



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 21, 1985

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

ATTORNEY GENERAL OPINION NO. 85-160

Steven L. Boyce
Coffey County Attorney
514 Neosho
P.O. Box 452
Burlington, Kansas 66839

Re: Schools -- Capital Outlay Levy, Fund and Bonds --
Protest, Petition and Election

Elections -- Sufficiency of Petitions -- Petition
Documents, Contents

Synopsis: A petition, prepared and filed under the supposed authority of K.S.A. 1984 Supp. 72-8801 which does not meet the requirements of K.S.A. 1984 Supp. 25-3601 et seq., is invalid. As such, assuming a board of education imposes a four mill levy for capital outlays pursuant to a validly adopted resolution, such an invalid petition has no effect in preventing the levy from being imposed. Cited herein: K.S.A. 25-3601; K.S.A. 1984 Supp. 25-3602; 72-8801.

* * *

Dear Mr. Boyce:

As Coffey County Attorney, you ask our opinion on the validity of a petition filed in the Coffey County Clerk's office. The petition states as follows:

"We the undersigned voters of USD 444 protest the four,4, [sic] mill tax levy for the capital outlay fund as per K.S.A. 1983 Supp. 72-8801 and are hereby objecting to the above levy. It is our desire that this four,4, [sic] mill levy be repealed;"

In some, but not all of the documents you submitted, the additional words "by a special election" appear at the end of the statement.

According to the plain language of K.S.A. 1984 Supp. 72-8801, a tax levy for capital outlays may be authorized by a properly adopted resolution of a school district board of education, unless a valid petition in opposition to the resolution is filed. The statutory language, which lays out a sample resolution, also states:

"The tax levy authorized by this resolution may be made unless a petition in opposition to the same, signed by not less than 10% of the qualified electors of the school district, is filed with the county election officer of the home county of the school district within 40 days after the last publication of this resolution." (Emphasis added.)

The statute goes on to say:

"In the event that no petition as specified above is filed in accordance with the provisions of the notice, the board of education may make the tax levy specified in the resolution." (Emphasis added.)

In determining whether a petition objecting to the tax levy specified in the resolution is valid under the capital outlay and election law, we must examine it in light of the general requirements for a sufficient petition, as specified in K.S.A. 25-3601 et seq. K.S.A. 25-3601, in relevant part, provides:

"Whenever under the laws of this state a petition is required or authorized as a

part of the procedure applicable to any county, city, school district or other municipality, or part thereof, the provisions of this act shall apply, except as is otherwise specifically provided in the statute providing for such petition."

K.S.A. 1984 Supp. 25-3602(b) provides, in part: "Each petition shall, unless otherwise specifically required: (1) Clearly state the question which petitioners seek to bring to an election." (Emphasis added.) We note that a majority of the petitions you submitted do not state any question in terms of an election. Instead, they merely contain a sentence stating that the undersigned voters object to the four mill tax levy for the capital outlay fund. Therefore, we must conclude that those documents do not fulfill the requirement of K.S.A. 1984 Supp. 25-3602(b)(1). While, as noted above, a few have been altered to correct this problem, they contain only 69 signatures, which may or may not equal the 10% limit required by K.S.A. 1984 Supp. 72-8801.

We also call your attention to the fact K.S.A. 1984 Supp. 25-3602(b) prescribes, in great detail, other requisites a petition must meet in order to be valid. In our opinion, the petition under review fails to comply with two of these additional requirements. Specifically, K.S.A. 25-3602(b)(3) requires that each petition shall "contain the following recital above the spaces provided for signatures: 'I have personally signed this petition. I am a registered elector of the state of Kansas and of _____ (here insert name of political or taxing subdivision) and my residence address is correctly written after my name.'" (Emphasis added.) This recital is not contained in the petition you submitted.

In addition, K.S.A. 1984 Supp. 25-3602(c) states:

"Every petition shall contain, at the end of each set of documents carried by each circulator, a verification, signed by the circulator, to the effect that the circulator personally witnessed the signing of the petition by each person whose name appears thereon."

No verification of any kind appears in the petition you enclose.

The matter of circulating a petition to place a particular question to a vote is a serious matter. Thus, it is important that each of the clearly-stated requirements of K.S.A. 1984 Supp. 25-3602 be met. See Atty. Gen Op. Nos. 79-290; 82-230. Persons desiring to prepare and circulate a petition can obtain a copy of the statutory requirements from the county library or from this office.

In summary, it is our opinion that a petition, prepared and filed under the supposed authority of K.S.A. 1984 Supp. 72-8801 which does not meet the requirements of K.S.A. 1984 Supp. 25-3601 et seq., is invalid. As such, assuming a board of education imposes a four mill levy for capital outlays pursuant to a validly adopted resolution, such an invalid petition has no effect in preventing the levy from taking effect.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Barbara P. Allen
Assistant Attorney General

RTS:JSS:BPA:crw