



STATE OF KANSAS

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April 17, 1979

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ATTORNEY GENERAL OPINION NO. 79-61

The Honorable James L. Francisco
State Senator, 26th District
604 North First Street
Mulvane, Kansas 67110

Re: Cities and Municipalities--Public Recreation
and Playgrounds--Establishment of Recreation
Commission

Synopsis: Absent express statutory authority, a city governing body may not require a referendum on any matter before the governing body. Thus, the question of establishing a recreation commission by a city may not be placed on the ballot at an election, except upon presentation of a proper petition, as prescribed by K.S.A. 12-1904.

* * *

Dear Senator Francisco:

You have requested our opinion as to whether it would be lawful for a city to place the proposition of the formation of a recreation commission on the ballot at the next city election, absent the filing of a petition by an appropriate number of the city's electors, requiring such election.

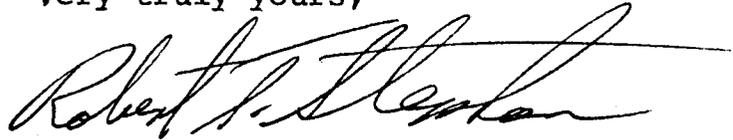
Essentially the same question was addressed in Attorney General Opinion No. 75-286, in which Attorney General Schneider determined that such proposition may be submitted only at the next election that is held more than thirty (30) days after the filing of a petition for establishing a recreation program pursuant to K.S.A. 12-1904. We concur with that opinion and enclose a copy

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thereof for your consideration. In our judgment, that opinion correctly determined that K.S.A. 12-1901 et seq. provide no authority for placing such proposition on the ballot, except where 5% of the city's qualified electors have petitioned the governing body therefor.

Absent express statutory authority, a city governing body may not require a referendum on any matter before it. Our conclusion in this regard is predicated on our reading of Article 12, Section 5 of the Kansas Constitution, which vests in cities the power to determine their local affairs and government, which determination shall be made "by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature." Thus, since we have discovered no statutory provision authorizing submission to the city's electors the question of forming a recreation commission (except upon presentation of a proper petition by the electors, as previously noted), a city governing body cannot exercise its home rule powers to provide for a referendum on this proposition.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk
Enclosure