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ATTORNEY GENERAL OPINION NO. 83- 128

John Dekker
City Attorney
City Hall
Thirteenth Floor
455 North Main Street
Wichita, Kansas 67202

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

Synopsis: K.S.A. 12-1029 provides that any city of the first class may adopt the council-city manager form of government pursuant to the procedure prescribed therein. The provisions of K.S.A. 12-1019, relating to acceptance of the commission form of government or the mayor-council form of government (and prescribing the form of the ballot for any election held thereunder), do not apply where the question of adopting the council-city manager form of government is submitted to voters pursuant to the provisions of K.S.A. 12-184. Cited herein: K.S.A. 12-184, 12-1001, 12-1018, 12-1019, 12-1029.

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Dear Mr. Dekker:

You request our interpretation of K.S.A. 12-1019 and K.S.A. 12-1029. Specifically, you ask whether voters of the city of Wichita may adopt the council-city manager form of government, without first voting to abandon the commission-manager form

of government and to accept either the commission form of government or the mayor-council form of government.

The city of Wichita is currently organized under the commission-manager act, K.S.A. 12-1001 et seq. Section 17 of that act, as amended, is codified at K.S.A. 12-1019, and provides, in part, as follows:

"Any city of the state of Kansas that has operated for four years or more under the provisions of this act, may abandon such form of organization as is herein provided for and accept either the provisions of the commission form of government law or the mayor and council form of government law, then applicable to cities of its population. Before such abandonment, a proposition to abandon such form of organization and accept the provisions, either of the mayor and commissioner form of government law, or the provisions of the mayor and council form of government law, must first be submitted to a vote of the qualified electors of such city in the manner provided by K.S.A. 12-184. Whenever the proposition to abandon such form of organization shall have been defeated at any election, another election to vote on such proposition shall not be called until after the expiration of four years from such first election.

"Any petition requesting the submission of a proposition hereunder shall specify the form of government which the petitioners desire the city to adopt, in case a majority of the votes cast upon the proposition at such election are in favor of abandoning the city-manager form, and whether the city shall accept the provisions of the mayor and commissioner form of government law or the provisions of the mayor and council form of government law.

"The form of the ballots used at any election held hereunder shall be as follows:

'The city of (naming the city) shall abandon its organization under article

10 of chapter 12 of the Kansas Statutes Annotated and any acts amendatory thereto and become a city under the general law governing cities of like population under (state the form of government, whether the mayor and commissioner or mayor and council form of government).'

YES _____ NO _____

"If a majority of the votes cast upon such proposition, at such election, shall be in favor of abandoning the city-manager plan of government, the city shall become a city under the general law governing cities of like population and according to the form designated in the proposition submitted to the voters at such election." (Emphasis added.)

You advise that petitions are being circulated which seek an election on the question of adopting the council-city manager form of government, K.S.A. 12-1029 et seq. K.S.A. 12-1029 provides for the adoption of said form of government as follows:

"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 "procedure for adoption" referred to in the above-quoted statute is set forth in K.S.A. 12-1018, and prescribes that the question shall be submitted to voters in the manner provided by K.S.A. 12-184.

In our judgment, K.S.A. 12-1019 and 12-1029 relate to the same subject matter, i.e. changing the form of city government, and are statutes in pari materia. Therefore, they must be construed together in determining legislative intent. State, ex rel. v. Moore, 154 Kan. 193, 197 (1941); Flowers v. Marshall, 208 Kan. 900, 905 (1972).

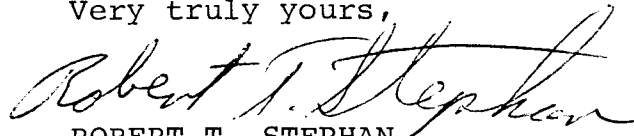
In this regard, K.S.A. 12-1029 provides that any city of the first class (including commission-manager cities) may adopt

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the council-city manager form of government pursuant to the procedure prescribed therein. We perceive no reason why the legislature would intend to restrict commission-manager cities from adopting the council-city manager form of government, or why the legislature would seek to impose the burden of conducting two elections to accomplish such a change in the form of city government. Therefore, in our judgment, the provisions of K.S.A. 12-1019, relating to the acceptance of either the commission form of government or the mayor-council form of government (and prescribing the form of the ballot for any election held thereunder), do not apply where the proposed change is to the council-city manager form of government.

In passing, we note that the Supreme Court of Montana has ruled upon a question which is analogous to the question posed herein, and that the decision in said case is in accord with our conclusions above. See Hackman v. City of Helena, 256 P.2d 692 (Montana Sup. Ct. 1953).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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RTS:BJS:TRH:jm