



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

January 29, 1985

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 85- 11

Richard D. Loffswold, Jr.  
City Attorney  
105 East Prairie  
P.O. Box 163  
Girard, Kansas 66743

Re: Cities of the Second Class--General Provisions--  
Abandonment of Organization under Act

Synopsis: The abandonment of the commission form of government  
by a city of the second class does not invalidate  
city ordinances adopted under that form of government.  
Cited herein: K.S.A. 14-1807.

\* \* \*

Dear Mr. Loffswold:

You request our opinion as to the validity of enforceability of city ordinances following adoption of a new form of city government. You indicate that the City of Girard, a city of the second class, will be changing from the commission form of government to the mayor-council form of government in April, 1985 (pursuant to the provisions of K.S.A. 14-1807), and ask whether this change will invalidate present city ordinances so as to require their readoption when the change of government is complete.

The Kansas Supreme Court considered the effect of a change in city government upon previously-adopted ordinances in the case of Ritchie v. City of South Topeka, 38 Kan. 363 (1888).

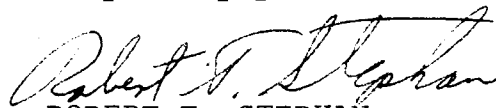
Richard D. Loffswold, Jr.  
Page Two

In that case, the court rejected the contention that all such ordinances were abrogated by a change in the form of city government, stating as follows:

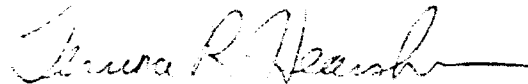
"It is claimed because there was no saving clause in the statute authorizing ordinances of a city of the third class to remain and form a part of the laws of cities of the second class, after it should be incorporated as a city of the second class, that all of the ordinances passed and enacted by the city government as a city of the third class were abrogated by the adoption of a new form of city government. This is not the law. It is still the same city, embracing the same territory, and is a government of the same people. There was a change to be sure, but it was simply a change of the form of the government of the city, intended for the future, and it left unchanged and unaffected the ordinances of the city. Were it not so, the new city organization would have been without a law until the city council of a city of the second class could have been elected, qualified, new ordinances enacted, published, and a new system been put in force." (Emphasis added.)

A modern authority on the law of municipal corporations concurs with the rule laid down in the Ritchie case. See McQuillin, Municipal Corporations (3rd ed.), §§3.10b, 9.33, 21.27. Therefore, in our judgment the abandonment of the commission form of government by a city of the second class does not invalidate city ordinances adopted under that form of government.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JSS:TRH:jm