



STATE OF KANSAS

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August 6, 1976

ATTORNEY GENERAL OPINION NO. 76-241

Mr. Lyndus A. Henry
County Counselor
Office of the Board of County
Commissioners
Box 31-A
Olathe, Kansas 66061

Re: Elections--County Charter--Ballot

Synopsis: Three propositions suggested by which to submit the proposed Johnson County charter, as approved by the Johnson County Charter Commission and submitted to the Johnson County Board of County Commissioners, are each fully and fairly descriptive of the proposition to be submitted to the voters, and each of the three propositions is legally sufficient. The three-minute restriction upon a voter's occupancy of the voting machine enclosure imposed by K.S.A. 25-1333 is not unconstitutional for any reason as applied to the election upon the proposed Johnson County charter.

* * *

Dear Mr. Henry:

You inquire, first, concerning the sufficiency of propositions which have been recommended by the judicial committee of the Johnson County Charter Commission to be used for submission of the proposed charter for Johnson County, as adopted by the Johnson County Charter Commission and which is to be submitted to the board of county commissioners of that county.

The three alternative forms are as follows:

"Shall the proposed Charter for Johnson County,
Kansas be adopted, as submitted on August _____,

Mr. Lyndus A. Henry
Page Two
August 6, 1976

1976 by the Johnson County Charter Commission to the Board of County Commissioners of Johnson County, Kansas?

Shall the proposed Charter submitted by the Johnson County Charter Commission on August 9, 1976 and submitted to the Board of County Commissioners on August _____, 1976, be adopted?

Shall there be adopted the Charter submitted by the Johnson County Charter Commission to the Board of County Commissioners of Johnson County, Kansas on August _____, 1976?

The question is being submitted pursuant to K.S.A. 1975 Supp. 19-2685, as amended by ch. 133, § 3, L. 1976, which states in pertinent part thus:

"The proposed charter shall be submitted by the charter commission to the board of county commissioners and the board of county commissioners shall submit the proposed charter to the electors of the county at the general election next following submission of the final report in which all qualified electors of the county are eligible to vote. In submitting such proposed charter to the board of county commissioners, the commission may submit alternative sections or articles"

The statute does not specify what form the proposition of charter adoption shall take on the ballot. According to the writer in 29 C.J.S., *Elections*, § 170 at p. 478,

"[I]t is not customary to print in extenso on the ballot the thing to be voted for, and it is sufficient if enough is printed to identify the matter and show its character and purpose."

In *Willmeth v. Harris*, 195 Kan. 322, 403 P.2d 973 (1965), the court stated that "when a special proposition is submitted to the qualified electors for a vote, the recital on the ballot shall clearly state the substance of the proposition." 195 Kan. at 324.

Mr. Lyndus A. Henry
Page Three
August 6, 1976

England v. McCoy, 269 S.W.2d 813 (Tex.Civ.App. 1954) is directly in point here. The sufficiency of the ballot was questioned as used in a city election upon a proposed charter, where the ballot stated that question to be simply whether the "proposed charter" should be accepted or rejected. Of particular pertinence here, the court stated thus:

"There is no contention that any other charter than the one submitted to the voters had at any time been proposed to the charter commission. . . . The voters of the city in the case at bar had been furnished copies of the proposed charter as the law directs and had ample opportunity to familiarize themselves with the proposed charter and to become informed as to the merits or demerits of same before they entered the polling places. The proposed charter covered 42 pages of small print and contained 170 separate sections. Obviously the entire charter could not reasonably have been printed on the ballot, or placed in the ordinance and election notice, and very obviously any attempt to state a fair and informative short-hand rendition of the charter and its 170 sections would in itself have constituted a task fraught with difficulties which would in itself be very lengthy and would perhaps have confused the voter instead of shedding light upon the issue. The charter was submitted as a whole and we think the 3216 voters who voted on the simple issue 'Do you favor the proposed charter?' were not misled or confused in the light of the record of this case." 269 S.W.2d at 817-818.

Precisely the same considerations apply here. The proposed charter, we understand, consists of approximately 15 pages of single-spaced typewritten matter. It cannot be placed in its entirety upon the ballot. Any attempt to summarize it would be a formidable task. Any summary would of necessity omit reference to many details of the proposed charter, details which some voters might regard as of vital importance. A summary might confuse as many voters as it would assist. Moreover, it is not clear who, if anyone, is legally authorized to draft and approve such a summary in this instance. In the case of amendments to the Kansas Constitution which are submitted to the voters, the legislature may submit a proposed constitutional amendment by a title which is "generally descriptive of the contents thereof," which must be specified by the legislature. Art. 14, § 2, Kansas Constitution.

Mr. Lyndus A. Henry
Page Four
August 6, 1976

Each of the three propositions which is suggested refers specifically to an identifiable charter which is proposed for adoption. No voter, in my judgment, may reasonably claim to be misled by either of the three propositions. Each refers unambiguously and specifically to a charter adopted on a fixed date by the Johnson County Charter Commission, or else submitted on specified date to the Johnson County Board of County Commissioners. The drafting of a charter has been a subject of substantial public interest in the county to date, and the charter to be adopted and submitted to the board of county commissioners is likely to be equally an issue of public concern. There is obvious public awareness of the matter. Copies of the charter must, of course, be made available to the public, and, I am advised that the election commissioner has proposed to post two copies of the proposed charter at each voting place outside the voting booth.

In view of all the foregoing, it is my opinion that each of the proposed alternative propositions is fully and clearly descriptive of the question to be placed before the voters, and that each is legally sufficient.

Secondly, you inquire concerning K.S.A. 25-1333, which states in pertinent part thus:

"No voter shall remain within the voting machine enclosure longer than three (3) minutes, and if he shall refuse to leave it after the lapse of three (3) minutes he shall be removed by the judges."

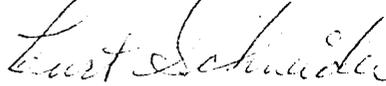
You inquire whether this restriction may become unconstitutional in its application to the election on adoption of the proposed Johnson County charter, in view of the fact that the proposed charter cannot be read within three minutes. The cited restriction is clearly, in my judgment, a reasonable regulation. In the present instance, the propositions which are proposed to appear on the ballot require but seconds to read. If the text of the entire proposed charter were to appear on the ballot, however, I believe that this restriction would be valid and enforceable. Three minutes is fully sufficient to permit voters to express their views on the questions before them. Ample provision is made by virtue of legal publications and posting of the proposition in question at the voting places to permit voters to familiarize themselves with the questions being presented for their approval or disapproval.

Lastly, you ask whether this office has any preference regarding the form of the proposition to be submitted. In my judgment, each of the

Mr. Lyndus A. Henry
Page Five
August 6, 1976

proposed propositions is equally descriptive, and I find no material difference among them upon which to base a preference for any one of them. I assume that the word "submitted" in the first line of the second proposition quoted above should be "approved." I do suggest that if the second proposition is used, that it be changed accordingly.

Yours very truly,



CURT T. SCHNEIDER
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