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March 11, 1980

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ATTORNEY GENERAL OPINION NO. 80-68

Mr. I. B. Wilcox
City Attorney
City Hall
Holton, Kansas 66436

Re: Cities and Municipalities--Public Recreation
and Playgrounds--Petitions for and Elections
on Establishing Recreation Systems

Synopsis: Nothing in the presidential preference primary election statutes (K.S.A. 1979 Supp. 25-4501 et seq.) precludes holding an election on the question of establishing a supervised recreation system pursuant to K.S.A. 12-1901 et seq. at the time of the presidential preference primary. However, as determined in Attorney General Opinion No. 75-286, K.S.A. 12-1904 does not authorize the calling and holding of an election on the question of establishing such recreation system in a city or school district, except in conjunction with the next regular or special election of such city or school district held more than 30 days after the filing of a petition for the establishment of such recreation system.

Similarly, K.S.A. 12-1905 does not provide separate authority for calling and holding an election on the question of establishing a recreation system jointly by a city and school district, and such proposition can be submitted to the electors only at the time specified in K.S.A. 12-1904.

Therefore, unless there is to be held at the time of the presidential preference primary a special election of U.S.D. No. 336, which is to be called and held under other lawful authority, there cannot be called and held a special election at that time on the question of establishing a supervised recreation system jointly by U.S.D. No. 336 and the City of Holton.

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Dear Mr. Wilcox:

You have requested an opinion of this office as to whether a special election on the proposition of establishing a supervised recreation system jointly by the City of Holton and U.S.D. No. 336 may be held at the time of the presidential preference primary election.

In Attorney General Opinion No. 80-34, we considered the propriety of holding certain elections in conjunction with the presidential preference primary election, which is provided for by K.S.A. 1979 Supp. 25-4501 et seq. In that opinion, we determined that, while nothing in these statutes can be construed as granting the authority for the holding of any particular election in conjunction with the presidential preference primary, nothing therein precludes the holding of any other election at the time of the presidential preference primary, where such other election is required or authorized by another law to be held at such time. Our conclusion in this regard was predicated on the provisions of K.S.A. 1979 Supp. 25-4508, which provides in pertinent part:

"In the event any election is held on the same day as the presidential preference primary election the direct costs solely attributable thereto shall be paid by the county and the subdivision of government responsible therefor shall reimburse the county."

Thus, in our judgment, the statutes providing for the presidential preference primary do not present any impediment to concurrently holding an election on the proposition of establishing a supervised recreation system, and the question resolves into a consideration of whether an election on such proposition is required or authorized by law to be held at such time.

The statutory provisions governing the establishment of supervised recreation systems are found at K.S.A. 12-1901 et seq. In your letter you have noted that there is being prepared a petition for the establishment of a joint recreation system by the City of Holton and U.S.D. No. 336, and you have concluded that, pursuant to K.S.A. 12-1904, it will be necessary to vote on the proposition presented by such petition at a special election of the school district, since "[t]here will not be a regular election of the School District in 1980." However, even though that conclusion may provide a correct selection of alternatives, it leaves unanswered the question of whether a special election on this proposition may be held at the time of the presidential preference primary.

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Initially, it is to be noted that K.S.A. 12-1904 prescribes the procedure to be followed where a petition is filed only with the city or the school district for the establishment of a supervised recreation system in that particular governmental unit. K.S.A. 12-1905, however, prescribes the procedure to be followed where the city and school district are petitioned jointly.

Moreover, we note it was determined in Attorney General Opinion No. 75-286 that "K.S.A. 12-1904 constitutes no authority for the calling of a special election for the purpose of submitting the question whether a supervised recreation system shall be established under K.S.A. 12-1901 et seq." That conclusion was predicated on an analysis of the language of 12-1904:

"The statute does not in and of itself appear to authorize the calling of an election. Rather, it prescribes the elections at which the question may be submitted, i.e., 'the next regular or special election of the city or school district to be held more than thirty (30) days after the filing of such petition.'"

By contrast, the prior opinion also noted that K.S.A. [now 1979 Supp.] 12-1908(b)

"provides that when an additional levy of one mill is deemed necessary, a resolution authorizing same shall be published, and a petition in opposition thereto may be filed. If a sufficient and valid petition is filed, the question of levying the additional tax shall be submitted at 'the next regular city election or at a special election called for the purpose.' Thus, K.S.A. [1979 Supp.] 12-1908 authorizes the calling of an election on the question of the levy, whereas, K.S.A. 12-1904 only prescribes the elections at which the question of establishment of a recreation system may be submitted, and does not, in and of itself, authorize the calling of a special election on the question." (Emphasis added.)

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We concur with the conclusion reached in Attorney General Opinion No. 75-286. Thus, it is our opinion that the question presented by a petition filed under K.S.A. 12-1904 may be submitted by the city or school district governing body only at the next regular election of the city or school district or at the next special election of the city or school district which is lawfully called under separate authority therefor, and either of such elections must occur "more than thirty (30) days after the filing of such petition."

More importantly to the question you have presented for our consideration, we believe that the conclusion we have reached as to the provisions of K.S.A. 12-1904 is equally applicable to K.S.A. 12-1905. We find nothing in the latter statute which constitutes authority for calling a special election. It provides:

"The petition mentioned in K.S.A. 12-1904 may be directed to the governing bodies of said city and school district jointly, and in such case it may be filed with the clerk of either the city or school district. Upon receipt of the petition, the clerk shall set a day not less than five nor more than ten days thereafter for the joint meeting of the two governing bodies for the consideration of the petition and if the petition be found sufficient the proposition shall be submitted to the electors within the corporate limits of the city or school district, whichever is the larger, the same to be submitted as provided by law for such city or school district. Notice of the receipt of the petition and the date and place of the joint meeting shall be given immediately by the clerk to the executive officer of the city and school district by registered mail."

As can be seen from the foregoing, K.S.A. 12-1905 provides only that when a petition for a joint recreation system has been filed, and it has been found sufficient by the city and school district governing bodies meeting jointly, it should be submitted to the electors "as provided by law for such city or school district." We cannot construe this language as providing separate and distinct authority for the calling and holding of a special election on this proposition. Rather, it merely governs the manner of submitting the proposition to the electors of the appropriate governmental unit.

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In this instance, the election would be held within the school district, as required by K.S.A. 12-1905, since U.S.D. No. 336 encompasses a larger territory than does the City of Holton. Thus, the requirement that the proposition be "submitted as provided by law for such . . . school district" has reference to those statutory provisions governing the submission of propositions to the electors of a school district at "question submitted" elections. These provisions are generally contained in Article 20 of Chapter 25 of Kansas Statutes Annotated. For example, K.S.A. 25-2010 provides that the county election officer shall conduct such elections; K.S.A. 25-2015 requires a separate ballot for questions submitted; and K.S.A. 1979 Supp. 25-2018(f) prescribes the notice requirements for a question submitted election of a school district.

School districts possess only such powers as are conferred upon them by statute, either expressly or by clear implication. Wichita Public Schools Employees Union v. Smith, 194 Kan. 2, 4, 5 (1964). It is with this rule in mind that we have concluded that K.S.A. 12-1905 cannot be construed as providing authority to call and hold a special election. Thus, since we are unaware of any other statute which would provide such authority, we must conclude that the requirement of 12-1905 that the proposition be submitted to the electors can be effectuated only in conjunction with 12-1904. We believe such conclusion appropriate because of the legislative intent underlying these two statutes.

The legislative history of K.S.A. 12-1904 and 12-1905 reveals that they were successive sections of a 1945 enactment (L. 1945, ch. 108, §§4, 5), and except for the addition of the introductory language of 12-1904 in 1963 (L. 1963, ch. 88, §1), these statutes have remained unchanged since their enactment. When they are construed together as statutes in pari materia, we find a legislative intent that the proposition of establishing a joint recreation system is to be submitted at the times specified in 12-1904, i.e., "at the next regular or special election of the . . . school district" that is held more than thirty days from the date the petition is filed.

The only purposes of 12-1905 are to provide for the filing of a petition requesting the establishment of a joint recreation system, to prescribe a procedure for holding a joint meeting of the city and school district governing bodies to consider the sufficiency of such petition and to require submission of such proposition to the appropriate constituency. With respect to the latter, if the requirement that the proposition be

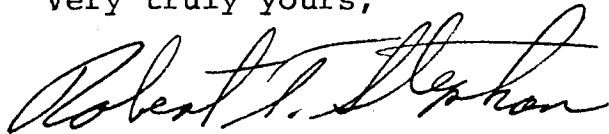
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submitted to the electors of the school district in the manner "provided by law for such . . . school district" is to have any meaning, it must be construed as a reference to the requirements of 12-1904. In our judgment, this is the only construction of this statute which will give effect and meaning to all of its provisions, since neither 12-1905 itself nor any other statutory provision authorizes calling an election for the purpose of submitting the proposition to the electors. Further, we have discerned no legislative intent underlying these statutes that an election on the question of establishing a joint recreation system by a city and school district be afforded any different treatment than an election on the question of establishing a recreation system in a city or school district.

Therefore, it is our opinion that neither K.S.A. 12-1904 nor K.S.A. 12-1905 authorizes the calling and holding of an election separate and apart from the next regular or special city or school election which is lawfully called under separate authority therefor. Irrespective of whether the proposition is for the establishment of a supervised recreation system by a city or school district or by a city and school district jointly, it can be submitted only in conjunction with such other regular or special city or school district election, as the case may be.

In answer to your specific question, then, unless there is to be held at the time of the presidential preference primary election a special election of U.S.D. No. 336, which is to be called and held under other lawful authority, we find no authority for calling and holding a special election at that time on the question of establishing a supervised recreation system jointly by U.S.D. No. 336 and the City of Holton.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General