

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 41

Vernon Jarboe  
City Attorney  
215 E. 7th Street  
Topeka, Kansas 66603-3979

Elsbeth D. Schafer  
Assistant City Attorney  
215 E. 7th Street  
Topeka, Kansas 66603-3979

Re: Cities and Municipalities--Planning and Zoning;  
Planning, Zoning and Subdivision Regulations in  
Cities and Counties--Protest Petitions; Mayor in  
Mayor-Council Form of Government Not a Voting Member

Synopsis: A mayor in a mayor-council form of municipal  
government may not vote on any matters before the  
council pursuant to K.S.A. 12-10a02. Therefore,  
only the votes of the council should be considered  
in determining the 3/4 vote of all of the members  
of the governing body which is required to override  
a protest petition, pursuant to K.S.A. 12-757(e).  
Cited herein: K.S.A. 12-742; 12-757; 12-10a01;  
12-10a02.

\* \* \*

Dear Mr. Jarboe and Ms. Schafer:

As attorneys for the city of Topeka, you have requested our  
opinion regarding K.S.A. 12-757(e). Specifically, you ask  
whether the language in K.S.A. 12-757(e) grants a vote to the  
mayor in a mayor-council form of municipal government.

Pursuant to K.S.A. 12-757(e), "a 3/4 vote of all of the members of the governing body" is required to adopt a zoning amendment when a protest petition has been filed against it. A governing body is defined under this act as "the governing body of a city in the case of cities. . . ." K.S.A. 12-742.

When a city operates under a mayor-council form of government, it is governed by the provisions of K.S.A. 12-10a01 et seq. See K.S.A. 12-10a01. Pursuant to K.S.A. 12-10a02, the governing body is defined as follows:

"The governing body shall consist of a mayor and three (3) members of the council elected at large and four (4) members of the council elected by districts.

. . . .

"Any action taken by the city council shall be by a majority vote of the members of the council serving on the council unless a greater number of votes are specifically required by another provision of law. The mayor may submit proposals for the consideration of the council, but may not vote on any matter before the council. (Emphasis added).

Thus, while K.S.A. 12-757(e) requires a 3/4 vote by "all of the members of the governing body," K.S.A. 12-10a02 specifically forbids the mayor from voting on any matters before the council. K.S.A. 12-757 does not specifically preempt K.S.A. 12-10a01, so the two statutes must be read to give effect to both if possible. Kansas Racing Management, Inc., v. Kansas Racing Commission, 244 Kan. 343, 353 (1989). In our opinion K.S.A. 12-757(e) can be read to require 3/4 vote of only the council members in a mayor-council form of city government. Therefore, the mayor should not be included in the 3/4 vote.

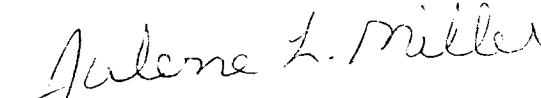
In conclusion, K.S.A. 12-10a02 governs that a mayor in a mayor-council form of municipal government may not vote on any matters before the council. Therefore, K.S.A. 12-757(e) does not grant a mayor voting; power only the council members will

constitute the 3/4 vote required to adopt a zoning amendment  
when a protest petition has been filed.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm