



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 87- 72

The Honorable Rick Bowden
State Representative, Ninety-Third District
State Capitol, Room 281-W
Topeka, Kansas 66612

Re: Constitution of the State of Kansas -- Suffrage --
Qualifications of Electors

Synopsis: 1987 House Bill No. 2273 defines "qualified elector" for purposes of municipal bond elections to include any person 18 years of age or over owning land within the limits of the municipality, even if that person is not a resident therein. Applying this definition of "qualified elector" to all municipal bond elections would violate Article 5, § 1 of the Kansas Constitution. Cited herein: K.S.A. 1986 Supp. 10-120; K.S.A. 12-105; K.S.A. 1986 Supp. 19-27a03; K.S.A. 19-3802; 24-410; 24-507; 24-605; 82a-602; 82a-1021(e); Ks. Const., Art. 5, § 1; Art. 11, § 7.

* * *

Dear Representative Bowden:

As state representative from the ninety-third district, you request our opinion on the constitutionality of 1987 House Bill No. 2273. The legal issue you raise is whether the definition of "qualified elector" contained in the bill is constitutional.

1987 House Bill No. 2273 amends K.S.A. 1986 Supp. 10-120 by adding a new subsection (c) to the statute, which provides:

"Whenever any election is held in any municipality upon the matter of the issuance of bonds for any purpose by the municipality, all qualified electors shall be entitled to vote. As used in this subsection:

"(1) 'Qualified elector' means any qualified elector of the district and any person 18 years of age or over owning land within the limits of the municipality, although not a resident therein, or owning tangible personal property within the district and having residence within such district;" (Emphasis added)

By contrast, Article 5, § 1 of the Kansas Constitution provides:

"Every citizen of the United States who has attained the age of eighteen years and who resides in the voting area in which he or she seeks to vote shall be deemed a qualified elector." (Emphasis added).

The Kansas Constitution requires that a person reside in the voting area in which he or she seeks to vote to be deemed a qualified elector. The definition of "qualified elector" in 1987 House Bill No. 2273 extends the voter franchise in municipal bond elections to a greater number of individuals than allowed by the constitution, by removing the residency requirement for persons 18 years of age or older who own property within the municipality in which the election is held.

To determine the issue of constitutionality which you raise, it is necessary to examine the history of municipalities. K.S.A. 12-105a defines "municipality" to mean:

"county, township, city, school district of whatever name or nature, community junior college, municipal university, drainage district, cemetery district, fire district, and other political subdivision or taxing unit,"

The existence of some types of municipalities, such as counties, townships, or cities, was clearly contemplated by the framers of the constitution. However, other types of

municipalities were created by the legislature, and therefore their existence could not have been contemplated by the constitutional convention. These municipalities would include drainage districts (K.S.A. 24-410; 24-507; 24-605); sewer districts, which can be formed upon petition of property owners (K.S.A. 1986 Supp. 19-27a03); groundwater management districts (K.S.A. 82a-1021(e)); industrial districts (K.S.A. 19-3802); and rural water supply districts (K.S.A. 82a-602).

Relevant statutes dealing with elections in these statutorily-created municipalities contain language which deviates from Article 5, § 1 by removing the residency requirement for a "qualified elector." For example, K.S.A. 24-410, the statute which addresses who may vote at drainage district elections, provides:

"Qualified elector" means any qualified elector of the district and any person eighteen (18) years of age or over owning land within the district, although not a resident therein, or owning tangible personal property within the district and having residence within such district.
(Emphasis added).

We note that this definition is nearly identical to that contained in 1987 House Bill No. 2273, and that Attorney General Curt T. Schneider was asked to opine on the constitutionality of defining "qualified elector" in this manner for purposes of drainage district elections when the language was added to K.S.A. 24-410 in 1971. (See 1971 House Bill No. 1968). In a letter opinion to Representative Roger Turner, dated January 31, 1972, General Schneider determined that such an extension of the voter franchise in drainage district elections was constitutional. However, in our opinion, the reasoning used by General Schneider to reach this conclusion cannot be applied on a broad basis to all municipalities.

The letter opinion cited to the early Kansas Supreme Court decision The State v. Monahan, 72 Kan. 492 (1905), in which the court stated:

"The elections held to choose officers of a drainage district or to pass upon the expediency of proposed improvements designed for protection against floods are not merely other elections than those

provided for in the constitution; they are of a different character from any therein referred to, and so far dissimilar in their nature that it cannot be supposed that they were within the contemplation of the constitutional convention when the qualifications of electors were under consideration by that body." 72 Kan. at 501. (Emphasis added).

Since the Kansas Supreme Court had previously determined that drainage district elections were not within the contemplation of the constitutional convention when the qualifications of electors were under consideration by that body, General Schneider concluded that the legislature was free to provide different or more restrictive qualifications for exercise of the franchise in drainage district elections than those prescribed by Article 5, § 1 of the Kansas Constitution, as long as no other applicable state or federal constitutional right was infringed upon. Therefore, he found the language in 1971 House Bill No. 1968, which allowed "qualified elector" to include any person eighteen years of age or over owning land within a drainage district, although not a resident therein, to be constitutional.

We concur with General Schneider's opinion in regard to drainage district elections, and believe similar reasoning can be applied to other municipalities which are purely creatures of the legislature and which were not within the contemplation of the constitutional framers when they were considering the constitutional qualifications of a "qualified elector."

However, 1987 House Bill No. 2273 seeks to extend the voter franchise in all municipal bond elections by defining "qualified elector" to include non-resident persons who own land within the limits of the municipality. In our judgment, such a broad application of this definition violates Article 5, § 1 of the Kansas Constitution, as it is clear that the existence of some types of municipalities was contemplated by the constitutional framers.

For example, Article 2, § 21 of the Kansas Constitution allows the legislature to confer powers of local legislation and administration upon political subdivisions. From this constitutional provision, we draw two conclusions. First, that the existence of certain municipalities, which are political subdivisions of the State, was contemplated by the constitutional convention, and second, that municipal bond

elections fall within the "powers of local legislation and administration" which the constitution allows the legislature to confer upon political subdivisions.

We also find it noteworthy to examine Article 11, § 7 of the Kansas Constitution, which provides:

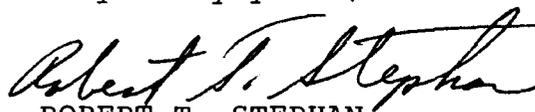
"No debt shall be contracted by the state . . . unless the proposed law for creating such debt shall first be submitted to a direct vote of the electors of the state at some general election;"

Thus, while the constitutional framers may not have contemplated municipal bond elections, it is clear that they anticipated elections on indebtedness by the State. Since a municipality is a political subdivision of the State, it is at least arguable that the framers contemplated some type of indebtedness elections by municipalities.

In light of the aforementioned constitutional provisions, we conclude that the residency requirement for a "qualified elector" set forth in Article 5, § 1 of the Kansas Constitution applies to those municipalities the existence of which was contemplated by the constitutional convention. Accordingly, we find the definition of "qualified elector" contained in 1987 House Bill No. 2273, which attempts to extend the voter franchise in municipal bond elections of all municipalities, to be unconstitutional.

In summary, 1987 House Bill No. 2273 defines "qualified elector" for purposes of municipal bond elections to include any person 18 years of age or over owning land within the limits of the municipality, even if that person is not a resident therein. Applying this definition of "qualified elector" to all municipal bond elections would violate Article 5, § 1 of the Kansas Constitution.

Very truly yours,


ROBERT T. STEPHAN

ATTORNEY GENERAL OF KANSAS



Barbara P. Allen
Assistant Attorney General