



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 49

The Honorable Jack H. Brier  
Secretary of State  
2nd Floor, State Capitol  
Topeka, Kansas

Re: Elections--Conduct of Elections; Mail Ballot  
Election Act

Counties and County Officers--General Provisions--  
Home Rule Powers; Charter Resolution Election; Use  
of Mail Ballot

Synopsis: The Mail Ballot Election Act, K.S.A. 1985 Supp. 25-431 et seq., provides for the conduct of "question submitted" elections in various governmental subdivisions by mail ballot. The mail ballot procedure may not be used in an election at which any candidate is elected, retained or recalled. The county home rule statutes, K.S.A. 19-101b(c)(3), establish procedures for the conduct of an election on a charter resolution passed by the county governing board and provide that such elections shall be conducted "in the same manner as are elections for officers of such county." The phrase "in the same manner . . ." as elections for county officers is ambiguous in this context and does not prevent, in the opinion of this office, the use of the mail ballot election act when a charter resolution is submitted to county voters. Cited herein: K.S.A. 19-101b(c)(3), 25-101; K.S.A. 1985 Supp. 25-409, 25-431, 25-433, 25-434, 25-437, 25-438, 25-439; K.S.A. 25-1434, 25-1452, 25-3001 to 25-3008.

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Dear Mr. Brier:

You have requested an opinion from this office concerning the Mail Ballot Election Act, (K.S.A. 1985 Supp. 25-431 et seq.) and the possible use of that act in an election conducted pursuant to K.S.A. 19-101b(c).

As you are aware, the Mail Ballot Election Act provides that an election may be conducted by mail ballot only if certain conditions are met. The most important condition is that the election is a question submitted election at which all of the qualified electors of various governmental subdivisions, including counties, are the only electors eligible to vote. Another condition precedent to the use of the mail ballot is that the election is not one at which any candidate is elected, retained or recalled.

A section of the county home rule statutes, K.S.A. 19-101b(c) (3), establishes procedures for conducting an election on a charter resolution passed by the county governing board. That statute provides that such an election shall be conducted "in the same manner as are elections for officers of such county." Arguably this language would prevent the use of the mail ballot when a charter resolution is submitted to the voters at an election since a mail ballot may not be used in an election for county officers. This is despite the fact that an election on a charter resolution is clearly a question submitted election and precisely the type of election for which the Mail Ballot Election Act was enacted.

Certain rules of statutory construction may aid in interpreting these two provisions in a harmonious manner. Generally, the legislature is not presumed to have enacted an ineffective statute. Thus, if it is reasonably possible, a statute should be construed so as to give it efficient operation and effect as a whole. In re Adoption of Baby Boy L, 231 Kan. 199, 209 (1982).

The language in K.S.A. 19-101b(c) (3) providing that a charter resolution election be conducted in the same manner as elections for county officers is ambiguous in view of other statutes pertaining to elections. Outside of provisions for notice and petitions, this is the only direction K.S.A. 19-101b(c) (3) provides as to the conduct of such an election. The constitutional section governing city home rule makes equally ambiguous provisions for elections on city charter resolutions, stating, "the election shall be conducted as elections for officers and by the officers handling such elections." Kan.Const., Art. 12, §5(c) (3). If the term "manner" in the K.S.A. 19-101b(c) (3) is given literal meaning

charter resolution elections may only be conducted when elections for county officers are conducted (K.S.A. 25-101); and must follow similar or the same procedures for ballots, canvassing and other aspects of such an election. Many of the sections regulating the election of county officers are inconsistent with the procedures necessary to conduct an election on a submitted question. It is thus unclear what the word "manner" means in this context. It is clear, however, that a literal interpretation of the term would unduly complicate the charter resolution election process. A more reasonable interpretation of the phrase suggests that the legislature intended that charter resolution elections be conducted with the same formality as elections for county officers. This guarantees that certain procedures necessary to protect the validity of an election are available on a charter resolution election. Thus, the ballots are canvassed, proper registration procedures are followed and mechanisms for challenging ballots or election procedures are available. (See K.S.A. 1985 Supp. 25-409; 25-1434 to 15-1452; 25-3001 to 25-3008.)

Assuming this to be the legislature's purpose, it is clear that the Mail Ballot Election Act accomplishes that purpose. K.S.A. 1985 Supp. 25-433 makes extensive provisions designed to protect the validity and confidentiality of ballots. It further provides that votes cast pursuant to the act may be challenged in the manner prescribed in K.S.A. 25-1136 for the challenge of absentee votes in other elections. (K.S.A. 1985 Supp. 25-434.) K.S.A. 1985 Supp. 25-437 provides for a special election board to make a canvass of ballots cast in the county. The Mail Ballot Election Act also provides that all provisions which apply to elections shall apply to elections under the act insofar as those provisions are applicable. (K.S.A. 1985 Supp. 25-438.) Finally we note that the act contains the following legislative direction concerning its interpretation:

"No mere informality in the manner of carrying out or executing the provisions of this act shall invalidate any election held under it or authorize the rejection of the returns thereof. The provisions of this act shall be construed liberally for the purpose of effectuating its purpose."  
(K.S.A. 1985 Supp. 25-439.)

Given the apparent purpose of the legislature in enacting these two provisions, it is reasonable to conclude that the mail ballot election procedure may be used in a charter resolution election under K.S.A. 19-101b(c)(3).

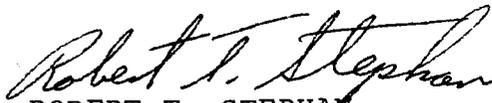
We are not unmindful of the apparent inconsistency created by a literal interpretation of K.S.A. 19-101b(c)(3). We note, however, that all statutes pertaining to elections are to be liberally construed to accomplish their essential purposes. As the Kansas Supreme Court has said:

"Elections must be invalidated where there has been violation or nonobservance of statutory provisions which are mandatory, either expressly or by clear implication, or which directly affect the merits of the election. But the general rule is that unless mandatory provisions compel a contrary result election statutes, like other statutes, are to be liberally construed to accomplish their essential purposes." (Citations omitted.) State v. Tipton, 166 Kan. 145, 150 (1948).

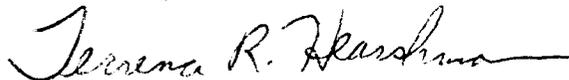
The statement in K.S.A. 19-101b(c)(3) that charter resolution elections should be conducted in the same manner as elections for county officers fails to qualify as an expressly mandatory provision and its ambiguity prevents it from being mandatory by clear implication. Since the Mail Ballot Election Act provides for the protection of the validity of the election, it does not appear that correct use of its procedures in a 19-101b(c) election would effect the merits of the election.

Therefore, we conclude that the Mail Ballot Election Act legitimately may be used in K.S.A. 19-101b(c) election. This would not run contrary to the apparent purpose of the legislature in enacting both sections despite the apparent inconsistency between the two sections.

Very truly yours,



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