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March 5, 1981

ATTORNEY GENERAL OPINION NO. 81-63

The Honorable Kenneth Francisco  
Representative, Ninetieth District  
Room 281-W, State Capitol  
Topeka, Kansas 66612

Re: Elections -- Voting Places -- Designation of Such  
by Election Commissioner

Synopsis: In the role of county election officer, an election commissioner or county clerk is authorized to determine the area to be served by each voting place at every election, pursuant to K.S.A. 1980 Supp. 25-2701. The simultaneous holding of a school district election with a county election may, in the absence of special arrangements, result in electors having to vote in two different places. While no law proscribes this result, statutory provisions exist which allow election officials to consider the convenience of the voters and to take steps to avoid confusion or delay which could reduce the turn-out. Additionally, in the event of a conflict between election officials of two counties that arises in relation to territory of a school district which is outside of its "home county," the Secretary of State is authorized by K.S.A. 25-2011 to make a conclusive determination. Cited herein: K.S.A. 25-2010, 25-2011, K.S.A. 1980 Supp. 25-2506, 25-2701, 25-2702, K.S.A. 25-2703.

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Dear Representative Francisco:

As Representative for the Ninetieth Kansas House District, which includes portions of Sedgwick County, you request our opinion on a matter involving the sites of voting places in the upcoming April elections. In addition to the usual city and school district elections, voters in Sedgwick County will, by virtue of 1981 House Bill No. 2095, also be voting on whether to expand from 3 to 5 county commissioners. It is the timing of this special election, which is to coincide with the regular elections mentioned above, which has prompted your inquiry.

Essentially, you are concerned that voters may be required to cast ballots for the county-wide question at one location, and for school district candidates and questions at another. This could occur, for example, if voters were required to vote at their precinct or township site for the former, and at their regular school district site for the latter. Additionally, even if the sites were combined, a problem could still exist for those who would ordinarily vote in their school district elections at a site in another county, where the special Sedgwick County question would not be on the ballot.

The problem of dual voting places is not a new one, and has been recognized in numerous prior opinions of this office. The opinions written are uniform in holding that in the absence of any requirement that electors be able to cast all of their votes at one location, discretion for the location of voting places lies in the hands of the county election officer (K.S.A. 25-2703), as well as designating such officer as the person who determines the "area" each voting place will serve. K.S.A. 1980 Supp. 25-2701. The term "area," it should be noted, is defined at K.S.A. 1980 Supp. 25-2506(c) as meaning the "territory served by one voting place" and which may include "part or all of one or more precincts or voting districts." In view of the language of these statutes, prior Attorneys General have concluded, and we would reaffirm, that the decision on the location of voting places rests with the county election officers, be they election commissioners or county clerks. Accordingly, the fact that county election officers may establish voting areas and locate voting places therein in such a way that county residents have to go to two distinct voting places to vote for different governmental units, is not contrary to Kansas statutes.

Of course, it is to be expected that a county election officer will attempt to minimize the confusion inherent in any election by attempting, insofar as possible, to have one voting place serve dual purposes,

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i.e., both school district and city (or, in this case, county) ballots would be available there. This is especially important in the case of school district elections, for, as was recognized in a recent opinion of this office, school district boundaries are drawn with no regard for the kind of precinct, ward and township divisions which characterize other governmental units. (See Attorney General Opinion No. 80-255.) Perhaps in recognition of this fact, K.S.A. 25-2011 provides that "primary and general school elections shall be conducted jointly with other elections held at the same time insofar as is practicable." In addition, an earlier opinion of this office (issued on March 7, 1969, to Senator Norman Gaar) offered suggestions as to how one voting place could be used for multiple elections. With the caveat that the ultimate disposition still would rest with the county election officer, we attach a copy of this opinion for your information, in that the suggestions appear to be both reasonable and practicable.

As to the situation which could arise in which residents of the county would be forced to vote on their school district races and questions in another county, the statutes give a qualified answer. It is clear that, if usual procedures are followed, the polling places for a district spanning two or more counties are determined by the county election officer of the "home county" of the school district. (K.S.A. 25-2010.) In the case of a district where the home county is, for example, Sumner, but which contains territory in Sedgwick County, K.S.A. 25-2011 would seem to apply. Therein, it is stated that:

"Any election officer having responsibility for any other such election shall cooperate with the election officer of the school election, and if a difference arises which cannot be agreed upon, determination of the difference shall be made by the county election officer unless such difference involves a question the determination of which is provided by law to be made by the secretary of state. In addition to other differences which the secretary of state may resolve, he shall determine any matters which cannot be agreed upon locally by county election officers and which occur in relation to territory of a school district which is outside of its home county. Any determination of a difference made by the officer responsible under this section shall be conclusive." (Emphasis added.)

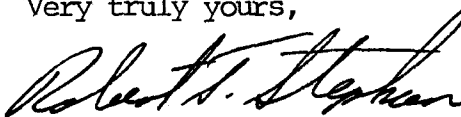
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It is also clear from K.S.A. 1980 Supp. 25-2702 that, while Sedgwick County residents cannot vote for county questions in any "voting area" other than the one in which they reside, an "area" can include one or more voting districts and hence is not limited by county lines.

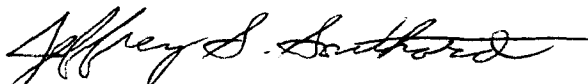
From the above, it appears that the Sedgwick County election commissioner could discuss the placement of voting places with the county election officials in those neighboring counties which contain school districts which overlap into Sedgwick County. In the absence of an agreement by which Sedgwick County residents could be given both ballots at one location, the Secretary of State could intervene with a conclusive determination. While it is to be hoped that agreements can be worked out, in our opinion the Secretary of State does possess the authority to rectify any unresolved conflicts arising from the type of multi-governmental elections described above.

In conclusion, in the role of county election officer, an election commissioner or county clerk is authorized to determine the area to be served by each voting place at every election, pursuant to K.S.A. 1980 Supp. 25-2701. The simultaneous holding of a school district election with a county election may, in the absence of special arrangements, result in electors having to vote in two different places. While no law proscribes this result, statutory provisions exist which allow election officials to consider the convenience of the voters and to take steps to avoid confusion or delay which could reduce the turn-out. Additionally, in the event of a conflict between election officials of two counties, which arises in relation to territory of a school district which is outside of its "home county," the Secretary of State is authorized by K.S.A. 25-2011 to make a conclusive determination.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



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Assistant Attorney General

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