



STATE OF KANSAS

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February 23, 1989

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ATTORNEY GENERAL OPINION NO. 89- 22

W. Lee Fowler
Chase County Attorney
302 Broadway
P.O. Box 640
Cottonwood Falls, Kansas 66845

Re: Counties and County Officers -- General Provisions
-- Charter Resolutions; Procedure

Synopsis: Pursuant to K.S.A. 19-101b, unless challenged pursuant to K.S.A. 19-101b(c) or rescinded by future action, a charter resolution is validly adopted when approved by the unanimous vote of a three member board of county commissioners. Cited herein: K.S.A. 19-101b.

* * *

Dear Mr. Fowler:

As Chase County Attorney you request our opinion regarding K.S.A. 19-101b. Specifically, you ask whether a charter resolution can be considered unanimously passed, pursuant to K.S.A. 19-101b, when it is not reduced to writing until after the close of the meeting. You inform us that a unanimous vote approved night meetings, but that subsequently one of the commissioners who voted to approve such a resolution now refuses to sign the written resolution. At the time of the unanimous vote the resolution was not in written form.

K.S.A. 19-101b provides in pertinent part:

"(b) A charter resolution is a resolution which exempts a county from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject. Such charter resolution shall be so titled, shall designate specifically the act of the legislature or part thereof made inapplicable to such county by the passage of the resolution and shall contain any substitute and additional provisions. Such charter resolution shall require the unanimous vote of all board members unless the board determines prior to passage it is to be submitted to a referendum in the manner hereinafter provided, in which event such resolution shall require a 2/3 vote of the board." (Emphasis added).

Chase county has a three member board of county commissioners and does not as yet contemplate submitting the matter to referendum. The January 9, 1989 minutes from the Chase County Board of Commissioners reveal that the resolution in question passed 3-0. Thus, there is no question that the vote was unanimously in favor of the matter. The issue becomes what action is required of the board in order to adopt a charter resolution.

K.S.A. 19-101b does not specifically indicate the status of a charter resolution before written recordation. The statute requires the charter resolution to be so titled and to designate the specific legislative act. However, the language does not dictate when such title and designation is required. K.S.A. 19-101b(c) provides that:

"Each charter resolution which becomes effective shall be recorded by the county election officer in a book maintained for that purpose with a statement of the manner of adoption, and a certified copy shall be filed with the secretary of state, who shall keep an index of the same." (Emphasis added).

Thus, the statute contemplates a charter resolution becoming effective and adopted before it is duly recorded. Recordation

must be accomplished by the county election officer, not the board of county commissioners.

"Statutory requirements for the passage of ordinances and resolutions and the keeping of a journal are all for the protection of the public, to serve as checks and balances upon extravagance, dishonesty and incompetency, and to prevent saddling upon the municipality liabilities created by unauthorized contracts.

. . .

Departure from the form prescribed for corporation action, as in the passage of an ordinance, will not affect the validity of such action unless the charter or governing law makes such formality vital, as by declaring the action or ordinance void unless the form prescribed be followed. In the absence of evidence to the contrary, formalities in the passage of an ordinance which are not expressly required to be entered in the minutes will be presumed to have been observed.

. . .

Therefore, the validity of any given corporate act, as the passage of an ordinance or resolution or the making of a contract for an improvement, depends upon the fact that it was regularly passed by the council." (Emphasis added).

McQuillin, Municipal Corporations, § 13.43 (3d ed. 1985).

K.S.A. 19-101b requires a unanimous vote, it does not require the vote to be on a written resolution, nor does it require a unanimous signature. The statute does not allow one commissioner to subsequently veto a previously unanimously approved resolution. To allow commissioners to later privately rescind their vote would effectively circumvent the open meeting laws that require the vote to be made in public. Therefore, it is our opinion that if a charter resolution is properly approved by the unanimous vote of a three member board of the county commissioners, pursuant to K.S.A. 19-101b,

such a resolution is validly adopted unless challenged pursuant to K.S.A. 19-101b(c) or later rescinded. We find no requirement that the charter resolution be reduced to its final written form at the time the vote is taken.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas