



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 71

The Honorable Ron Reinert
State Representative
One Hundred Fifteenth District
Rt. #1, Box 312
Dodge City, Kansas 67801

Re: Counties and County Officers--County Commissioners;
Powers and Duties--Change in Number of Districts;
Petition; Question; Recital

Elections--Sufficiency of Petitions--Petition
Documents; Contents; Question; Recital

Synopsis: K.S.A. 19-204 recognizes that the qualified electors of a county may petition to have a question regarding a change in the number of county commissioner districts submitted to the electors. Such a petition must meet the requirements of K.S.A. 25-3601 et seq. Because the petition in question fails to state the question petitioners seek to bring to an election and fails to include the recital set forth in K.S.A. 25-3602(b)(3), the petition in question is invalid. Cited herein: K.S.A. 19-204; K.S.A. 1989 Supp. 25-3601; K.S.A. 25-3602.

* * *

Dear Representative Reinert:

As representative for the one hundred fifteenth district, you request our opinion regarding the sufficiency of a petition. The petition in question was the subject of an opinion issued

May 14, 1990, by Leigh Hood, Ford county attorney. The petition in question is in the following form:

"COUNTY OF FORD, STATE OF KANSAS

"We the undersigned, being registered voters in Ford County, hereby petition the Ford County Commission and the election officer to place on the ballot at the next general election the following proposition:

"To change the number of commission districts from three (3) to five (5), pursuant to K.S.A. 19-204(b).

"Should a majority of the electors voting at such election be in favor of changing the number of commission districts, the monies budgeted for commissioner salaries should be divided among all five (5) board members to accommodate the two (2) new commissioners which would be elected to that office. By dividing the salaries as outlined above each commissioner would be paid approximately \$11,000 a year instead of approximately \$18,000 a year that is presently being paid."

The petition in question then provides space in a grid format for the following: Signature; printed name; address; city; and date.

K.S.A. 19-204(b) states in part:

"Upon the presentation of a petition to the board of county commissioners, signed by electors equal in number to 5% of the qualified electors of the county and verified by the county election officer, requesting that the number of commissioner districts be changed, the board of county commissioners shall cause such proposition to be submitted to the voters of the county at the next general election, following not less than 60 days the presentation of each petition, in which all of the qualified electors of the county are entitled to vote."

While K.S.A. 19-204 recognizes a petition as part of the procedure available for subjecting a change in the number of county commissioner districts to a vote of the electors of the county, the statute does not establish a format for that petition. "When under the laws of this state a petition is

required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of [K.S.A. 25-3601 et seq.] shall apply, except as is otherwise specifically provided in the statute providing for such petition." K.S.A. 1989 Supp. 25-3601. Therefore, the petition in question must meet the requirements set forth in K.S.A. 25-3602.

The pertinent sections of K.S.A. 25-3602 state:

"(a) Each petition shall consist of one or more documents pertaining to a single issue or proposition under one distinctive title. . . .

"(b) Each petition shall, unless otherwise specifically required: (1) Clearly state the question which petitioners seek to bring to an election;

"(2) name the taxing subdivision or other political subdivision in which an election is sought to be held; and

"(3) contain the following recital above the spaces provided for signatures: 'I have personally signed this petition. I am a registered elector of the state of Kansas and of _____ (here insert name of political or taxing subdivision) and my residence address is correctly written after my name.'

"The recital shall be followed by blank spaces for the signature, residence address and date of signing for each person signing the petition."

The provisions of K.S.A. 25-3601 et seq. are mandatory and are not mere formalities that can be disregarded at will. See Attorney General Opinions No. 77-303; 81-230; 82-230; 84-41; 86-51. "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." Attorney General Opinion No. 86-51.

The petition in question contains two defects which we have previously determined will invalidate a petition. First, the petition fails to state the question which the petitioners seek to bring to election. Rather, the petition appears to request that the county commission exercise its authority under K.S.A. 19-204 and submit a proposition regarding the number of county commissioner districts to the electors. A statement requesting the governing body to take certain action will not fulfill the requirement set forth in K.S.A. 25-2602(b)(1). See Attorney General Opinions No. 82-230; 85-160; 86-19. Because the petition in question fails to clearly state the question which petitioners seek to bring to election, it is invalid.

The second defect which we have previously considered is that the petition in question fails to state the recital, or anything similar, set forth in K.S.A. 25-3602(b)(3). Thus, the petition clearly deviates from the requirements of K.S.A. 25-3602(b). "[T]he failure to comply with the requirement of K.S.A. [] 25-3602(b)(3) is a substantial irregularity which serves to invalidate the petition in question." Attorney General Opinion No. 86-51.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General