



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 64

Philip S. Harness
County Counselor
Johnson County
110 S. Cherry, Suite 8
Olathe, Kansas 66061

Re: Counties and County Officers--General
Provisions--Exemption of County From Act of
Legislature; Procedure; Sufficiency of Petition

Elections--Sufficiency of Petitions--Petition
Documents; Question; Verification

Synopsis: K.S.A. 19-101b does not specifically provide a format for a petition demanding that a resolution of a county be submitted to a vote of the electors. Therefore, such a petition must meet the requirements of K.S.A. 25-3602. The petition must clearly state the question which petitioners seek to bring to an election and each circulator must sign a verification at the end of each set of documents which that circulator carried. It is not necessary for each and every document to contain a separate verification. The verification must be accompanied by an oath or affirmation of the circulator stating to the effect that the circulator has personally witnessed the signatures contained on the documents. In lieu of an oath or affirmation, the verification may be accompanied by the statement contained in K.S.A. 1989 Supp. 53-601. However, state statute does not require that the verification be notarized. Cited herein: K.S.A. 12-688 (repealed, L. 1986, ch. 173, §85); K.S.A. 19-101b; K.S.A. 1989 Supp. 25-3601; K.S.A.

25-3602; K.S.A. 1989 Supp. 53-601; K.S.A. 54-101;
79-5036.

* * *

Dear Mr. Harness:

As Johnson county counselor, you request our opinion regarding the sufficiency of petitions seeking an election on Charter Ordinance No.1 of the Olathe public library board. Specifically you ask:

- "1. If a protest petition does not set out verbatim the question to be submitted, does the 'question to be submitted' language found in K.S.A. 19-101b cure the defect?
- "2. Must the verification, required by K.S.A. 25-3602(c) appear on the back of, or at the end of, each document comprising a petition or is it sufficient if it appears at the end of the entire set of documents comprising a petition?
- "3. Must the verification be acknowledged before a notary public?"

Under K.S.A. 79-5036(c), the governing body of a library "may elect, in the manner prescribed by and subject to the limitations of K.S.A. 19-101b, and amendments thereto, . . . to exempt such subdivision" from the tax lid law. See Attorney General Opinion 90-11. (Various provisions of the tax lid laws have been amended by 1990 House Bill No. 2700. This opinion does not address the effect of the subject ordinance and the amendments on one another.) K.S.A. 19-101b provides that such a resolution will take effect 60 days after final publication unless it is submitted to a referendum. The governing body of the library is obligated to call an election regarding the resolution if a petition "demanding that such resolution be submitted to a vote of the electors" is properly signed and filed.

The petition you question is in the following form:

"The Board of Directors of the Olathe Library Board voted to exempt the library from the provisions of K.S.A., 1988 Supp., [sic] 79-5021 to 79-5033 by the passage of

Charter Ordinance No. 1, on the 22nd day of February, 1990. Such Charter Resolution would exempt the library from the aggregate tax levy limit law passed by the Kansas Legislature.

"I, the undersigned, an elector living in the taxing subdivision of the Olathe Library Board, do, pursuant to K.S.A. 19-101(b) [sic], protest the passage of such Charter Resolution and demand that such Charter Resolution be submitted to a vote of the electors and that such Resolution not take effect until submitted to a referendum and approval of a majority of electors voting thereon.

"I have personally signed this petition this _____ day of _____, 1990. I am a registered elector of the State of Kansas and the City of Olathe, Kansas, and my residence is correctly written after my name."

While there appears to be sufficient room for four signatures following the above statement, only one signature line is provided on each page. The signature line is followed by a line for the printed name of the signator and three lines for address.

K.S.A. 1989 Supp. 25-3601 states:

"When under the laws of this state a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election 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. . . . When any statute makes specific provisions concerning matters that K.S.A. 25-3601 et seq. and amendments thereto also has requirements which are different therefrom, the provisions of the specific statute shall control." (Emphasis added.)

The provisions of K.S.A. 25-3601 et seq are mandatory, and are not mere formalities that can be disregarded at will. See Attorney General Opinions No. 77-303; 81-230; 82-230; 84-41; 86-51. Therefore, unless K.S.A. 19-101b otherwise specifically provides, the petition must clearly state the question which petitioners seek to bring to an election. K.S.A. 25-3602(b). A statement requesting the governing body to take certain action will not meet this obligation. See Attorney General Opinions No.: 82-230; 85-160; 86-19.

The petition in question fails to "clearly state the question which petitioners seek to bring to an election". K.S.A. 25-3602(b)(1). Because such a requirement is mandatory unless the statute providing for such petition otherwise specifically provides, the petition in question would be invalid unless K.S.A. 19-101b specifically provides an alternative format for the petition.

"Specifically" is defined as "in a specific manner; explicitly, particularly, definitely." Black's Law Dictionary 1254 (5th Ed. 1979). K.S.A. 19-101b fails to specifically provide an alternative format for petitions as it merely states:

"(c) If within 60 days of the final publication of a charter resolution, a petition . . . shall be filed in the office of the county election officer demanding that such resolution be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by the electors."

This provision recognizes that a petition is a part of the procedure applicable to the governing body of the library. However, it does not establish an alternative format for the petition. A petition authorized by K.S.A. 19-101b must still meet the requirements of K.S.A. 25-3601 et seq. Because the petition in question fails to clearly state a question, the petition would be invalid.

K.S.A. 25-3602(c) states:

"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.)

In Graham v. Corporan, 196 Kan. 564 (1966), the proper format of a petition under K.S.A. 12-688 (repealed, L. 1981, ch. 173, § 85) was considered. "In requiring verification, the legislature sought to provide evidence or proof that all signatures were genuine and prevent the fraudulent procurement of names of signers to the protest." Id. at 569. The provision of K.S.A. 12-688 requiring "One of the signers of each such paper [to] make oath . . . that each such signature to the paper appended is the genuine signature of the person whose name it purports to be" required a verification at the end of the petition. Each group of sheets stapled or fastened together and filed as one document was to be regarded as a separate protest petition requiring one verification.

Although Graham involved an interpretation of K.S.A. 12-688 rather than K.S.A. 25-3602, the analysis is comparable to the present situation, particularly as the terms "paper" and "document" are synonymous. See Black's Law Dictionary 1001 (5th Ed. 1979). K.S.A. 25-3602 recognizes that each petition will consist of one or more documents and that the petition must contain a verification at the end of each set of documents carried by a circulator. Based upon the analysis in Graham and the language in K.S.A. 25-3602, each signed sheet of the petition in question would constitute a "document" of the petition. Because K.S.A. 25-3602(c) requires a verification "at the end of each set of documents carried by each circulator," it is not necessary for each sheet signed by a registered elector to contain a verification paragraph.

"The purpose of a verification is to verify the truth of the matter set forth in the document being verified. 'A verification is an affidavit attached to a statement as to the truth of the matters therein set forth.' [Citation omitted.]" (Emphasis added). Trane Co. v. Bakkalapulo, 234 Kan. 348, 352 (1983). An affidavit is "a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation." Black's Law Dictionary, 54 (5th ed. 1979).

Therefore, the statement signed at the end of each set of documents carried by a circulator must be accompanied by an

oath or affirmation of the circulator stating to the effect that the circulator has personally witnessed the signatures contained on the documents. The statement will then constitute a verification. The oath swearing to or affirming the truthfulness of the petition may be administered by those individuals authorized under K.S.A. 54-101 et seq.

The circulator of a set of documents is given an option under K.S.A. 1989 Supp. 53-601 in lieu of the oath or affirmation.

"(a) Except as provided by subsection (b), whenever a law of this state . . . requires or permits a matter to be supported, evidenced, established or proved by the sworn written . . . verification . . . of a person, such matter may be supported, evidenced, established or proved with the same force and effect by the unsworn written . . . verification . . . dated and subscribed by the person as true under penalty of perjury, in substantially the following form. . . ." K.S.A. 1989 Supp. 53-601.

Because a petition authorized by K.S.A. 19-101b does not fall within the exceptions of K.S.A. 1989 Supp. 53-601(b), the verification at the end of each set of documents may be accompanied with the statement set forth in K.S.A. 1989 Supp. 53-601(a). Such statement will replace the oath or affirmation otherwise required.

While it is required that a verification be sworn to or affirmed by the circulator before an individual authorized to administer oaths, or accompanied by the statement set forth in K.S.A. 1989 Supp. 53-601, state statute does not require that the verification be notarized. Where a statute is plain and unambiguous, an interpretation of the statute must give effect to the intent of the legislature as expressed rather than determine what the law should or should not be. Johnston v. Tony's Pizza Service, 232 Kan. 848, 850 (1983). Neither K.S.A. 19-101b or K.S.A. 25-3601 et seq. contains a provision requiring that a verification be acknowledged before a notary public. Because there is no statutory obligation to have a verification of a petition notarized, the lack of such an acknowledgement will have no effect on the validity of the petition.

It should also be noted that the petition in question fails to meet the requirements of K.S.A. 25-3602(b)(3). The statute requires that each petition must:

"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.'"

K.S.A. 25-3602 goes on to state:

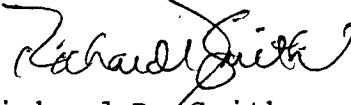
"The recital shall be followed by blank spaces for the signature, residence address and date of signing for each person signing the petition."

However, because the petition fails to state the question which petitioners seek to bring to an election, it is unnecessary for us to determine whether such a flaw would be fatal to the validity of the petition in question.

In conclusion, a petition required or authorized under K.S.A. 19-101b must meet the requirements set forth in K.S.A. 25-3602. The petition must clearly state the question which petitioners seek to bring to an election. Each circulator must sign a verification at the end of each set of documents carried by that circulator. Circulators are not required to sign a separate verification on each and every document of a petition. While there is no requirement that a verification be notarized, the verification must be accompanied by an oath or affirmation stating to the effect that the circulator has personally witnessed all the signatures on the documents carried by that circulator. In lieu of an oath or affirmation, the verification may be accompanied by the statement set forth in K.S.A. 1989 Supp. 53-601.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Richard D. Smith
Assistant Attorney General