



STATE OF KANSAS

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October 21, 1985

ATTORNEY GENERAL OPINION NO. 85- 142

Ken Eland
City Attorney
Hoxie, Kansas 67740

Re: Cities and Municipalities--Public Recreation and
Playgrounds--Petition; Election

Synopsis: Under the provisions of K.S.A. 1984 Supp. 12-1904a
and K.S.A. 12-1905, a proposition to establish a
joint city-school district recreation commission must
be approved by the voters of the city and the school
district.

K.S.A. 12-1902, 12-1904 and 12-1905 are contained in
enactments which are not uniformly applicable to all
cities, and are therefore subject to a charter
ordinance adopted under city home rule powers.
Accordingly, a city may exempt itself from: (1) the
prohibition against both a city and school district
conducting independent recreation programs; (2) the
requirement of holding an election on the question of
establishing a city recreation commission; and (3) the
requirement of holding an or election on the question of
establishing a joint recreation commission. (Kansas
Constitution, Article 12, Section 5). However, a
school district must submit any proposition to
establish a joint recreation commission to an election
of district voters. Cited herein: K.S.A. 12-1901,
12-1902, 12-1904; K.S.A. 1984 Supp. 12-1904a; K.S.A.
12-1905; 12-1906; Kan. Const., Art. 12, §5.

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*laws
repealed
in 1987*

Dear Mr. Eland:

You request our interpretation of K.S.A. 12-1901 et seq. Specifically, you advise that while the City of Hoxie and Unified School District No. 412 desire to establish a joint recreation commission pursuant to the aforesaid statutes, they do not wish to submit such a proposition to a vote of the electors. You ask whether a city may, by charter ordinance, exempt itself and a school district from the election requirement prescribed by K.S.A. 12-1904 and 12-1905. Additionally, you ask whether the City of Hoxie may exempt itself from the prohibition (in K.S.A. 12-1902) against both a city and school district conducting independent recreation programs.

K.S.A. 12-1902 confers authority on cities and school districts to operate recreation systems, and provides that recreational services and programs shall not be conducted by both a city and school district acting independently. Additionally, K.S.A. 12-1904, K.S.A. 1984 Supp. 12-1904a and 12-1905 provide for an election on the question of establishing a recreation system and levying a tax therefor, and K.S.A. 12-1906 provides for creation of a recreation commission following voter approval.

K.S.A. 12-1902, 12-1904 and 12-1905 are contained in enactments which are not uniformly applicable to all cities. As a result, a city may, under Article 12, Section 5 of the Kansas Constitution, adopt a charter ordinance exempting itself from any part of those statutory provisions. Accordingly, Hoxie may exempt itself by charter ordinance from the prohibition against both a city and school district conducting independent recreation programs contained in K.S.A. 12-1902. However, while a city may exempt itself from the requirement (prescribed by K.S.A. 12-1905) of holding an election on a proposition (initiated by petition) to establish a joint city-school district recreation commission, it has no power under the home rule amendment to exempt a school district from the aforesaid requirement. Unlike cities and counties, unified school districts do not possess home rule authority.

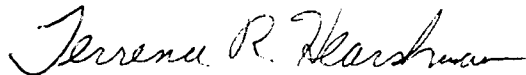
Further, we note that K.S.A. 1984 Supp. 12-1904a, which prescribes the procedure for establishing a joint city-school district recreation system by a joint ordinance or resolution, is part of an enactment (L. 1984, ch. 59) which is uniformly applicable to all cities. Accordingly, a city may not exempt itself from the requirement of holding an election under that statute.

In summary, it is our opinion that under the provisions of K.S.A. 1984 Supp. 12-1904a and K.S.A. 12-1905, a proposition to establish a joint city-school district recreation commission must be approved by the voters of the city and the school district. While K.S.A. 12-1905 is part of an enactment which is not uniformly applicable to all cities, and is thus subject to a charter ordinance adopted pursuant to the city home rule amendment (Kan. Const., Art. 12, §5), school districts must submit any proposition to establish a joint recreation commission to an election of district voters. Further, K.S.A. 12-1902 and 12-1904 are also parts of enactments which are not uniformly applicable to all cities, and are therefore subject to a charter ordinance adopted under city home rule powers. Accordingly, a city may exempt itself from the prohibition against both a city and school district conducting independent recreation programs, and may exempt itself (although not a school district) from the requirements of conducting an election on the questions of establishing either a city recreation commission or a joint recreation commission with a school district.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm