



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 53

Robert J. Watson
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Overland Park, Kansas 66212

Re: Cities and Municipalities -- City Manager Plan;
Cities, First Class -- Mayor-Council-City Manager
Form of Government; Filling Council Vacancies

Elections -- City Elections -- Partisan City
Elections; Vacancies in City Offices

Kansas Constitution -- Corporations -- Cities'
Powers of Home Rule

Synopsis: The city of Overland Park adopted a charter ordinance exempting itself from statutory provisions concerning filling city council vacancies. The charter ordinance was within the city's constitutional home rule powers, and was lawfully enacted.

In accordance with the language of the charter ordinance, if the council rejects the recommendation to fill a vacancy made by the precinct committeepersons, the committeepersons must then recommend "another person", meaning someone else, or a different person. Cited herein: K.S.A. 12-1036a; 12-1036d; 25-2113; Kan. Const., Art. 12, § 5.

* * *

Dear Mr. Watson:

As city attorney, you have requested our opinion concerning filling vacancies on the Overland Park city council.

The City of Overland Park, a city of the first class, operates under the mayor-council-city manager plan pursuant to K.S.A. 12-1036a et seq. City officers are elected on a partisan political basis. K.S.A. 25-2113(b). See Attorney General Opinion No. 85-20.

K.S.A. 12-1036d provides that vacancies on a city council of a first class city with a mayor-council-manager form of government are to be filled as follows:

"A vacancy in the office of councilman shall be filled by the council, as the case may be, until the next regular city election and a councilman has been duly elected for the unexpired two-year term and has qualified, or until the next regular city election and a councilman has been duly elected for a full term and has qualified."

You inform us that Overland Park has "chartered-out" of the above provision. Specifically, on December 3, 1962, charter ordinance no. 1 was adopted, exempting the city of Overland Park from four statutes, including K.S.A. 12-1036d. Charter ordinance no. 1-A, adopted September 25, 1967, amended the first charter ordinance by substituting a section concerning vacancies in office:

"A vacancy in the office of the councilman shall be filled by the council, from a recommendation submitted to the council by the precinct committee people from the political party represented by the councilman being replaced, and shall be communicated to the council by the party City chairman, as the case may be, until the next regular City election and a councilman has been duly elected for the unexpired two-year term and has qualified, or until the next regular City election and a councilman has been duly elected for a full term and has qualified."

Thus, precinct committee persons were given a role in the selection process to fill vacancies.

Charter ordinance no. 34, adopted on September 10, 1984, exempted the city from five statutes, including K.S.A. 12-1036d. Regarding vacancies, the ordinance provided as follows:

"SECTION 9. FILLING VACANCY IN OFFICE OF
MAYOR AND COUNCILMEMBER.

. . .

(b) . . . A vacancy for any reason in the office of Councilmember shall be filled by the Council from a recommendation submitted to the Council by the precinct committee people from the political party represented by the Councilmember whose office is vacated and such recommendation shall be communicated to the Council by the party's City chairman and thereafter such person shall serve in such office until the next regular City election and a successor has been duly elected and qualified. If the Councilmember who vacated the office had a term which would not expire at such regular City election, then the successor elected at such regular City election is elected to serve such unexpired term."

On April 20, 1987, charter ordinance 40 was adopted. The title of the ordinance read as follows:

"A CHARTER ORDINANCE AMENDING AND REPEALING EXISTING SECTION 9 OF CHARTER ORDINANCE NO. THIRTY-FOUR RELATING TO VACANCIES ON THE COUNCIL AND PROVIDING A METHOD OF FILLING SUCH VACANCIES."

In pertinent part, the provision concerning vacancies now reads:

"Whenever a vacancy occurs for any reason in the office of Councilmember, the precinct committee persons who represent the precincts located within the ward from

which the vacating Councilmember was elected, and who were elected by the political party of the vacating Councilmember, shall recommend a replacement to the Council. Such recommendation shall be communicated to the Council by the party's City chairman. Upon receipt of such recommendation, the Council by majority vote of the remaining members thereof may either appoint such recommended replacement or may reject such recommended replacement. Should the remaining members of the Council reject such recommended replacement, the precinct committee persons shall recommend another person for Council consideration, and shall continue to make recommendations successively until the remaining members of the Council have appointed a replacement. The appointed replacement shall serve in such office until the next regular City election and until a successor has been duly elected and qualified." (Emphasis added.)

The amendment makes clear that the council has discretion to accept or reject a recommendation made by the council.

Your first question is whether "charter ordinance no. 40 is duly and lawfully enacted and fully within the authority of the city of Overland Park to enact." The Kansas Constitution grants to cities "home rule" powers to enact local legislation:

"Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of

indebtedness." Kans. Const., Art. 12,
§ 5(b).

"Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city." Kans. Const., Art. 12, § 5(c)(1).

Home rule powers granted to cities are "liberally construed for the purpose of giving to cities the largest measure of self-government." Kans. Const., Art. 12, § 5(e). K.S.A. 12-1036d pertains to first class cities with the mayor-council-manager form of government. As this statute is not uniformly applicable to all cities, the city of Overland Park had authority under the Kansas Constitution to enact charter ordinance no. 40.

The second part of the question is whether the city lawfully enacted the charter ordinance. The requirements for enacting a charter ordinance are listed in the Kansas Constitution at Art. 12, § 5(c). In summary, the requirements are:

- The ordinance must be titled and designate specifically the statute inapplicable to the city by adoption of the ordinance.
- The ordinance must contain the substitutions, or additions to the statute.
- The ordinance must be approved by two-thirds of the councilmembers.
- The ordinance must be published once each week for two consecutive weeks in the official city newspaper.
- The ordinance does not take effect until 60 days after final publication.

You inform us that on April 20, 1987, the council passed the ordinance by a vote of 10-0, constituting more than a

two-thirds vote of the council. We understand that the charter ordinance was published in the Overland Park Sun on April 24 and May 1, 1987. (We assume this is the official city newspaper.) No petition calling for a referendum was filed during the sixty days following the final publication date. Charter ordinance no. 40 states that it amends section 9 of charter ordinance no. 34. As noted earlier, charter ordinance 34 stated that the city was exempting itself from K.S.A. 12-1036d. Thus, based on the information provided to us, we believe the procedural requirements for adopting a charter ordinance were met.

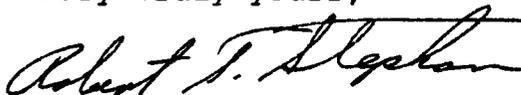
Your second and third inquiries concern the language in charter ordinance 40 stating, "Should the remaining members of the Council reject such recommended replacement, the precinct committee persons shall recommend another person for Council consideration. . . ." (Emphasis added). You have informed us that a vacancy exists on the Overland Park city council and that the recommendation made by the precinct committee persons was denied. You ask whether "another person" means someone different from the person first recommended, and whether the charter ordinance requires the precinct committee persons to recommend someone to the council other than the first recommendation.

It is a fundamental rule that in construing legislation the intent of the enactment is to be ascertained from a general consideration of the entire act. State v. Adee, 241 Kan. 825, 829 (1987). The courts have repeatedly ruled that the first step in interpretation is to apply the plain meaning of the language; Young v. Sedgwick County, Kansas, 660 F.Supp. 918 (D.Kan. 1987). Case law shows that the courts interpret words in their ordinary, everyday meaning, and consider the practicalities of various interpretations. King Radio Corporation, Inc. v. United States, 486 F.2d 1091 (10th Cir., 1973); Sterling Drilling Co. v. Kansas Dept. of Revenue, 9 Kan.App.2d 108, 110 (1983), rev. denied 234 Kan. 1078 (1984). In addition, legislation is construed to avoid unreasonable results. In re Gantz, 10 Kan.App.2d 299, 301, rev. denied 237 Kan. 887 (1987).

The plain language of the ordinance is clear that if the council rejects a recommendation, the precinct committee persons are to recommend another, or different person to fill the vacancy. Any other reading of this phrase would render the ordinance meaningless. Therefore, the

precinct committee persons must make another recommendation to the council, or a vacancy will continue to exist.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
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RTS:JLM:RLN:bas