



STATE OF KANSAS

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September 20, 1982

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ATTORNEY GENERAL OPINION NO. 82- 211

I. H. McMahon
Mayor
425 15th Street
Osawatomie, Kansas 66064

Re: Cities of the Second Class--General Provisions--
Meetings of Council

Synopsis: Where a special meeting of the council of a city of the second class is held, at which the mayor and all members of the council are present and participate in all matters coming before the council for consideration, the preliminary requirements of K.S.A. 14-111, relating to written request and formal call for such meeting, are waived, and the special meeting, and actions taken thereat, are legal despite the failure to observe such preliminary requirements.

In the absence of a charter ordinance providing otherwise, the mayor of a council city is not authorized to veto motions or resolutions adopted by a majority of the council members.

A memorandum of agreement between a recognized employee organization and a city subject to the provisions of the Kansas Public Employer-Employee Relations Act must be implemented by the adoption of an ordinance by the city governing body. Cited herein: K.S.A. 12-3003, 14-111, 15-106, 75-4321, 75-4322, 75-4331, 75-4337.

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Dear Mr. McMahon:

You request our opinion as to several questions arising out of a special meeting of the Osawatomie city council. You advise that the meeting in question was arranged by the city manager

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for the purpose of reviewing the 1981 city audit report, but that none of the formalities of K.S.A. 14-111, relating to written request for and call of a special meeting, were observed. You state that all city council members and the mayor were present at said meeting, and that the council, in addition to reviewing the audit report, approved (by a 5-3 vote) a motion to present a settlement proposal, relating to negotiations between the city and the International Brotherhood of Electrical Workers (IBEW), to union representatives. The questions raised by your inquiry are as follows:

1. In the absence of compliance with the preliminary requirements of K.S.A. 14-111, as to written request and formal call of a special meeting, was the special meeting, attended by all council members and the mayor, and the action taken relative to the IBEW settlement, legal and valid?
2. Do you, as mayor, have the power to veto the action taken by the council (at the special meeting) in relation to the IBEW contract?
3. Is it necessary for the city to adopt an ordinance in order to "legalize" the agreement with the IBEW?

In response to the first question, it should be noted that K.S.A. 14-111 relates to regular and special meetings of the council in cities of the second class, and provides as follows:

"Regular meetings of the council shall be held at such times, not less than once in each month, as shall be prescribed by ordinance. Special meetings may be called by the mayor or acting mayor, on the written request of any three members of the council, specifying the object and purpose of such meeting, which request shall be read at the meeting, and entered at length on the journal. In all cases, it shall require a majority of the councilmen elect to constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as the council by ordinance may have previously prescribed."

In Bluff City v. Western Light & Power Corp., 137 Kan. 169 (1933), the Kansas Supreme Court construed the provisions of K.S.A. 15-106, which statute relates to special meetings in cities of the third class and is identical to K.S.A. 14-111 (disregarding minor differences in punctuation), in the following manner:

"Where a special meeting of the council of a city of the third class is held, at which the mayor, the clerk and all the members of the council are present and participate in all the matters coming before the council for consideration, the specific preliminary requirements of R. S. 15-106 as to written request and formal call for such meeting will be deemed as having been waived, and the special meeting will not be illegal nor the ordinances passed thereat invalid on account of the omission of such preliminary requirements." Syllabus No. 4 (Emphasis added.)

In our judgment, the above-quoted rule, which was quoted with approval in West v. Unified School District, 204 Kan. 29, 36 (1969), is dispositive of the first question. The preliminary requirements of K.S.A. 14-111 were, in our opinion, waived by the presence of the mayor and all council members, and the action taken relative to the IBEW settlement does not appear to be illegal or invalid as a result of these procedural deficiencies.

In regard to your second question, relating to the mayoral veto power, K.S.A. 12-3003 provides, in part, as follows:

"The mayor of a council city shall have the power to sign or veto any ordinance passed by the council: Provided, That ordinances on which the mayor casts the deciding vote and appropriation ordinances the mayor shall have no veto and he or she shall sign such ordinances if present at the meeting, and if the mayor refuses or neglects to sign or be not present at the meeting they shall take effect without his or her signature."

As is readily apparent, the above-quoted statute gives the mayor of a council city the power, with certain exceptions, to veto ordinances. In the absence of a charter ordinance providing otherwise, it is our opinion that the mayor of a council city is not authorized to veto motions or resolutions adopted by a majority of the council members.

Addressing your third question, it should be noted that state statutes do not distinguish an ordinance from a resolution or declare when it is proper to use one or the other. Benson v. City of DeSoto, 212 Kan. 415, 420 (1973). However, the Kansas Supreme Court has distinguished between the two modes of action, and in Benson, supra, the Court quoted the following excerpt from McQuillin, Municipal Corporations § 15.02 (3rd ed.):

"A 'resolution' is not an 'ordinance,' and there is a distinction between the two terms as they are commonly used in charters. A resolution ordinarily denotes something less solemn or formal than, or not rising to the dignity of, an ordinance. The term 'ordinance' means something more than a mere verbal motion or resolution, adopted, subsequently reduced to writing, and entered on the minutes and made a part of the record of the acting body. It must be invested, not necessarily literally, but substantially, with the formalities, solemnities, and characteristics of an ordinance, as distinguished from a simple motion or resolution.

"A resolution in effect encompasses all actions of the municipal body other than ordinances. Whether the municipal body should do a particular thing by resolution or ordinance depends upon the forms to be observed in doing the thing and upon the proper construction of the charter. In this connection it may be observed that a resolution deals with matters of a special or temporary character; an ordinance prescribes some permanent rule of conduct or government, to continue in force until the ordinance is repealed. An ordinance is distinctively a legislative act; a resolution, generally speaking, is simply an expression of opinion or mind concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the municipality. Thus, it may be stated broadly that all acts that are done by a municipal corporation in its ministerial capacity and for temporary a purpose may be put in the form of resolutions, and that matters upon which the municipal corporation desires to legislate must be put in the form of ordinances. It may further be stated broadly that charters contemplate that all legislation creating liability or affecting in any important or material manner the people of the municipality should be enacted by ordinances, whether the city is acting in its governmental or private capacity. Whenever the controlling law directs the legislative body to do a particular thing in a certain manner the thing must be done in that manner." (Emphasis added.) Id. at 420-421

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The underscored portion of the above quotation is particularly pertinent in considering your third question. We are advised that IBEW Local 304 has been formally recognized by the Kansas Public Employees Relations Board as an employee organization, and it is, therefore, apparent that the city of Osawatomie has elected to be covered by the Kansas Public Employer-Employee Relations Act, K.S.A. 75-4321 to 75-4337. See K.S.A. 75-4321(c). A portion of that act, K.S.A. 75-4331, concerns the "memorandum of agreement," which is the basic bargaining tool, and provides, in part, as follows:

"If a settlement is reached with an employee organization and the governing body or authority, the governing body or authority shall implement the settlement in the form of a law, ordinance, resolution, executive order, rule or regulation."
(Emphasis added.)

While the above-quoted statute provides for the implementation of a settlement in six different forms, it is apparent that the form to be utilized depends upon the type of governmental subdivision which is entering into the settlement. The Kansas Public Employer-Employee Relations Act applies to a number of different governmental subdivisions, as is reflected in the following definition of "public employer," as set forth in K.S.A. 75-4322:

"As used in this act:

. . . .

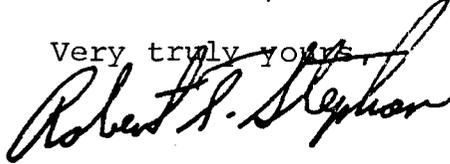
"(f) 'Public agency' or 'public employer' means every governmental subdivision, including any county, township, city, school district, special district, board, commission, or instrumentality or other similar unit whose governing body exercises similar governmental powers, and the state of Kansas and its state agencies." K.S.A. 75-4322.

In our judgment, a settlement between a city and an employee organization must, under K.S.A. 75-4331, be implemented in the form of an ordinance. If, on the other hand, a school district or county were entering into a settlement, it should be implemented in a form of a resolution. Similarly, settlements involving the state of Kansas could take the form of a law, executive order, rule or regulation.

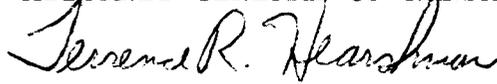
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In accordance with the above, it is our opinion that the city of Osawatomie must adopt an ordinance in order to implement the settlement which was negotiated with IBEW, Local 304.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:hle