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ATTORNEY GENERAL OPINION NO. 91- 67

John E. Lang
Pottawatomie County Counselor
Courthouse
Westmoreland, Kansas 66549

Re: Cities and Municipalities--Ordinances of
Cities--Petition for Proposed Ordinance;
Requirements

Elections--Sufficiency of Petitions--Application to
All State and Local Elections; Determination of
Sufficiency of Petition Signatures

Synopsis: As used in K.S.A. 12-3013, the word "electors"
means persons who were qualified electors at the
time they signed the petition requesting the
referendum and does not mean that they had to be
qualified electors at the time of the preceding
regular city election. Additionally, pursuant to
K.S.A. 1990 Supp. 25-3601, the sufficiency of each
signature and the number thereof on a petition
filed pursuant to K.S.A. 12-3013 shall be
determined by the county election officer. Cited
herein: K.S.A. 12-3013; K.S.A. 1990 Supp. 25-3601.

* * *

Dear Mr. Lang:

You request our interpretation of K.S.A. 12-3013.
Specifically, you ask whether a person signing an initiative
petition must merely be a elector of the city, or whether such
person must be a elector who voted at the last regular city

election. Also, you ask whether the county election officer or the city clerk determines the validity of the signatures on an initiative petition.

Subsection (a) of K.S.A. 12-3013 provides as follows:

"Except as provided in subsection (e), a proposed ordinance may be submitted to the governing body of any city accompanied by a petition as provided by this section. Such petition shall be signed by electors equal in number to at least 25 per cent in cities of the first class, and 40 per cent in cities of the second and third class, of the electors who voted at the last preceding regular city election as shown by the poll books and shall contain a request that the governing body pass the ordinance or submit the same to a vote of the electors. Such ordinance and petition shall be filed with the city clerk."

In a letter opinion dated January 25, 1963, appearing at page 35 of Volume IV of Opinions of the Attorney General, former Attorney General Robert C. Londerholm interpreted the above language as follows:

"It is our opinion that the word 'electors' means persons who were qualified electors at the time they signed the petition requesting the referendum and does not mean that they had to be qualified electors at the time of the preceding regular city election. The words 'forty percent' relate to the words 'who voted' and do not relate to the word 'electors' except for the purpose of fixing the number of the petitioners."

We agree with the above-quoted interpretation, and adopt it as our response to the first question you have posed.

In regard to your second question, regarding the official who determines the sufficiency of signatures on an initiative petition, K.S.A. 1990 Supp. 25-3601 provides as follows:

"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 this act shall apply, except as is otherwise specifically provided in the statute providing for the petition. The sufficiency of each signature and the number thereof on any such petition shall be determined in accordance with the provisions of K.S.A. 25-3601 to 25-3607, inclusive, and amendments thereto by the county election officer or such other official as designated in the applicable statute. When any statute makes specific provisions concerning matters that K.S.A. 25-3601 et seq. and amendments thereto also has requirements which are different therefrom, the provisions of the specific statute shall control."

Subsection (a) of K.S.A. 12-3013, quoted above, provides that the initiative petition authorized thereunder shall be filed with the city clerk. That section does not, however, designate the city clerk as being responsible for determining its sufficiency. The city clerk is designated only as the filing officer, as it were, who has no other responsibilities in connection with the petition. In our judgment, it is the county election officer who is responsible for determining the sufficiency of an initiative petition filed under K.S.A. 12-3013.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Terrence R. Hearshman
Assistant Attorney General