



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 23, 1987

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 87- 71

Dale W. Bell
Emporia City Attorney
519 Commercial
P.O. Box 921
Emporia, Kansas 66801-0921

Re: Cities and Municipalities--Buildings, Structures
and Grounds; Business Improvement Districts--
Protest Petition to Repeal Ordinance

Elections--Sufficiency of Petitions--Application to
Counties, Cities, School Districts and Other
Municipalities; Determination of Sufficiency of
Petition Signatures

Synopsis: K.S.A. 12-1789 authorizes the filing of a petition
in opposition to the continuation of a business
improvement district. The sufficiency of such a
petition is to be determined in accordance with the
provisions of K.S.A. 25-3601 et seq. Cited
herein: K.S.A. 12-1781; 12-1789; 25-3601; 25-3602.

*

*

*

Dear Mr. Bell:

You request our opinion concerning the sufficiency of
petitions filed pursuant to K.S.A. 12-1789. Specifically, you
ask whether the validity of a protest petition filed under the
provisions of the aforesaid statute is to be determined in
accordance with the provisions of K.S.A. 25-3601 et
seq.

K.S.A. 12-1781 et seq. prescribes the procedure for establishment of business improvement districts within Kansas cities, with K.S.A. 12-1789 providing for the dissolution of such a district:

"Following publication of an ordinance passed under K.S.A. 12-1788, the owners of businesses located within the district may file with the governing body of the city a petition in opposition to the continuation of the district. Upon a finding that the petition was signed by not less than a majority of the number of businesses located within the district, the district shall be voided and the governing body shall by ordinance repeal the ordinance which established the district and return any unused moneys collected and distribute such moneys back to the businesses on a pro rata basis in the same percentage as such moneys were collected."

Except for prescribing the number of signatures necessary to constitute a valid petition, the above-quoted statute provides no guidance in determining the sufficiency of a petition in opposition to the continuation of a business improvement district. In this regard, K.S.A. 25-3601 provides as follows:

"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. The sufficiency of each signature and the number thereof on any such petition shall be determined in accordance with the provisions of this act by the county election officer or such other official as designated in the applicable statute."

K.S.A. 25-3602 enumerates what a petition must contain in order to be sufficient:

"(a) Each petition shall consist of one or more documents pertaining to a single

issue or proposition under one distinctive title. The documents shall be filed with the county election officer or other official, if another official is designated in the applicable statutes. The filing shall be made at one time all in one group. Later or successive filings of documents relating to the same issue or proposition shall be deemed to be separate petitions and not a part of any earlier or later filing.

"(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.

"Whenever petitioners are required by law to possess qualifications in addition to being registered electors, the form of the petition shall be amended to contain a recital specifying the additional qualifications required and stating that the petitioners possess the qualifications.

"(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. The circulator of a petition shall be duly registered to vote and a resident of the political or taxing subdivision in which the election is sought to be held.

"(d) Any person who has signed a petition who desires to withdraw such person's name may do so by giving written notice to the county election officer or other designated official not later than the third day following the date upon which the petition is filed.

"(e) Any petition shall be null and void unless submitted to the county election officer or other designated official within 90 days of the date of the first signature on the petition.

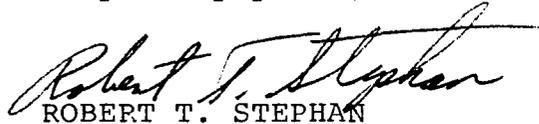
"(f) Unless the governing body of the political or taxing subdivision in which the election is sought to be held authorizes a special election, all elections which are called as a result of the filing of a sufficient petition shall be held at the next succeeding primary or general election as defined by K.S.A. 25-2502, and amendments thereto, in which the political or taxing subdivision is participating."

It is clear that the provisions of K.S.A. 25-3601 et seq. are to be applied except as otherwise specifically provided in the statute providing for the petition. K.S.A. 25-3601. As K.S.A. 12-1789 does not provide for a different method of determining the sufficiency of a petition in opposition to the continuation of a business improvement district, the method prescribed by K.S.A. 25-3601 et seq. must be utilized. In this regard, we have previously recognized that the requirements of the aforesaid statutes (K.S.A. 25-3601 et seq.) may be applied in cases where the petitioners are not seeking to bring any question to an election. See Attorney General Opinion No. 81-224. In

cases where no election is sought, the requirement of subsection (b) (1) of K.S.A. 25-3602 would not apply.

In summary, K.S.A. 12-1789 authorizes the filing of a petition in opposition to the continuation of a business improvement district. The sufficiency of such a petition is to be determined in accordance with the provisions of K.S.A. 25-3601 et seq.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm