



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 19

The Honorable LeRoy F. Fry  
State Representative, 105th District  
Capitol Building, Room 272-W  
Topeka, Kansas 66612

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 pursuant to K.S.A. 72-8801 must meet the requirements of K.S.A. 25-3601 et seq. Since the petition submitted for our examination does not state any question in terms of an election, such petition would be invalid if filed in the present form. Cited herein: K.S.A. 25-3601; K.S.A. 1985 Supp. 25-3602; K.S.A. 72-8801.

\* \* \*

. Dear Representative Fry:

As State Representative for the 105th District, you ask our opinion on the validity of a petition that members of your district intend to circulate to obtain the signatures of electors of Unified School District No. 400. The petition states as follows:

"We, the undersigned, qualified electors of Unified School District No. 400, McPherson, Ellsworth and Saline Counties, Kansas, oppose and protest an annual tax levy for a period of five (5)

years in the amount of not to exceed four (4) mills upon the assessed taxable tangible property within such School District for the purpose of acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing and equipping of buildings necessary for school district purposes, including housing and boarding pupils enrolled in an area vocational school operated under the board, architectural expenses incidental thereto, the acquisitions of building sites, and acquisition of school buses and the acquisition of other equipment and for the purpose of paying a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopments projects upon property located within the school district, all as authorized in the Resolution adopted by the Board of Education of Unified School District No. 400, McPherson, Ellsworth and Saline Counties, Kansas, on the 13th day of January, 1986."

K.S.A. 72-8801 provides that 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. This statute, which sets 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 Attorney General Opinion No. 85-160, we stated that in order to be valid a petition prepared and filed pursuant to K.S.A. 72-8801 must meet the requirements of K.S.A. 25-3601 et seq. K.S.A. 1985 Supp. 25-3602 provides that a petition must contain the following:

"(b) Each petition shall, unless otherwise specifically required: (1) Clearly state the question which petitioners seek to bring to an election;

"(2) name the taxing subdivision or other political subdivision in which an election is sought to be held; and

"(3) 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.'

"The recital shall be followed by blank spaces for the signature, residence address and date of signing for each person signing the petition.

"(c) 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." (Emphasis added.)

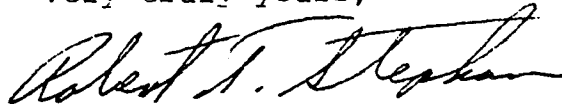
We are of the opinion that the petition you submitted for our examination meets all but one of the above requirements. K.S.A. 1985 Supp. 25-3602(b)(1) states that the petition shall "[c]learly state the question which petitioners seek to

bring to an election." (Emphasis added.) The proposed petition does not state any question in terms of an election. Instead, the petition contains a sentence stating that the undersigned voters object to the four mill tax levy for the capital outlay fund. Therefore, we must conclude that the proposed petition does not fulfill the requirements of K.S.A. 1985 Supp. 25-3602.

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. 1985 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 pursuant to K.S.A. 72-8801 must meet the requirements of K.S.A. 25-3601 et seq. Since the proposed petition does not state any question in terms of an election, such petition if filed in the present form would be invalid and would have no effect in preventing a capital outlay mill levy from taking effect.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Rita L. Moll  
Assistant Attorney General