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ATTORNEY GENERAL OPINION NO. 92- 120

The Honorable Ben E. Vidricksen
State Senator, Twenty-Fourth District
713 N. 11th Street
Salina, Kansas 67401

Re: Cities and Municipalities--City-Manager Plan;
General Provisions--Commission-Manager Plan;
Abandonment of Plan; Election; Petition;
Retrospective Application of Amendment

Elections--Sufficiency of Petitions--Application to
All State and Local Elections; Opinion of County or
District Attorney; Retrospective Application of
Amendment

Synopsis: K.S.A. 12-1019 authorizes a petition seeking to
bring to an election a question regarding a change
in the form of government for a city. K.S.A. 1991
Supp. 25-3601, as amended by L. 1992, ch. 194, §
2, establishes in part the requirements for such
petition. The amendment adopted in L. 1992, ch.
194, § 2 is merely procedural in nature, and
therefore may be applied retrospectively to
petitions being circulated prior to April 30, 1992,
the effective date of the amendment. A petition
drafted on March 31, 1992, should, prior to its
circulation, be submitted to the county attorney
for an opinion regarding the legality of the form
of the question unless such retrospective
application of the requirement results in a
manifest injustice. Cited herein: K.S.A. 12-184;
12-1019; K.S.A. 1991 Supp. 25-3601, as amended by
L. 1992, ch. 194, § 2; U.S. Const., art. 1, §
10.

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Dear Senator Vidricksen:

As senator for the twenty-fourth district, you request our opinion regarding whether a petition seeking to bring to a vote of the electorate a question concerning a change in the form of city government must be reviewed by the county attorney prior to its circulation.

According to the information provided, the city of Salina has operated under the commission-manager form of government since 1921. On March 31, 1992, citizens of Salina began circulating a petition as authorized under K.S.A. 12-1019 seeking to bring about a change in the form of city government to the mayor-council form of government. After that time, amendments to statutes regarding the sufficiency of petitions went into effect. One such amendment requires that before such petitions are circulated, "a copy thereof containing the question to be submitted shall be filed in the office of the county attorney . . . for an opinion as to the legality of the form of such question." K.S.A. 1991 Supp. 25-3601, as amended by L. 1992, ch. 194, § 2.

K.S.A. 12-1019 provides that any city of the state that has for four or more years operated under a commission-manager form of government may abandon such form of government after approval by a majority of the electorate voting on a proposition to abandon such form of government and accept the provisions of the mayor and council form of government law. The proposition may be submitted to the qualified electors of the city upon adoption by the governing body of the city of a resolution providing for the submission of such question or upon the certification of a petition requesting the submission of such question. K.S.A. 12-184.

"(c) Any petition requesting the submission of a question hereunder shall be filed with the county 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." Id.

Further, K.S.A. 1991 Supp. 25-3601, as amended by L. 1992, ch. 194, § 2, provides in part:

"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 to any county, city, school district or other municipality, or part thereof, the provisions of this act shall apply, except as is otherwise provided in the statute providing for such petition."

Therefore, it is clear that the petition circulated pursuant to K.S.A. 12-184 is subject to the requirements set forth in K.S.A. 25-3601 et seq. Prior to April 30, 1992, there was no requirement that the petition be approved by the county attorney prior to being circulated. However, the following provision became effective April 30, 1992:

"Before any petition other than a recall petition as described in K.S.A. 25-4301 et seq. and amendments thereto, requesting an election in any political or taxing subdivision of the state is circulated, a copy thereof containing the question to be submitted shall be filed in the office of the county attorney of the county or district attorney of the district in which all or the greater portion of the political or taxing subdivision is located for an opinion as to the legality of the form of such question. The county or district attorney shall within five calendar days following the receipt of such question furnish a written opinion as to the legality of the form of the question submitted." K.S.A. 1991 Supp. 25-3601, as amended.

Generally, a statute will operate prospectively unless its language clearly indicates that the legislature intended that it operate retrospectively. State v. Sylva, 248 Kan. 118, Syl. ¶ 1 (1991). This rule is normally applied when an amendment to an existing statute or a new statute is enacted which creates a new liability not existing before under the law or which changes the substantive rights of the parties.

Jackson v. American Best Freight System, Inc., 238 Kan 322, 324 (1985). Where a statute is merely procedural or remedial in nature, however, it may be applied retrospectively if it does not affect the substantive rights of a party. Sylva, supra. Procedural changes have retrospective effect unless the legislature specifically dictates otherwise or a manifest injustice is created. Merchants National Bank v. Safrabank (California), 776 F.Supp. 538, 540 (D.Kan. 1991). In State v. Chapman, 15 Kan.App.2d 643 (1991), the Kansas Court of Appeals, citing State ex rel. v. Ind. Comm., 228 N.E.2d 621 (Ohio 1967), acknowledged that "[i]t is doubtful if a perfect definition of 'substantive law' or 'procedural law' could be devised. However, the authorities agree that, in general terms, substantive law is that which creates duties, rights, and obligations, while procedural or remedial law prescribes methods of enforcement of rights or obtaining redress. [Citations omitted.]" Chapman, 15 Kan.App.2d at 646. See also, Stevenson v. Topeka City Council, 245 Kan. 425, 427 (1989).

The pertinent amendment to K.S.A. 1991 Supp. 25-3601 does not create a right, nor does it affect the substantive rights of a party. The amendment does not result in a violation of section 10 of article 1 of the United States Constitution. ["To violate the constitutional proscription of ex post facto laws, a law must be (1) penal or criminal in nature; (2) retrospective in application; and (3) adverse to the offender because it may impose increased punishment." Wilson v. U.S. Parole Commission, 760 F.Supp. 183, 185 (D. Kan. 1991).] K.S.A. 1991 Supp. 25-3601, as amended, establishes in part the requirements for a petition as authorized in K.S.A. 12-1019 seeking to bring to an election a question regarding a change in the form of government for a city. The amendment adopted in L. 1992, ch. 194, § 2 is merely procedural in nature, and therefore may be applied retrospectively to petitions being circulated at the time the amendment became effective. Therefore, a petition drafted on March 31, 1992, should, prior to its circulation, be submitted to the county attorney for an opinion as to the legality of the form of the question unless such retrospective application of the requirement results in a manifest injustice.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Richard D. Smith
Assistant Attorney General