprising the governing board under K.S.A. 12-1006. It also applies to such a city in that it establishes a four-year term of office for city commissioners elected at all elections subsequent to the initial election of commissioners. (See response to question number 3, above.) Although the subject charter ordinance is not entirely clear on the subject, we believe that it probably reflects an intent to exempt the city of Goodland from only the provisions of K.S.A. 14-1204 which establish a three-member commission, and that there was no intent to exempt the city from the four-year term of office referred to above. It would seem that, if the city had intended to exempt itself from the part of the statute prescribing a four-year term of office, the ordinance would have prescribed a "substitute" term of office for commissioners elected subsequent to the initial election. However, since the charter ordinance is not free from ambiguity on this subject, we would recommend that, if the charter ordinance is approved at the election on November 2nd, that it be amended, in the manner prescribed by Section 5(c)(4) of the Home Rule Amendment to clarify the term of office of commissioners to be elected at all elections subsequent to the initial election of commissioners.

Very truly yours,



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