



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 54

Larry R. Baer  
Halstead City Attorney  
Ice, Turner & Ice  
713 North Main Street, Box 224  
Newton, Kansas 67114

Re: Cities of the Second Class; Government by Mayor and Council and General Laws Applicable to Cities of the Second Class--General Provisions--  
Change in Classification of City From City of Third to City of Second Class; Division of City Into Wards

Synopsis: Where an injunction prevents a governing body from dividing a city into wards (as required by K.S.A. 14-101) until 2 weeks before the city general election, K.S.A. 14-101 should be interpreted as requiring such division after the election. Under such circumstances, council members who are elected on April 7, 1987, and other members of the governing body, will hold their offices until the next city election in an odd-numbered year (in the absence of a charter ordinance providing otherwise). Cited herein: K.S.A. 14-101, 14-103.

\* \* \*

Dear Mr. Baer:

You request our interpretation of K.S.A. 14-101. Specifically, you advise that Governor Carlin issued a public proclamation on July 22, 1986, declaring Halstead, Kansas, to be a City of the Second Class. You indicate that the Mayor called a meeting of the City Council for August 12,

1986, to consider the division of the city into wards, but that the district court issued a restraining order prior to the meeting restraining the city from taking any action or conducting any business as a city of the second class. The restraining order was not dissolved until February 10, 1987, twelve days after the deadline for filing for offices to be filled in the city general election. You advise that the governing body has not divided the city into wards following dissolution of the restraining order since the five candidates who filed for three open seats on the council filed as at large candidates, and ask what effect this scenario will have upon the city general election.

K.S.A. 14-101 prescribes the circumstances and procedure under which a city may change its classification from third class to second class, and provides, in part, as follows:

"The change in classification of any city under the provisions of this section shall take effect on the date the proclamation of the governor is issued unless a later date is specified therein, in which case the change and classification shall take place on such later date. The governing board of any such city, holding office at the time of the proclamation, shall continue to be the governing board of such city and the members of such board shall hold their respective offices until the next city election in an odd-numbered year.

"Whenever the governor shall make proclamation as herein provided for, it shall be the duty of the mayor of the city affected thereby to call a meeting of the city council, and the governing body shall at such meeting divide the city into wards." (Emphasis added.)

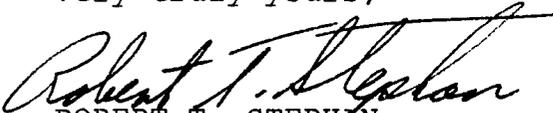
K.S.A. 14-103 prescribes the procedure for dividing the city into wards (with 2, 3 or 4 wards being permissible in a city of Halstead's size), and provides that "two council members shall be elected from each ward at the city election in odd-numbered years."

If the above-quoted statutes must be implemented in Halstead on a date so shortly before the city general election, three

council members will have to be elected solely on the basis of write-in candidacies, since no candidate will have filed for a position to be filled, i.e. council member representing a specific ward. Such a situation would pose obvious practical problems for both the candidates and the electorate at large, and it seems unlikely that the legislature could have intended such a result. A more reasonable interpretation is that where a city is prevented from implementing these statutes until shortly before the 1987 city general election, the "next city election" in which wards must be utilized is the 1989 city general election.

For the reasons stated above, it is our opinion that where an injunction prevents a governing body from dividing a city into wards (as required by K.S.A. 14-101) until 2 weeks before the city general election, K.S.A. 14-101 should be interpreted as requiring such division after the election. Under such circumstances, council members who are elected on April 7, 1987, and other members of the governing body, will hold their offices until the next city election in an odd-numbered year (in the absence of a charter ordinance providing otherwise).

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas



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RTS:JLM:TRH:jm