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June 29, 1984

ATTORNEY GENERAL OPINION NO. 84- 60

John R. Eland
City Attorney
City of Hoxie
Hoxie, Kansas 66740

Re: Cities and Municipalities--General Provisions--
Adoption or Abandonment of Forms of City Government

Synopsis: No state statute prescribes a procedure whereby a city of the third class may change from the commission form of government to the mayor-council form of government. However, the governing body of such a city may, by ordinance adopted pursuant to home rule powers, prescribe that the city shall revert to the mayor-council form of government on the date of the next city election, and provide for the election of a mayor and five council members at that election. Cited herein: K.S.A. 12-184, 12-1019, 12-1027, 12-1035, 12-1036h, 12-10a09, 13-1812, 14-1807, 15-124, 15-1201, 15-1704, Kan. Const., Art. 12, §5.

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Dear Mr. Eland:

You request our opinion as to whether the city of Hoxie may abandon the commission form of government and "return" to the mayor-council form of government applicable to cities of the third class.

K.S.A. 15-124 prescribes that, upon incorporation, cities of the third class operate under the mayor-council form of government,

and K.S.A. 15-1704 authorizes such cities to change to the commission form of government. However, the commission government act applicable to third class cities, codified at K.S.A. 15-1201 et seq., prescribes no procedure whereby a city may abandon the commission form of government and "return" to the mayor-council form of government. The absence of such a statutory procedure is somewhat incongruous, given the fact that other acts authorizing various forms of city government authorize abandonment of such form and adoption of the mayor-council form of government. See K.S.A. 12-1019, 12-1027, 12-1035, 12-1036h, 12-10a09, 13-1812, 14-1807.

The absence of a statutory procedure is not, in our opinion, cured by K.S.A. 12-184, which provides, in part, as follows:

"(a) Whenever any law of this state provides for an election on the question of the adoption or abandonment of any form of city government, such question shall be submitted to the qualified electors of a city upon:

"(1) The adoption by the governing body of the city of a resolution providing for the submission of such question, or

"(2) the certification, as provided in subsection (c) of this section, of a petition requesting the submission of such question, signed by qualified electors of the city equal in number to not less than ten percent (10%) of the qualified electors of the city.

"(b) Upon the adoption of a resolution or the certification of a petition as provided in subsection (a) of this section, the question of the adoption or abandonment of the form of city government shall be submitted to the qualified electors of the city at the next city or state general or primary election following by not less than sixty (6) days the adoption of such resolution or the certification of such petition." (Emphasis added.)

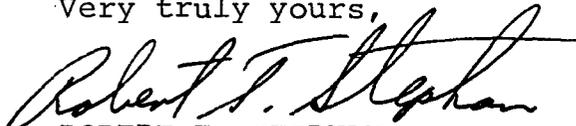
In our judgment, the above-quoted statute is not, in and of itself, sufficient to authorize the proposed change in the form of city government. As you correctly note, the statute prescribes

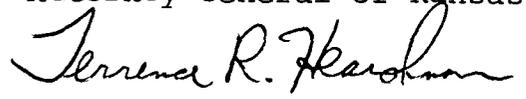
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the procedure whereby a question of adopting or abandoning a form of city government may be submitted to a vote of city electors, but it only applies where "any law of this state provides for an election" on the question of such adoption or abandonment. As noted above, no statute provides for an election on the question of abandoning the commission form of government applicable to cities of the third class.

Although state statutes do not prescribe a procedure whereby the City of Hoxie may change from the commission form of government to the mayor-council form of government, the lack of such a statutory procedure does not mean that the city is powerless to effect a change. Under Article 12, Section 5 of the Kansas Constitution, which is commonly referred to as the city home rule amendment, legislative silence on a subject no longer means absence of a city's authority to act in that area. City of Junction City v. Lee, 216 Kan. 495, 498 (1975). In our judgment, the governing body of the City of Hoxie may, by ordinance adopted pursuant to home rule powers, prescribe that the city shall change from the commission form of government to the mayor-council form of government on the date of the next city election, and provide for the election of a mayor and five council members at that election. Since there is no statute or set of statutes from which the city would need to exempt itself, this action could be taken by a regular ordinance, rather than the charter ordinance procedure set forth in subsection (c) of Article 12, Section 5 of the state constitution.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm