



STATE OF KANSAS

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July 31, 1985

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ATTORNEY GENERAL OPINION NO. 85- 91

Robert F. Bennett
Bennett, Lytle, Wetzler, Winn
and Martin
5100 West 95th Street
P.O. Box 8030
Prairie Village, Kansas 66208-0030

Re: Elections -- Conduct of Elections -- Mail Ballot
Election Act

Schools -- Unified Districts; Provisions of Limited
Application -- U.S.D. 512 School Building Closing;
Election

Synopsis: K.S.A. 1984 Supp. 72-8136e, which pertains in part
to elections held on the question of school
building closings in U.S.D. 512, provides that such
elections, if required, shall be "held in the
manner provided by law for elections on questions
submitted in the school district." The Kansas Mail
Ballot Election Act (K.S.A. 1984 Supp. 25-431 et
seq.) is clearly applicable to question submitted
elections in a school district and therefore may be
used to conduct an election under K.S.A. 1984 Supp. 72-8136e if all the requirements of K.S.A. 1984
Supp. 25-432 are met. Cited herein: K.S.A. 1984
Supp. 25-432; 72-8136e.

* * *

Dear Mr. Bennett:

As counsel for the board of education of Unified School
District No. 512 of Johnson County, Kansas, you have requested
our opinion on whether the Kansas Mail Ballot Election Act
(K.S.A. 1984 Supp. 25-431 et seq.) may be used to conduct

any election which may be required upon the closing of four school buildings in the district.

The closings will be accomplished according to the dictates of K.S.A. 1984 Supp. 72-8136a et seq., which applies only to U.S.D. No. 512. Those statutes authorize the board of education to close any school building within the district upon the consideration of numerous statutorily-prescribed factors. K.S.A. 1984 Supp. 72-8136e provides in relevant part:

"The final decision either not to close the affected school building or to close the affected school building at the conclusion of the school year may be implemented unless a petition in opposition to implementation of the same, signed by not less than 5% of the registered electors residing within the member district of the unified school district in which the affected school building is located, is filed with the county election officer of the home county of the school district within 45 days after publication of the final decision. In the event such a petition is filed, such county election officer shall hold an election upon the question of whether such school building should be closed. Such election shall be called within 30 days after such petition is filed and shall be held in the manner provided by law for elections on questions submitted in the school district. All registered electors residing within the member district of the unified school district in which the affected school building is located may vote at the election. The board shall not close any affected school building pending any election to be held under the provisions of this section. (Emphasis added.)

You ask whether any election required under the language quoted above may be conducted as provided in the Mail Ballot Election Act (K.S.A. 1984 Supp. 25-431 et seq.). We note that K.S.A. 1984 Supp. 72-8136e provides that any election required under its terms shall be "held in the manner provided

by law for elections on questions submitted in the school district."

The Mail Ballot Election Act specifically defines the elections which may be conducted under its terms. K.S.A. 1984 Supp. 25-432 provides in parts relevant here:

"An election shall not be conducted under this act unless:

"(a) The county election officer responsible for the conduct of the election authorizes the use of mailed ballots for the election; and

"(b) the secretary of state approves a written plan for conduct of the election, which shall include a written timetable for the conduct of the election, submitted by the county election officer; and

"(c) the election is nonpartisan; and

"(d) the election is not one at which any candidate is elected, retained or recalled; and

"(e) the election is not held on the same date as another election in which the qualified electors of that subdivision of government are eligible to cast ballots; and

"(f) the election is a question submitted election at which all the qualified electors of one of the following subdivisions of government are the only electors eligible to vote:

"(1) Counties;

"(2) cities;

"(3) school districts, except in an election held pursuant to K.S.A. 72-7302 et seq., and amendments thereto."

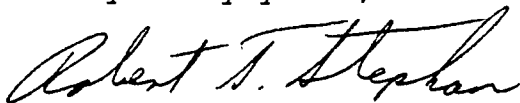
(Emphasis added.)

Assuming the cooperation of the county election officer and the Secretary of State, we are aware of nothing which would prevent conducting a K.S.A. 1984 Supp. 72-8136e election through the use of mail ballots. The election on the proposed school closing is clearly non-partisan and it is not an election at which any candidate's future is at stake, thus complying with subsections (c) and (d) of 25-432. You do not indicate that the election would be held in conjunction with any other election at which the voters of school district may vote and thus it would not run afoul of 25-432(e).

Finally, we note that subsection (f) of the quoted statute provides that a mail ballot election shall not be conducted unless the election is a question submitted election at which all the qualified electors of certain specified governmental subdivisions are eligible to vote. Those governmental subdivisions include school districts, with the only exception concerning elections held pursuant to statutes not at issue here. The school closing question is obviously a "question submitted" election. Thus, it is clear that a mail ballot election is one which is "provided by law for elections on questions submitted in the school district," as required by K.S.A. 1984 Supp. 72-8136e.

Considering all these factors, it is our opinion that an election held on a school building closing pursuant to K.S.A. 1984 Supp. 72-8136e may be conducted as a mail ballot election according to the procedures established in K.S.A. 1984 Supp. 25-431 et seq.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

RTS:JSS:MFC:crw