



STATE OF KANSAS

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April 28, 1982

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ATTORNEY GENERAL OPINION NO. 82- 98

Marlin Johanning
City Attorney
City Hall
515 Kansas Avenue
Atchison, Kansas 66002

Re: Cities and Municipalities--Ordinances of Cities--
Applicability of Initiative and Referendum Ordinances
to Placement of Traffic Control Devices

Synopsis: A proposed ordinance concerning the use of traffic control devices at designated intersections within the territorial limits of a city is an administrative ordinance, and is not a proper subject of an initiative petition under the provisions of K.S.A. 1981 Supp. 12-3013. Cited herein: K.S.A. 8-1401, 8-1424, 8-1432, 8-2004, 8-2005, and K.S.A. 1981 Supp. 12-3013.

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Dear Mr. Johanning:

You request our opinion as to whether a proposed ordinance concerning the placing of traffic control devices at designated intersections of city streets is a proper subject of an initiative petition.

A determination of your inquiry necessarily involves consideration of the concepts of initiative and referendum, which are codified in K.S.A. 1981 Supp. 12-3013. This statute "provides a procedure whereby a city's electors may initiate by petition any proposed ordinance 'except an administrative ordinance' (and except certain other types of ordinances not relevant here)." City of Lawrence v. McArdle, 214 Kan. 862, 863 (1974). The exception for administrative

Marlin Johanning
Page Two

ordinances leaves with the electors the power to initiate ordinances that are legislative in character.

The legislative-administrative dichotomy is perhaps the strongest of the several tests applied by the Kansas Supreme Court in determining the appropriateness of initiative. It should be noted that the Court has taken a conservative approach in applying these tests, which fact was specifically recognized in McArdle, supra at 870. To more fully understand the Court's approach to this issue, a review of its pertinent decisions is appropriate.

In Rauh v. City of Hutchinson, 223 Kan. 514 (1978), the Court reaffirmed the principles set forth in McArdle, quoting at length from the syllabus of the prior decision, including:

"1. The operation of the initiative and referendum statute is to be confined with a considerable degree of strictness to measures which are quite clearly and fully legislative and not principally executive or administrative.

"2. One crucial test for determining that an ordinance is administrative or legislative is whether the ordinance is one making a new law or one executing a law already in existence. Permanency and generality of application are two additional key features of a legislative ordinance.

"3. Acts constituting a declaration of public purpose and making provisions for ways and means of its accomplishment may be generally classified as calling for the exercise of legislative power. Acts dealing with only a small segment of an overall policy question are generally of an administrative character." 223 Kan. at 519.

Further insight is gained from Rauh, where the Court quotes with approval section 16.55 of 5 McQuillin, Municipal Corporations (3rd Ed.), p. 212, the pertinent portion of which reads as follows:

"It has been said, however, that if the subject is one of statewide concern in which the legislature has delegated decision-making

power, not to the local electors, but to the local council or board as the state's designated agent for local implementation of state policy, the action receives an 'administrative' characterization, hence is outside the scope of the initiative and referendum.'" (Emphasis added by court.) 223 Kan. at 519.

The last-quoted rule as to the scope of the initiative and referendum statute is pertinent in considering your inquiry. The regulation of highway traffic is a matter of statewide concern, a fact which has been recognized in this state by adoption of the Uniform Act Regulating Traffic on Highways, K.S.A. 8-1401 et seq. A part of that act, K.S.A. 8-2005, concerns local traffic-control devices, and provides as follows:

"(a) Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this act or local traffic ordinances or to regulate, warn or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

"(b) Local authorities in exercising those functions referred to in subsection (a) shall be subject to the direction and control of the secretary of transportation with respect to highways and streets designated by the secretary as connecting links in the state highway system."

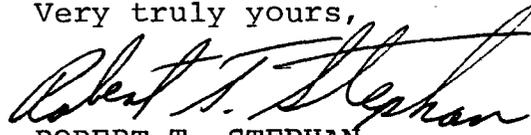
The terms "local authorities" and "highways," as used in K.S.A. 8-2005, are defined in K.S.A. 8-1432 and 8-1424.

In accordance with the above-quoted provisions of K.S.A. 8-2005, it is our opinion that the placing of traffic control devices within the territorial limits of a city is a matter which has been delegated [subject to the control and jurisdiction of the secretary of transportation as prescribed in K.S.A. 8-2004(b) and 8-2005(b)] to the city governing body. Further, in our judgment, a proposed ordinance concerning the use of such devices

Marlin Johanning
Page Four

is an administrative ordinance, and is not a proper subject of an initiative petition under the provisions of K.S.A. 1981 Supp. 12-3013.

Very truly yours,



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RTS:BJS:TRH:jm