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December 4, 1980

ATTORNEY GENERAL OPINION NO. 80- 255

The Honorable Bill Morris
State Senator, 27th District
Kansas Senate Chamber
Capitol Building
Topeka, Kansas 66612

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

Synopsis: As determined in Attorney General Opinion Nos. 75-286 and 80-68, K.S.A. 12-1904 does not authorize the calling and holding of an election on the question of establishing a joint recreation system of a city and 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. Where such election is called and held in conjunction with the state general election, and not in conjunction with a regular or special election of the city or school district, such election is void. Petitions submitted pursuant to K.S.A. 12-1904 continue to be valid and require the city and school district to resolve to hold an election on the question of a joint recreation system at the next regular or special election of the city or school district. Cited herein: K.S.A. 12-1901, 12-1904.

* * *

Dear Senator Morris:

As State Senator for the 27th District, which includes the western portion of Wichita and other portions of Sedgwick County, you have requested the opinion of this office concerning an election which

was held in Unified School District No. 266 (Maize) on November 4, 1980. Specifically, you inform us that voters in the Westlink region of Wichita were required to vote on a question regarding a joint recreation system at a location different from that used in the general election. Questions have also been raised concerning the adequacy of the notice given prior to the vote.

U.S.D. No. 266, together with the City of Maize, had previously passed a joint resolution calling for a special election on the question of whether a joint recreation system should be established pursuant to K.S.A. 12-1901 et seq. This election was mandated by a petition filed pursuant to K.S.A. 12-1904. The petitions were initially filed in March, but due to various circumstances not relevant here the resolutions of the city and school district were not passed until June, with the question not appearing on the ballot until November, when a vote was held in conjunction with the general election.

This fact, that the school district election was held in conjunction with the general election and not in connection with a regular or special election of the school district, preempts consideration of your inquiries by raising grave doubts about the legality of the election. In Attorney General Opinion No. 75-286, the Kansas Attorney General concluded that the statute which prescribes the timing of the election, K.S.A. 12-1904, does not of itself authorize the calling of a special election, meaning that such question may be submitted only at the next regular or special election of the city or school district. A second opinion of even more recent vintage is Attorney General Opinion No. 80-68, which, in reaffirming the above-cited opinion, clarified the import of the result, i.e., the question may be submitted only in conjunction with the next regular election of the city or school district, or with the next special election which is called by the governing body of the city or school district under separate statutory authority. As the presidential preference primary set for April 1, 1980, did not fit either of these categories, the opinion found that a vote on the recreation system issue could not be held at that time. Copies of both these opinions are enclosed.

We reaffirm the conclusions reached by these opinions, and find them to be dispositive of the question here, for insofar as there exists no statutory authority to conduct a vote on this issue in conjunction with the general election, any result reached therein must be without legal effect. See, e.g., State ex rel., v. Kerns, 210 Kan. 579, 585 (1972), State ex rel., v. Tipton, 166 Kan. 145, 150 (1948). Although no legislative history so indicates, it may be surmised that the segregation of elections on this issue with only those concerning the city or school district was intended to avoid the type of thing

which occurred here, namely the need to vote at two different polling places. School districts such as U.S.D. No. 266 are drawn with no regard for the kind of precinct, ward and township divisions which characterize other governmental units, and the simultaneous holding of elections in two such different units could frustrate the expression of the popular will. However, as the result reached above is dispositive of the issue, we decline an opinion whether the polling places were adequate or as to the validity of the notice provided.

While the continuing validity of the petitions was not a part of your query, we note that nothing in the statutes dealing with the establishment of such recreation systems would appear to void or otherwise negate the continuing effect of such petitions. Thus, the petitions require the city and school district to act by resolution and submit the question to the voters as required by K.S.A. 12-1901 et seq.

In conclusion, the vote on the question of whether to establish a joint recreation system was held prematurely, and therefore cannot satisfy the requirements of K.S.A. 12-1904. A new election must be held at the time which is specified by statute, as only such an election will complete the legal requirements for the establishment of the system.

Very truly yours,

Robert T. Stephan

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RTS:BJS:JSS:phf
Enclosures