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May 24, 1979

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ATTORNEY GENERAL OPINION NO. 79-92

Mr. Michael P. McKone
City Attorney
P. O. Box 287
Municipal Building
Junction City, Kansas 66441

Re: Cities of the First Class--Commission Form of
Government--Filling Vacancies in Board of
Commissioners

Synopsis: The provisions of K.S.A. 1978 Supp. 13-1806 require that a vacancy occurring in the office of city commissioner be filled by the remaining commissioners selecting a successor to serve until the next city general election. Even though said statute is silent as to the election procedure to be followed where such vacancy occurs during a term of office that otherwise would not have expired at such election, the apparent underlying legislative intent is that, at said election, the qualified electors of the city elect a successor to fill the balance of the unexpired term.

* * *

Dear Mr. McKone:

In your letter of January 11, 1979, you requested our opinion regarding the application of K.S.A. 1978 Supp. 13-1806 to the 1979 city elections for the City of Junction City. Because of your immediate need for a response, it was provided verbally, and this opinion merely reduces such response to writing.

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The situation prompting your request was created initially by the resignation of a member of Junction City's City Commission. Such member's term of office otherwise would have expired in 1981. Pursuant to K.S.A. 1978 Supp. 13-1806, the remaining commissioners selected a successor to fill the vacancy by electing an "eligible person to serve in such capacity until the next city general election." This statute is silent, however, as to the procedure at the next city general election where the vacancy so filled was in a term of office that otherwise did not expire at such election. The statute does not specify whether a candidate for this position at such election is seeking election for a full term of office or for the unexpired portion of the term only. It is on this issue you requested our opinion.

You have advised us that Junction City operates under the city manager-commission form of government and that the commissioners are elected pursuant to K.S.A. 12-1005k. The election scheme prescribed by this statute is that at each city general election three of the five commissioners are elected--two for terms of four years and one for a two-year term. The term each commissioner serves is determined by the results of the election, with the "candidates receiving the largest and second largest number of votes" being elected for four-year terms "and the candidate receiving the third largest number of votes . . . [being] elected for the two-year term."

You have suggested that one possible interpretation of the combined provisions of K.S.A. 12-1005k and K.S.A. 1978 Supp. 13-1806 is that no person would be required to declare his or her candidacy for the unexpired portion of the term wherein a vacancy was created and subsequently filled until the next city general election. Rather, the general election would be conducted so as to elect four commissioners at large. We cannot accept such interpretation.

Admittedly, as you have recognized, K.S.A. 1978 Supp. 13-1806 is confusing, and it is ambiguous to the extent that it has created a hiatus in the election procedure. Undoubtedly, such ambiguity, resulting from the multiplicity of possible constructions of this statute, necessitates the ascertainment of legislative intent to determine the meaning of K.S.A. 1978 Supp. 13-1806. United Parcel Service, Inc. v. Arnold, 218 Kan. 102, 107 (1975); State v. V.F.W. Post No. 3722, 215 Kan. 693, 697 (1974). However, we cannot discern a legislative intent underlying that statute which could require a corresponding interpretive modification of K.S.A. 12-1005k. That is, if

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K.S.A. 1978 Supp. 13-1806 is construed as requiring an additional "at large" position to be filled at the general election, there also is required a corresponding amendment of K.S.A. 12-1005k by implication, to accommodate the election of four instead of three commissioners.

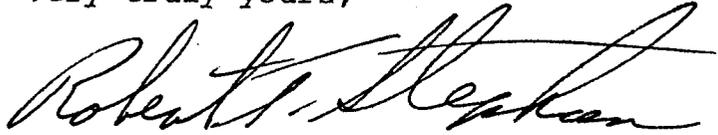
We believe such construction to be unwarranted, since it involves a tenuous application of rules of statutory construction. To interpret K.S.A. 1978 Supp. 13-1806 in a way which amends K.S.A. 12-1005k by implication achieves a result that is never favored in the law. Tague v. Hudspeth, Warden, et al., 171 Kan. 225, 229 (1951). See, also, In Re Murray, 88 Kan. 855, 857 (1913); Wolff v. Rife, 140 Kan. 584, 587 (1934). The terms of K.S.A. 12-1005k are plain and unambiguous, and in our judgment the implied modification thereof resulting from the suggested interpretation of K.S.A. 1978 Supp. 13-1806 is inappropriate. We cannot glean any legislative intent requiring such effect.

Instead, we find that the most plausible interpretation of K.S.A. 1978 Supp. 13-1806 is that, when a vacancy occurs in the office of city commissioner and the term of such office would not otherwise expire at the next city general election, the remaining commissioners are to appoint a successor to fill the vacancy until said election, at which time a successor will be elected to fill the unexpired term. Such interpretation is based on our perception of the legislative intent underlying this statute, i.e., to provide an orderly means for filling vacancies in city commissions. By limiting the term of service of a successor elected by the remaining commissioners to the time of the next city election, we believe the legislature has manifested an intent that the commissioners should not have the power to fill a vacancy for an unexpired term of office extending beyond the next city election, and that the qualified electors of the city should have the power to select a successor to fill the balance of the unexpired term.

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While we have reached this conclusion by extrapolation of a very confusing statute that reflects legislative inattention, it is our opinion that the intent we have attributed to the legislature in enacting this statute is reasonable, and it supports our interpretation over the other possible constructions of this statute.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk

cc: William Frost
Manhattan City Attorney