



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 80

The Honorable Jack H. Brier
Secretary of State
Capitol, 2nd Floor
Topeka, Kansas 66612

Re: Elections -- Conduct of Elections; Mail Ballot
Election Act -- Voting by Electors; Statute
Prohibiting Electioneering Inapplicable

Synopsis: Elections conducted pursuant to the Mail Ballot
Election Act, K.S.A. 1984 Supp. 25-431 et seq., are
subject to general election laws to the extent that
such laws are applicable. In that there are no
designated polling or voting places in a mail ballot
election, K.S.A. 25-2430, which prohibits
electioneering at such locations, does not apply to
mail ballot elections. Accordingly, advertising of
views in support of or in opposition to the Sedgwick
County sales tax proposal does not have to be
discontinued for the 20 day period in which mail
ballots are in circulation. Cited herein: K.S.A.
1984 Supp. 25-432; 25-433; 25-438; 25-439; K.S.A.
25-2430; 25-2703; 25-2810.

* * *

Dear Mr. Brier:

As Secretary of State for the State of Kansas, you have requested our opinion on a question which has arisen in Sedgwick County and which concerns the pending submission of a sales tax question to the voters through a mail ballot. Specifically, a question has been raised as to the applicability of certain statutes which prohibit "electioneering" at polling places on the day of an election. It is our understanding that certain people have argued that the advertising of messages urging voters to either

support or oppose the question should be prohibited during the time mail ballots are in circulation, in that the residence of each voter is a "polling place." As a result, advertisements through television, radio, newspapers and other means would be prohibited during the 20-day period the ballots are in circulation.

The election in Sedgwick County is being conducted pursuant to K.S.A. 1984 Supp. 25-431 et seq., otherwise known as the Mail Ballot Election Act. Under the provisions of this act, certain questions may be conducted by means of mail ballots (K.S.A. 1984 Supp. 25-432), with the actual procedures for such an election set forth at K.S.A. 1984 Supp. 25-433. In the case of Sedgwick County, the question concerns the adoption of a county-wide 1/2 cent sales tax, with the ballot to be sent out on July 10, with tabulation to occur on July 20, 1985.

It is our understanding that the argument which is made for prohibiting advertising during this 20-day period is based upon K.S.A. 25-2430. This statute, which is contained in the statutes which set forth election crimes, states as follows:

"Electioneering at polling places is knowingly electioneering on election day within any polling place or within a radius of two hundred fifty (250) feet from the entrance thereof. As used in this section, electioneering means an attempt to display or influence by any means, eligible voters, to vote for or against a particular candidate, party or questions submitted.

"Electioneering at polling places is a class C misdemeanor."

If applicable, this statute would have the effect of prohibiting advertising, as noted above, in that each person's residence would be considered as a polling place. However, in our opinion the above statute does not apply in the present situation, where an election is being conducted by a mail ballot.


Unlike a traditional election, a question submitted through a mail ballot does not require voters to go to a designated voting place to cast their ballot. Whereas K.S.A. 25-2703 sets forth detailed requirements for the establishment and maintenance of voting places for traditional elections, the Mail Ballot Election Act contains no such provisions. Further, while statutes such as K.S.A. 25-2810 detail the control which each election board has over a polling place, this statute and others like it again refer

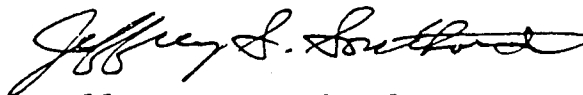
to separate, independent sites where votes are cast and then tabulated. Accordingly, they are inapplicable to the Mail Ballot Election Act, a fact recognized by a section of that act, K.S.A. 1984 Supp. 25-438, which states that all laws which apply to elections shall apply to mail ballot elections "to the extent applicable."

We see nothing in either the general election laws or in the Mail Ballot Election Act itself that indicates that each voter's place of residence is somehow transformed into a polling place by the use of a mail ballot. Further, the legislature has not attempted to restrict the dissemination of information during the time that mail ballots are in the hands of electors. Indeed, we have serious questions whether such a restriction would be constitutional as an infringement upon the First Amendment to the United States Constitution, which has been interpreted broadly to allow interested parties to disseminate their positions on public questions. See First National Bank of Boston v. Belotti, 435 U.S. 765, 55 L.Ed.2d 707 (1978). Finally, such a construction would be contrary to the language of K.S.A. 1984 Supp. 25-439, which requires that the provisions of the Mail Ballot Election Act be liberally construed for the purpose of giving effect to the act.

In conclusion, elections conducted pursuant to the Mail Ballot Election Act, K.S.A. 1984 Supp. 25-431 et seq., are subject to general election laws to the extent that such laws are applicable. In that there are no designated polling or voting places in a mail ballot election, K.S.A. 25-2430, which prohibits electioneering at such locations, does not apply to mail ballot elections. Accordingly, advertising of views in support of or in opposition to the Sedgwick County sales tax proposal does not have to be discontinued for the 20 day period in which mail ballots are in circulation. Cited herein: K.S.A. 1984 Supp. 25-432; 25-433; 25-438; 25-439; K.S.A. 25-2430; 25-2703; 25-2810.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Deputy Attorney General