



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

ATTORNEY GENERAL OPINION NO. 89- 35

The Honorable Clyde D. Graeber
State Representative, Forty-First District
State Capitol, Room 175-W
Topeka, Kansas

Re: Cities and Municipalities--Modified Mayor-Council
Form of Government--Adoption of Modified
Mayor-Council Form of Government; Submission to
Election

Synopsis: K.S.A. 12-10a01 provides that any city may adopt
the modified mayor-council form of government
pursuant to the procedure prescribed therein. The
provisions of K.S.A. 12-1019, relating to
acceptance of the commission form of government or
the mayor-council form of government (and
prescribing the form of the ballot for any election
held thereunder), do not apply where the question
of adopting the modified mayor-council form of
government is submitted to voters pursuant to the
provisions of K.S.A. 12-10a01. Cited herein:
K.S.A. 12-1019; 12-10a01.

* * *

Dear Representative Graeber:

You request our interpretation of K.S.A. 12-1019 and K.S.A.
12-10a01. Specifically, you ask whether voters of the city of
Leavenworth may adopt the modified mayor-council form of
government without first voting to abandon the
commission-manager form of government and to accept either the

commission form of government or the mayor-council form of government.

The city of Leavenworth is currently organized under the commission-manager act, K.S.A. 12-1001 et seq. Section 17 of that act, as amended, is codified at K.S.A. 12-1019, and provides, in part, as follows:

"Any city of the state of Kansas that has operated for four years or more under the provisions of this act, may abandon such form of organization as is herein provided for and accept either the provisions of the commission form of government law or the mayor and council form of government law, then applicable to cities of its population. Before such abandonment, a proposition to abandon such form of organization and accept the provisions, either of the mayor and commissioner form of government law, or the provisions of the mayor and council form of government law, must first be submitted to a vote of the qualified electors of such city in the manner provided by K.S.A. 12-184. Whenever the proposition to abandon such form of organization shall have been defeated at any election, another election to vote on such proposition shall not be called until after the expiration of four years from such first election.

"Any petition requesting the submission of a proposition hereunder shall specify the form of government which the petitioners desire the city to adopt, in case a majority of the votes cast upon the proposition at such election are in favor of abandoning the city-manager form, and whether the city shall accept the provisions of the mayor and commissioner form of government law or the provisions of the mayor and council form of government law.

"The form of the ballots used at any election held hereunder shall be as follows:

'The city of (naming the city) shall abandon its organization under article 10 of chapter 12 of the Kansas Statutes Annotated and any acts amendatory thereto and become a city under the general law governing cities of like population under (state the form of government, whether the mayor and commissioner or mayor and council form of government).'

YES _____ NO _____

"If a majority of the votes cast upon such proposition, at such election, shall be in favor of abandoning the city-manager plan of government, the city shall become a city under the general law governing cities of like population and according to the form designated in the proposition submitted to the voters at such election." (Emphasis added.)

You advise that a group of Leavenworth citizens has expressed an interest in establishing a modified mayor-council form of government, K.S.A. 12-10a01 et seq., for the city of Leavenworth. K.S.A. 12-10a01 provides for the adoption of said form government as follows:

"Any city may adopt the modified mayor-council form of government in the manner herein provided and shall thereafter be governed by the provisions of this act. A proposition to adopt such form of government must first be submitted to a vote of the qualified electors of such city at any city or state primary or general election. The governing body of said city may submit such proposition by resolution and must submit it upon the filing of a petition signed by at least ten percent (10%) of the qualified electors of the city. The petition shall be headed 'Petition for an election of the city of _____, Kansas, to vote on the adoption of the modified mayor-council form of government,' shall be addressed to the governing body of the city, and be filed

with the election officer of the county in which the city is located. Such petition shall conform to the requirements of article 36 of chapter 25 of the Kansas Statutes Annotated and amendments thereto, and its sufficiency shall be determined in the manner therein provided and shall be certified to the city clerk by the county election officer. Upon the adoption of a resolution or the certification of a petition as provided in this section, the governing body of the city shall submit the proposition at the next city or state primary or general election, following by not less than sixty (60) days such adoption or certification. Notice thereof shall be published in the manner provided by K.S.A. 25-105. The form of the ballot to be used at the election shall be as follows:

"Shall the city of _____
adopt the modified mayor-council form
of government and become a city
operating under the general laws
governing cities of like class?

Yes _____ No _____

"If a majority of the votes cast upon said proposition shall be in favor of adopting the modified mayor-council plan of government, then at the next regular city election the mayor and members of the council hereinafter provided for as constituting the governing body of the city shall be elected as provided herein; and upon their election and qualification the rights, powers and duties of the commissioners or mayor and members of the council of such city shall cease and terminate."

In our judgment, K.S.A. 12-1019 and 12-10a01 relate to the same subject matter i.e. changing the form of city government, and are statutes in pari materia. Therefore, they must be construed together in determining legislative intent. State, ex rel. v. Moore, 154 Kan.

193, 197 (1941); Flowers v. Marshall, 208 Kan. 900, 905 (1972).

In this regard, K.S.A. 12-10a01 provides that any city (including commission-manager cities) may adopt the modified mayor-council form of government pursuant to the procedure prescribed therein. We perceive no reason why the legislature would intend to restrict commission-manger cities from adopting the modified mayor-council form of government, or why the legislature would seek to impose the burden of conducting two elections to accomplish such a change in the form of city government. Therefore, in our judgment, the provisions of K.S.A. 12-1019, relating to the acceptance of either the commission form of government or the mayor-council form of government (and prescribing the form of ballot for any election held thereunder), do not apply where the proposed change is to the modified mayor-council form of government.

In passing, we note that the Supreme Court of Montana has ruled upon a question which is analogous to the question posed herein, and that the decision in said case is in accord with our conclusions above. See Hackman v. City of Helena, 256 P.2d 692 (Montana Supreme Court 1953).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

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