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October 22, 2014

ATTORNEY GENERAL OPINION NO. 2014- 16

Gary Anderson, Bond Counsel
Unified Government of
Wyandotte County/Kansas City, Kansas
Gilmore & Bell
2405 Grand Avenue, Suite 1100
Kansas City, MO 64108-2521

Re: Cities and Municipalities—Ordinances of Cities—Publication; Effective Date; Contingencies

Synopsis: An ordinary ordinance may include a contingency. The “day” of the contingency may be stated as a specific calendar day or the occurrence of an action or event. Cited herein: K.S.A. 2014 Supp. 12-3007.

* * *

Dear Mr. Anderson:

As Bond Counsel for the Unified Government of Wyandotte County/Kansas City, Kansas, you request our opinion regarding whether an ordinary ordinance is valid when one section of it becomes operative upon the occurrence of a future event.

When reviewing an ordinance, there is a presumption of legality.

“When reviewing the constitutionality of an ordinance, [the court] must (1) presume the ordinance is constitutional; (2) resolve all doubts in favor of validating the ordinance; (3) uphold the ordinance if there is a reasonable way to do so; and (4) strike down the ordinance only if it clearly appears to be unconstitutional.”¹

According to a leading treatise on municipal law, “[t]he rule that a legislative body may pass a law to take effect or go into operation upon the happening of a future event

¹ *City of Lincoln Center v. Farmway Co-op, Inc.*, 298 Kan. 540, 544 (2013).

within a reasonable time after its passage has been applied to municipal ordinances.”²
As the Missouri Supreme Court explained:

“In the absence of any constitutional or statutory prohibition, an ordinance enacted by a municipal corporation may provide that it shall become operative and effective only on the happening of a certain contingency. It makes no difference what the nature of the contingency is as long as it is a moral and legal one and is not opposed to public policy.”³

In Kansas, legislative acts have been upheld in cases when the contingency affects only portions of the enactment.⁴

Applying these principles, courts in other jurisdictions have upheld ordinances the effective dates of which were delayed until identified laws were enacted by the state legislature,⁵ the terms of the ordinance were ratified by a majority of the municipality’s electors⁶ or approved by the mayor,⁷ court proceedings were resolved,⁸ developers completed certain conditions,⁹ or certain funds were deposited with the municipality.¹⁰

In our opinion, Kansas law authorizes the adoption of an ordinary ordinance containing a contingency. An ordinary ordinance adopted by a city in Kansas takes effect “the day of publication unless a different and later day is stated in the ordinance or otherwise specified by statute.”¹¹ We believe the statute allows the “day” to be stated as a specific calendar day or the happening of an action or event.

Sincerely,

Derek Schmidt
Attorney General

Richard D. Smith
Assistant Attorney General

DS:AA:RDS:sb

² 5 McQuillin *Municipal Corporations* § 15.39 (3rd ed. 2013).

³ *Roeslein v. Chicago & E.I.R. Co.*, 214 S.W.2d 13, 16 (Mo. 1948). See also *City of Miami Beach v. Lansburgh*, 218 So. 2d 519, 522 (Fla. 3rd Dist. Ct. App. 1969) (quoting *Gaulden v. Kirk*, 47 So. 2d 567, 575 (Fla. 1950)); 62 C.J.S. *Municipal Corporations* § 384 (2014).

⁴ See *State v. Dumler*, 221 Kan. 386 (1977) (act established maximum speed limits for different districts; contingency applied only to districts subject to 55 mile-per-hour limitation). See also *Phillips v. Vieux*, 210 Kan. 612, 617 (1972) (“The rules for judicial interpretation of statutes are equally applicable to municipal ordinances.”).

⁵ *City of Miami Beach v. Lansburgh*, 218 So. 2d at 522-23.

⁶ *Brown v. City of Tampa*, 6 So. 2d 287, 289 (Fla. 1942).

⁷ *Rooney v. South Sioux City*, 195 N.W. 474, 475 (Neb. 1923).

⁸ *Mayor, etc. of Baltimore v. Clunet*, 23 Md. 449, 469 (1865).

⁹ *Konkel v. Common Council, City of Delafield*, 229 N.W. 2d 606, 608-09 (Wis. 1975).

¹⁰ *Heman Const. Co. v. Loevy*, 64 Mo. App. 430, 432-33 (1896).

¹¹ K.S.A. 2014 Supp. 12-3007. Appropriation ordinances are expressly excluded from the provision.