



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 15, 1976

ATTORNEY GENERAL OPINION NO. 76-367

Mr. David C. All
City Attorney of Benton
Suite 3, Fifth Avenue Building
Augusta, Kansas 67010

Re: Cities--Annexation--Elections

Synopsis: Under Kansas law, a city may annex property only by action of the governing body, and there is no provision for submitting the question of annexation to a legally binding election by the voters of the city. An election which is purely advisory may be called and held on a proposed annexation, although such an election is of no legal force and effect and is not binding upon the governing body.

* * *

Dear Mr. All:

You inquire whether the governing body of the City of Benton may commit to an election of the voters of the city the question whether a designated tract of land shall be annexed by the city.

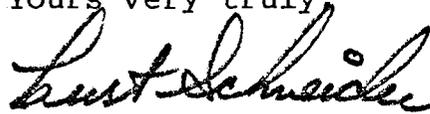
I enclose a photocopy of an opinion issued by Attorney General Vern Miller, dated May 3, 1972, addressed to Mr. Joe Levy, then city attorney for Coffeyville, concluding that in the exercise of the constitutional home rule powers of a Kansas municipality, the governing body may call and expend public funds for an advisory election.

Mr. David C. All
Page Two
December 15, 1976

However, where a decision is vested by law in the governing body itself, it may not abdicate or delegate its legal responsibility by committing such decisions to the results of an election held on a question before it. Under K.S.A. 12-519 *et seq.*, annexation may be accomplished only by legislative action of the governing body. There is no provision for delegation of that action to the voters speaking through a binding election on the question.

Thus, it is my opinion, first, that the city may call and hold an election which is advisory only on the question of annexation of a particular tract of land. However, the result of any such election is not legally binding upon the governing body, and the decision to annex still rests with the governing body itself.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure