



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 108

The Honorable Billy Q. McCray
State Senator, Twenty-Ninth District
1532 North Ash
Wichita, Kansas 67214

Re: Cities and Municipalities -- City-Manager Plan --
Adoption of Council-City Manager Plan by First
Class City

Synopsis: Pursuant to L. 1947, Ch. 150 (now codified at K.S.A. 12-1029 et seq.), a city of the first class may adopt the council-city manager form of government at a primary or general election of either the city or the state. In neither this act nor the general statute governing elections for the adoption of a form of city government (K.S.A. 12-184) is there authority for a special election to be held on such a question apart from these times. Accordingly, if the petition requesting such an election is sufficient under the provisions of K.S.A. 25-3602, as amended by, 1983 House Bill No. 2015, the election will be held at the next succeeding primary or general election in which the city participates. While the petition cannot require the holding of a special election at a different time, the use of the phrase "special election" in the title does not invalidate the petition, assuming the requirements of K.S.A. 25-3602, as amended, are otherwise met. Cited herein: K.S.A. 12-184, 12-1001, 12-1018, 12-1019, 12-1029, 12-1036a, 25-3602 (as amended by 1983 House Bill No. 2015).

* * *

Dear Senator McCray:

As State Senator for the 29th District, which encompasses a portion of the City of Wichita, you request our opinion on a

question concerning petitions which are currently being circulated in the city. The petitions, which seek an election calling for the council-city manager form of government, are entitled "Petition for a Special Election of the City of Wichita, Kansas." You inquire whether this heading contains some legal defect which would render the petition itself invalid. As far as we are aware, none of the petitions have yet been presented to the county election commissioner for approval.

At the outset, we should note that a question has also been raised concerning the ability of the city to adopt the council-city manager form of government at the present time. This inquiry, received from Wichita City Attorney John Dekker, concerns the fact that the city currently employs a commission-city manager form under K.S.A. 12-1001 et seq. This act apparently contains provisions for the abandonment of this form of municipal government (at K.S.A. 12-1019) that do not envisage a change to the council-city manager form, at least directly. Hence, a question has arisen whether, even if the petition is found to be sufficient, the action it seeks can legally be taken. We are continuing our research into this question, and hope to have our opinion prepared in the next few days. However, in that your inquiry concerns a threshold question which goes to the validity of the form of the petition itself, we have given first priority and expedited our reply.

First class cities in Kansas were provided with the option of adopting the council-city manager form of government in 1947. L. 1947, Ch. 150. Now codified at K.S.A. 12-1029 et seq., the act provides in the initial section that:

"Any city of the first class may hereafter adopt the council-city manager form of government at any primary or general city election or state primary or general election. The procedure for adoption shall be the same as now provided for the adoption of the commission-city manager form of government." (Emphasis added.)

The statute which contains the procedure for adoption of the commission-city manager form, K.S.A. 12-1018, is incorporated by reference by K.S.A. 12-1029, and states as follows:

"Before the provisions of this act shall apply to and become operative in any city of this state, it shall be submitted in the manner provided by K.S.A. 12-184 to a vote of the legally qualified electors of such city for adoption, and shall receive a majority of all the votes cast thereon at such election." (Emphasis added.)

K.S.A. 12-184, deals with the specifics of the petition itself, and states:

"(a) Whenever any law of this state provides for an election on the question of the adoption or abandonment of any form of city government, such question shall be submitted to the qualified electors of a city upon: (1) The adoption by the governing body of the city of a resolution providing for the submission of such question, or

"(2) the certification, as provided in subsection (c) of this section, of a petition requesting the submission of such question, signed by qualified electors of the city equal in number to not less than ten percent (10%) of the qualified electors of the city.

"(b) Upon the adoption of a resolution or the certification of a petition as provided in subsection (a) of this section, the question of the adoption or abandonment of the form of city government shall be submitted to the qualified electors of the city at the next city or state general or primary election following by not less than sixty (60) days the adoption of such resolution or the certification of such petition.

"(c) Any petition requesting the submission of a question hereunder shall be filed with the county election officer of the county in which the city is located. Such petition shall conform to the requirements of article 36 of chapter 25 of the Kansas Statutes Annotated and amendments thereto, and its sufficiency shall be determined in the manner therein provided and shall be certified to the city clerk by the county election officer."
(Emphasis added.)

From the above, it is clear that the timing of an election to adopt the council-city manager form of government is not left to chance or to the discretion of local election officials. Rather, the statutes are specific in stating that such an election can only be held at the next primary or general election of the city or the state following the certification of the petition.

In view of this result, it remains to determine the effect of the wording in the petition's caption, which calls for a

special election. In our opinion, such wording, while undesirable, does not invalidate the petition as a matter of law. We base this conclusion on two separate statutes. The first, K.S.A. 25-3602, as amended by 1983 House Bill No. 2015, is the benchmark statute by which the sufficiency of a petition is determined. The statute provides a detailed set of requirements by which each petition must be judged, and it has long been held that the failure to meet such requirements removes a condition precedent to the holding of the election. Greeley County v. Davis, 99 Kan. 1 (1916). Numerous opinions of this office have also found that these requirements are mandatory, not discretionary. Attorney General Opinion Nos. 80-97, 81-230, 82-230.

In pertinent part, the statute contains the following requirements:

"(a) Each petition shall consist of one or more documents pertaining to a single issue or proposition under one distinctive title. The documents shall be filed with the county election officer or other official, if another official is designated in the applicable statutes. The filing shall be made at one time all in one group. Later or successive filings of documents relating to the same issue or proposition shall be deemed to be separate petitions and not a part of any earlier or later filing.

"(b) Each petition shall, unless otherwise specifically required: (1) Clearly state the question which petitioners seek to bring to an election;

"(2) name the taxing subdivision or other political subdivision in which an election is sought to be held; and

"(3) contain the following recital above the spaces provided for signatures: 'I have personally signed this petition. I _____ (here insert name of political or taxing subdivision) and my residence address is correctly written after my name.'

"The recital shall be followed by blank spaces for the signature, residence address and date of signing for each person signing the petition.

"Whenever petitioners are required by law to possess qualifications in addition to being registered electors, the form of the petition shall be amended to contain a recital specifying the additional qualifications required and stating that the petitioners possess the qualifications.

"(c) Every petition shall contain, at the end of each set of documents carried by each circulator, a verification, signed by the circulator, to the effect that the circulator personally witnessed the signing of the petition by each person whose name appears thereon. The circulator of a petition shall be a resident of the political or taxing subdivision in which the election is sought to be held."

Nothing contained herein, however, details the contents of the title to the petition, save that the title be "distinctive." Of course, the title cannot be misleading or deceptive, any more than may the body of the petition. See, e.g., Community Gas and Service Co. v. Walbaum, 404 P.2d 1014 (Okla., 1965). However, the silence of the statute as to the title leads us to the conclusion that in this respect a petition may demonstrate substantial compliance with the statute and be valid, as long as the essential matters necessary to assure the objectives of the statute are met. Sabatini v. Jayhawk Construction Co., 214 Kan. 408, 411 (1974).

In addition, it appears that other, related statutes expressly allow the use of the term "special election" in a petition. K.S.A. 12-1036a is contained in an act which allows for the adoption of a mayor-council-city manager plan in much the same way as that proposed here. However, the statute is more specific than is K.S.A. 12-1029 in setting forth the format of the petition, stating:

"Any city of the first class may adopt the mayor-council-city manager form of government in the manner herein provided and shall thereafter be governed by the provisions of this act. A proposition to adopt such form of government must first be submitted to a vote of the qualified electors of such city in the manner provided by K.S.A. 12-184.

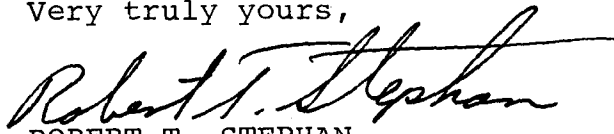
"Any petition for the submission of a proposition hereunder shall be headed 'Petition for a special election of the city of _____, Kansas, to vote on the adoption of the mayor-council-city manager form of government'."
(Emphasis added.)

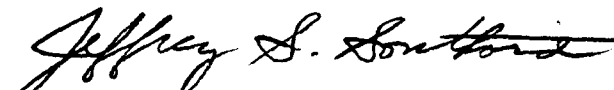
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While the caption of such a petition would lead one to believe that the election contemplated was in fact a special one called especially for that purpose, the reference to K.S.A. 12-184 is an indication that such is not the case. This latter statute, cited earlier herein, provides only for such elections to be held with regularly scheduled primary or general elections. Accordingly, when the phrase "special election" is used here, it must be ascribed a different meaning than that generally used. As a result, we find no fatal flaw in the petition presented here, in that the provisions of K.S.A. 12-184 would still control. See also the recent amendment to K.S.A. 25-3602, in which new subsection (f) states that, in the absence of authority to hold a special election, all elections called as a result of valid petitions under this statute will be held at the next succeeding primary or general election.

In conclusion, pursuant to L. 1947, Ch. 150 (now codified at K.S.A. 12-1029 et seq.), a city of the first class may adopt the council-city manager form of government at a primary or general election of either the city or the state. In neither this act nor the general statute governing elections for the adoption of a form of city government (K.S.A. 12-184) is there authority for a special election to be held on such a question apart from these times. Accordingly, if the petition requesting such an election is sufficient under the provisions of K.S.A. 25-3602, as amended by 1983 House Bill No. 2015, the election will be held at the next succeeding primary or general election in which the city participates. While the petition cannot require the holding of a special election at a different time, the use of the phrase "special election" in the title does not invalidate the petition, assuming the requirements of K.S.A. 25-3602, as amended, are otherwise met.

Very truly yours,


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Jeffrey S. Southard
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