



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 94

Darrell E. Miller
Jewell County Attorney
208 N. Commercial
P.O. Box 344
Mankato, Kansas 66956

Re: Elections--Sufficiency of Petitions--Petition Documents; Contents; Verification; Tax Levy for County Hospital

Synopsis: A petition seeking to bring to an election a resolution of the board of county commissioners levying a tax of six mills for the purpose of operating a county hospital must include those items set forth in K.S.A. 1990 Supp. 25-3602. The petition must state the question which petitioners seek to bring to an election, contain a recital and verification, and provide the date of signing for each elector signing the petition. Cited herein: K.S.A. 1990 Supp. 19-4606; 25-3601; 25-3602.

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Dear Mr. Miller

As attorney for Jewell county, you request our opinion regarding the sufficiency of a petition seeking to bring to an election a resolution of the board of county commissioners which levies a tax of six mills for the purpose of operating the county hospital. For purposes of this opinion, it is assumed the proposition was published once each week for two consecutive weeks in the official county newspaper and that the petition was submitted within the time limit prescribed in

K.S.A. 1990 Supp. 19-4606. The petition is in substantially the following form:

"Petition To Call For Election Of
Increased Mill Levy For Jewell County,
Kansas Hospital.

"We, qualified electors of Jewell
County, Knasas [sic], pursuant to K.S.A.
19-4606, and amendments thereto, duly
Petition the County Commissioners of
Jewell County, Kansas, to defer the 6
mill levy for Jewell County Hospital,
until such time as the mill levy shall be
submitted to and approved by a majority of
the voters of Jewell County, Kansas at
an election held thereon."

The petition then contains a grid consisting of two columns. The first column of the grid contains the signature of an elector; the second, the address of the elector. At the bottom of each page of the petition is the word "Witness:" followed by a signature.

K.S.A. 1990 Supp. 25-3601 states:

"When under the laws of this state a petition is required or authorized as a part of the procedure applicable 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 such petition. . . . 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." (Emphasis added.)

The provisions of K.S.A. 25-3601 et seq. are mandatory, and are not mere formalities that can be disregarded at will. Attorney General Opinions No. 90-71; 90-64; 86-51; 84-41; 82-230; 81-230; 77-303. Therefore, because K.S.A. 1990 Supp. 19-4606 does not specifically provide otherwise, the petition must include those items set forth in K.S.A. 1990 Supp. 25-3602.

The petition must clearly state the question which petitioners seek to bring to an election. K.S.A. 1990 Supp. 25-3602(b)(1). A statement requesting the governing body to take certain action will not meet this obligation. Attorney General Opinions No. 90-71; 90-64; 86-19; 85-160; 82-230. The petition in question contains a statement requesting the board of county commissioners "to defer the 6 mill levy for Jewell County Hospital, until such time as the mill levy shall be submitted to and approved by a majority of the voters. . . ." This fails to meet the requirement set forth in K.S.A. 1990 Supp. 25-3602(b)(1).

Each petition must contain above the spaces provided for signatures a recital as set forth in K.S.A. 1990 Supp. 25-3602(b)(3). The recital should state: "I have personally signed this petition. I am a registered elector of the state of Kansas and of [the political or taxing subdivision] and my residence address is correctly written after my name." K.S.A. 1990 Supp. 25-3602(b)(3). The petition in question fails to state the recital, or anything similar, set forth in K.S.A. 1990 Supp. 25-3602(b)(3). The failure to comply with such requirement is a substantial irregularity which serves to invalidate the petition in question. Attorney General Opinions No. 90-71; 86-51.

Following the recital, the petition must contain space for the signature, residence address and date of signing for each person signing the petition. K.S.A. 1990 Supp. 25-3602(b)(3). The residence address and date of signing are descriptive matter, often useful in assisting the county election officer to determine whether the signers are indeed registered voters and whether the petition was timely filed. See Attorney General Opinions No. 84-41; 78-290. Therefore, under certain circumstances, the fact that such information may be incomplete or may have been supplied by someone other than the signer will not invalidate the petition. Id. However, failure to provide such information completely will invalidate the petition. The petition in question fails to state the date of signing for each person signing the petition and is, therefore, invalid.

"(c) 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. . . ." K.S.A.
1990 Supp. 25-3602.

As with the other requirements addressed herein, the verification is mandatory. Attorney General Opinions No. 85-160; 81-230; 77-303. The petition in question contains a verification consisting of one word; witness. There is no indication as to what is being witnessed. The petition in question does not substantially comply with the provisions of K.S.A. 1990 Supp. 25-3902(c). The petition is invalid for the purpose for which it was submitted.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm