



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 30, 1985

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

ATTORNEY GENERAL OPINION NO. 85- 111

Keith Wilson
Assistant City Attorney
419 North Kansas
P.O. Drawer I
Liberal, Kansas 67901

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

Synopsis: The Kansas Mail Ballot Election Act, which provides that a mail ballot election may not be held on the same date as "another election" at which the same electors are entitled to vote, does not prohibit the submission of more than one question to the voters on a single mail ballot. "Another election" refers to any election other than the mail ballot election scheduled for that day and not to the separate and individual choices which may be submitted to the voters on a single mail ballot. Cited herein: K.S.A. 1984 Supp. 25-431; 25-432; 25-433; 25-439; 25-2502; K.S.A. 25-2503.

* * *

Dear Mr. Wilson:

As Assistant City Attorney for the City of Liberal, Kansas, and on behalf of the city commissioners, you have requested our opinion on a question regarding the proper interpretation of the Kansas Mail Ballot Election Act, K.S.A. 1984 Supp. 25-431 et seq.

You inform us that the Liberal City Commissioners would like to submit two separate questions to the voters of the city by mail ballot. You do not describe the nature of the two

questions nor whether the submission of the two questions is effected by other statutory provisions. We, therefore, will limit our discussion solely to the effect of the Mail Ballot Election Act upon your request. You indicate further that you have been advised (by some unnamed party) that only one question may be submitted in a single mail ballot election. You thus seek our opinion on whether more than one question may be submitted to the voters on a single mail ballot.

Your question apparently arises from the language of K.S.A. 25-432 which provides in pertinent parts:

"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 of the qualified electors of one of the following subdivisions of government are the only electors eligible to vote:

"(1) Counties;

"(2) cities;" (Emphasis added.)

It would appear that the emphasized language of subsection (e) is the basis for your question and that determining the meaning of the words "another election" in this context is basic to a response. The language of K.S.A. 1984 Supp. 25-432(e) is subject to two interpretations. The first is more general and obvious; the second goes to the heart of your question.

The more general interpretation is that the phrase "another election," as used in K.S.A. 1984 Supp. 25-432(e), refers to any election other than the mail ballot election being held on that date. Thus, under subsection (e), one could not hold a mail ballot election on the same date as any other election (other than the mail ballot election) at which the voters of the particular governmental subdivision are entitled to vote. "Another election" could be a primary or general election, or any special election, including a question submitted election held at the polls. (Please note that the date of a mail ballot election is the day on which the ballots must be received by the county election officer. K.S.A. 1984 Supp. 25-433). Under this interpretation it is the process of submitting a question or questions to the voters on a mail ballot which constitutes an "election." Thus a mail ballot "election" cannot be held on the same date as an election other than the one conducted by mail ballot.

The question you raise asks whether the meaning of "another election" also includes each individual question which is submitted to the voters. That is, whether each question submitted to the voters may be regarded as a separate "election." If that is the case, the language of K.S.A. 1984 Supp. 25-432(e) which prohibits the conduct of a mail ballot election on the same date as "another election" would prohibit the submission of more than one question/election on a single mail ballot. Thus, use of the Mail Ballot Election Act would be limited to the submission of a single question at one time.

In our opinion, this is an overly restrictive interpretation of the language of K.S.A. 1984 Supp. 25-432(e). We note that the Mail Ballot Election Act provides in K.S.A. 1984 Supp. 25-439 that its provisions "shall be construed liberally for the purpose of effectuating its purposes." We are also guided here by the paramount rule of statutory construction that the purpose and intent of the legislature must govern if that intent may be ascertained from the statute. When construing statutes, it is necessary, so far as is practicable, to reconcile provisions so as to make them consistent,

harmonious, and sensible. State ex rel. Stephan v. U.S.D. 428, 231 Kan. 579, 584 (1982); State v. Dumler, 221 Kan. 386, 389 (1977).

The apparent purpose of restricting mail ballot elections to days on which no other election is held is to avoid confusion among those person who would be eligible to vote in both elections. This confusion could arise from the difference in the procedures utilized to conduct the two different elections. Presumably, a voter could miss an opportunity to vote in the non-mail ballot election believing that his or her participation in the mail ballot election was an alternative procedure to going to the polls to vote rather than a separate election. The opposite result is also possible, that is, a voter who votes in an election at the polls on the same date as a mail ballot election may believe that his or her vote at the polls exercised the same privilege offered by the mail ballot. The confusion to be avoided, however, is between the different methods of voting and conducting the election, not from the fact that more than one question or choice is submitted to the voters by a single opportunity to vote.

In our opinion the words "another election," as used in K.S.A. 1984 Supp. 25-432(e), do not refer to each individual question which properly may be submitted to the voters on a mail ballot. Instead, "another election" simply refers to any election other than the mail ballot election scheduled for that day. The adjective "another" is generally defined to refer to something different or distinct from the one first named or considered. [Webster's Third New International Dictionary (1966)]. In K.S.A. 1984 Supp. 25-432(e), the election first named or considered is the mail ballot election. Thus "another election" is an election different from the mail ballot election, not another question which appears on the mail ballot.

The next question, is whether the term "election" [as used in subsection (e)], which refers to the process of conducting the election, should also be defined narrowly to refer to choices the voters make on each and every question submitted to them. Our research has failed to reveal any case law which addresses this particular question. It seems clear, however, that the term may have both meanings. We are concerned with whether such an interpretation is necessary here.

Our research indicates that the term "election" is defined variously depending upon the circumstances and the statutory context. Generally, "election" refers to the process of electing, that is, selecting between various alternatives. [Webster's Third International Dictionary (1966)]. In that sense, each choice the voters make constitutes an election between alternatives either in the selection of persons to hold office or in response to a question submitted.

The term "election" is also commonly understood in a broader sense to refer to the entire process or proceedings whereby voters are permitted to select between the alternatives presented. This use of the term is found throughout the Kansas statutes pertaining to elections. For example, K.S.A. 1984 Supp. 25-2502 defines a "general election" as:

"the election held on the Tuesday succeeding the first Monday in November of even-numbered years, the elections held for officers of the first Tuesday in April, and in the case of special elections of any officers to fill vacancies, the election at which any such officer is finally elected." (Emphasis added.)

K.S.A. 25-2503 provides the following definitions of various "elections":

"(a) 'National election' means the election of members of the United States house of representatives, members of the United State senate or members of the United States presidential electoral college.

"(b) 'State election' means the election of state officers elected on a statewide basis, members of the house of representatives and state senators, members of the state board of education, district judges, associate district judges, district magistrate judges and district attorneys.

"(c) 'County election' means the election of such county officers as are provided by law to be elected.

"(d) 'City election' means the election of such city officers as are provided by law to be elected.

"(e) 'School election' means the election of members of the governing body of a school district or a community junior college.

"(f) 'Township election' means the election of such township officers as are provided by law to be elected.

"(g) 'Question submitted election' means any election at which a special question is to be voted on by the electors of the state or a part of them.

It is clear that all or part of the individual elections defined by K.S.A. 25-2503 may occur as part of the election defined as a "general election" in K.S.A. 1984 Supp. 25-2502. In addition, each election defined by K.S.A. 25-2503 is defined by reference to the "election" of officers or the choice of voters on a question. More than one choice of officers may be presented at a single "state election" which may, in turn, be part of the "general election." Similarly, a "question submitted election" may present more than one question to the voters at the election defined as a "general election." Clearly, the term election is used to describe a variety of events from the single choice/election of an individual voter to the entire process which permits the voter to make his choice.

A general election is normally one at which the voters may and do make choices on several different matters. They choose national and state officers, as well as local officers, and may respond to several questions submitted. Thus, the general election is often made up of the various "elections" defined by K.S.A. 25-2503. Each individual choice made by the voters, however, is not regarded as an "election" in the sense that the word is used to describe the process which permits the voter to select between alternatives. It is in this latter sense of the term that, in our opinion, the prohibitions of the Mail Ballot Election Act may best be understood. Submitting two questions on a single mail ballot does not constitute "another election" if "another election" is defined to refer to the entire process or machinery which permits the voters to choose. In our opinion, "another

election" as used in K.S.A. 1984 Supp. 25-432(e) refers to an election other than the mail ballot election which is held on the same date. It does not refer to each individual question upon which a voter may exercise his or her choice. Therefore, K.S.A. 1984 Supp. 25-432(e) does not prohibit the submission of more than one question on a single mail ballot. This conclusion is, of course, subject to the understanding that compliance has been had with all other statutory provisions relating to the submission of specific questions to the voters.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Mary F. Carson
Assistant Attorney General

RTS:JSS:MFC:crw