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February 26, 1985

ATTORNEY GENERAL OPINION NO. 85- 25

Nanette L. Kemmerly-Weber
Allen County Attorney
Allen County Courthouse
Iola, Kansas 66749

Re: Cities of the Third Class -- Election, Appointment
and Removal of Officers -- Qualifications of Officers;
Qualified Elector; Provision Non-Uniform

Synopsis: K.S.A. 15-209 applies to cities of the third class
having the mayor-council form of government, and
provides that all elected officers shall be qualified
electors of the city. In order to be a qualified
elector under state law, a person must have attained
the age of 18. Therefore, the statute on its face
would prohibit a person under the age of 18 from
taking office as a city council member. However, as
K.S.A. 15-209 is contained in an act which has
non-uniform provisions, a city to which the statute
applies may use home rule authority to charter out
from any or all of the provisions contained therein,
including the requirement that council members be 18
or older. Cited herein: K.S.A. 12-1208a; 13-2102;
15-201; 15-209; Kan. Const., Art. 5, §1;
Art. 12, §5; L. 1967, ch. 90.

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Dear Ms. Kemmerly-Weber:

As County Attorney for Allen County, Kansas, you request our
opinion on a question which has arisen concerning Moran, the
class city having the mayor-council form of government, and will
be conducting city elections this spring. One person who has

filed for a city council position is under the age of 18, and will still be a minor at the time of the general election in April. You ask whether such a person, if elected, could serve on the city council.

As a city of the third class with the mayor-council form of government, Moran is subject to the provisions of K.S.A. 15-201 et seq., dealing with elections in such cities. One such statute, K.S.A. 15-201, provides that the city shall have a mayor and five city council members as its elective officer. A subsequent statute, K.S.A. 15-209, states that all elective officers shall be qualified electors who reside in the city. In that the Kansas Constitution provides that a person must attain the age of 18 before acquiring the right to vote and thereby becoming an elector (Kan. Const., Art. 5, §1), the effect of K.S.A. 15-209 is to preclude a person under that age from becoming a city council member in a city like Moran. Presumably, persons 17 years old could be elected to the council and take their seats, if they became 18 between the time of the election and taking office.

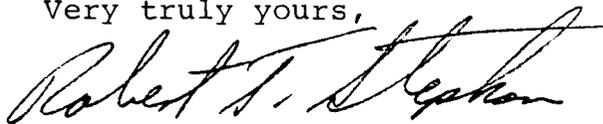
However, the above statute is not completely dispositive of the issue, due to the existence in Kansas of home rule authority for cities. As a recent opinion of this office (No. 85-20) noted:

"Under Article 12, Section 5 of the Kansas Constitution, a city may be exempt from the application of a state statute by enacting a charter ordinance which provides substitute or additional provisions on the same subject. However, in the event that the statute is contained in an enactment applicable uniformly to all cities, the city may not employ a charter ordinance to supersede the statute. The use of home rule has accordingly often hinged upon the presence of some non-uniform provision in an act, for even one such section is sufficient to 'taint' an otherwise uniformly applicable act. City of Junction City v. Griffin, 227 Kan. 332 (1980)."

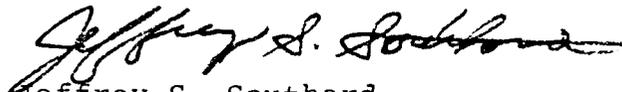
When the act which contains K.S.A. 15-209 is examined (L. 1967, ch. 90), it is obvious that numerous sections are non-uniform in their application. Section 1, which amends K.S.A. 12-1028a, affects only cities of the second class, while Section 4, which amends K.S.A. 13-2102 deals with only first class cities. Accordingly, under the Griffin holding, the entire act is non-uniform, including K.S.A. 15-209, and the city may, if it wishes, charter out from any or all of its provisions.

As a practical matter, the existence of this non-uniformity can have only a prospective effect in Moran, for a charter ordinance may only become effective after certain steps are followed. One of these steps involves the publication of two official notices (once each week for two consecutive weeks) and the elapsing of an additional 60 days after the second notice. Kansas Constitution, Article 12, Section 5(c)(1) and (2). In that any change made by the Moran City Council (assuming initially that such a change would be desired) could not take effect in time for this year's city election, the provisions of K.S.A. 15-209 would continue in effect, thus precluding a minor from being elected to the city council.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL STEPHAN



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw