



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 7, 1986

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 86- 51

Gene Porter
Barton County Attorney
Barton County Courthouse
P.O. Box 881
Great Bend, Kansas 67530

Re: Elections -- Sufficiency of Petitions -- Contents
of Petition; Petition to Challenge Capital Outlay
Resolution

Synopsis: A petition, prepared and filed pursuant to K.S.A.
72-8801 which does not meet the requirements of
K.S.A. 25-3601 et seq., is invalid and has no
effect in preventing a capital outlay levy from
taking effect. Furthermore, even though a petition
is valid under the requirements of K.S.A. 1985
Supp. 25-3602, it must in addition correctly
identify the resolution which it challenges in
order to legally protest the resolution. Cited
herein: K.S.A. 25-3601; K.S.A. 1985 Supp. 25-3602;
K.S.A. 72-8801.

* * *

Dear Mr. Porter:

As county attorney for Barton County, you request our
opinion as to whether a petition recently submitted to the
county clerk is legally sufficient. Such petition, which
relates to a resolution passed by the Board of Education of
Unified School District #428 for a capital outlay levy, would
require the question to be submitted to a vote of the electors
of U.S.D. #428, pursuant to the provisions of K.S.A.
72-8801.

Initially, we note that the petition in question specifically refers to a resolution adopted by the board of education on January 15, 1986. However, this resolution was superseded by a subsequent resolution passed on March 4, 1986. You first inquire whether the submitted petition is sufficient to challenge the resolution of March 4, even though the petition specifically identifies the earlier resolution as that which the petitioners wish to challenge. Second, assuming the petition is sufficient to challenge the later resolution, you inquire whether the petition is legally sufficient, i.e. whether it meets the requirements of K.S.A. 1985 Supp. 25-3602.

We will address your second question first. The sample petition which you submitted to us states as follows:

"PETITION

The undersigned, electors of Unified School District #428 of Barton County, Kansas, and duly registered voters, hereby state our opposition to the Capital Outlay Levy as authorized by Resolution adopted by U.S.D. #428 Board of Education on January 15, 1986. In accordance with K.S.A. 1984 Supp. 72-8801, the County Clerk is hereby petitioned to submit the question of the proposed Capital Outlay Levy to a vote of the electors of said School District."

K.S.A. 72-8801 provides that a tax levy for capital outlay funds may be authorized by resolution of a board of education and is effective unless a valid petition in opposition to the resolution is filed. The statute which lays out a sample resolution, also states:

"The tax levy authorized by this resolution may be made, unless a petition in opposition to the same, signed by not less than 10% of the qualified electors of the school district, is filed with the county election officer of the home county of the school district within 40 days after the last publication of this resolution." (Emphasis added.)

and 84-41. Past opinions have consistently concluded that any substantial departure from the statutory form will render a petition invalid. See Opinion Nos. 81-230 and 82-230. We affirm this result, and conclude that the failure to comply with the requirement of K.S.A. 1985 Supp. 25-3602(b)(3) is a substantial irregularity which serves to invalidate the petition in question.

We also call your attention to subsection (c) of K.S.A. 1985 Supp. 25-3602, which provides:

"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." (Emphasis added.)

The verification contained in the sample petition states:

"that he knows that they signed the same with full knowledge of the contents thereof;"

Although the sample petition contains a verification, it is unclear from the language whether the circulator actually witnessed the signing of the petition. As stated earlier, any substantial departure from the statutory form will render a petition invalid. At the same time, a petition should not be invalidated by unimportant irregularities or defects if it is in substantial compliance with statutory requisites. See Community Gas and Service Co., v. Walbaum, 404 P.2d 1014 (Okla., 1965); 26 Am.Jur.2d, Elections §189; 29 C.J.S. Elections §69. In our opinion, however, this defect in the verification is a substantial irregularity, as subsection (c) specifically requires that the circulator personally witness the signing of the petition by each person whose name appears thereon. In that statutes governing the sufficiency of petitions are to be strictly construed, and because the requirements of K.S.A. 1985 Supp. 25-3602 are mandatory, we conclude that the sample petition fails to comply with an additional requirement of the statute.

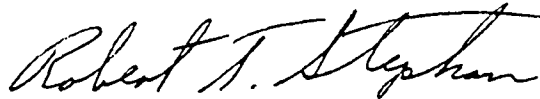
In regard to the sufficiency of petitions, we emphasize that the matter of circulating a petition to place a particular question to a vote is a serious matter. Thus, it is important

that each of the clearly-stated requirements of K.S.A. 1985 Supp. 25-3602 be met. See Attorney General Opinion Nos. 79-290 and 82-230. Persons desiring to prepare and circulate a petition can obtain a copy of the statutory requirements from the county library or from this office, and may additionally wish to seek the advice of private counsel.

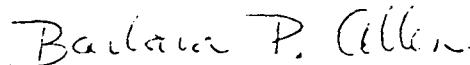
Although the above conclusions are dispositive of the question of sufficiency, you also inquire whether the submitted petition is sufficient to challenge the resolution of March 4, even though the resolution of January 15 is specifically identified as the one which is challenged. In our opinion, such a petition is defective under the requirements of K.S.A. 1985 Supp. 25-3602(b)(1), which requires a clear statement of the question which is sought to be voted upon. Accordingly, a petition which refers to a resolution different than the one it opposes can have no effect on such a later resolution. However, we find this question to be moot in the case at hand, as the sample petition does not meet the other sufficiency requirements set forth earlier.

In conclusion, a petition, prepared and filed pursuant to K.S.A. 72-8801 which does not meet the requirements of K.S.A. 25-3601 et seq., is invalid and has no effect in preventing a capital outlay levy from taking effect. Furthermore, even though a petition is valid under the requirements of K.S.A. 1985 Supp. 25-3602, it must in addition correctly identify the resolution which it challenges in order to legally protest the resolution.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Barbara P. Allen
Assistant Attorney General