



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 16, 1992

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

ATTORNEY GENERAL OPINION NO. 92- 133

The Honorable Gerald "Jerry" Karr
State Senator, Seventeenth District
R.R. #2, Box 101
Emporia, Kansas 66801

Re: Counties and County Officers--County Commissioners;
Powers and Duties--Change in Number of Commissioner
Districts; Time for Holding Election

Synopsis: When the legislature has named a day on which an election is to be held, or places bounds within which it must be held, a proclamation naming a day other than that fixed by the statutes is void and the election confers nothing. K.S.A. 19-204, as amended by L. 1992, ch. 38, § 4 provides that an election regarding a change in the number of county commissioners is to be conducted on the day of the general election, following not less than 60 days the presentation of the petition. Because November 3, 1992, falls within that 60-day period, an election regarding a change in the number of county commissioners for Chase county may not be called for November 3, 1992, but rather, must be called for the date of the general election to be conducted in November, 1994. Cited herein: K.S.A. 19-204, as amended by L. 1992, ch. 38, § 4; 25-2502; K.S.A. 1991 Supp. 25-3601, as amended by L. 1992, ch. 194, § 2; 25-3602, as amended by L. 1992, ch. 194, § 3; 77-201; Kan. Const., art. 4, § 2.

*

*

*

Dear Senator Karr:

As senator for the seventeenth district, you request our opinion regarding whether a question concerning expansion of the board of county commissioners for Chase county may be submitted to a vote of the electorate on November 3, 1992.

As authorized under K.S.A. 19-204, as amended by L. 1992, ch. 38, § 4, electors of Chase county circulated a petition requesting that a proposition concerning expansion of the board of county commissioners be submitted to the electorate of Chase county. The proposed petition was submitted as required by K.S.A. 1991 Supp. 25-3601, as amended by L. 1992, ch. 194, § 2, to the Chase county attorney for a written opinion as to the legality of the form of the question submitted. On September 10, 1992, the county attorney determined that the form of the question was proper and legally sufficient; however, he expressed no opinion as to the validity and sufficiency of the proposed petition. The petition was then circulated and the requisite number of signatures collected in two days -- September 13 and 14, 1992. The petition was thereafter filed with the county election officer pursuant to K.S.A. 1991 Supp. 25-3902, as amended by L. 1992, ch. 194, § 3, and it was determined that a sufficient member of valid signatures had been collected. However, as the general election to be held November 3, 1992, falls within 60 days of the presentation of the petition, an election regarding expansion of the board of county commissioners has not been called for November 3, 1992.

"When under the laws of this state a petition is required or authorized as a part of the procedure applicable to . . . any county, . . . 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. 1991 Supp. 25-3601, as amended (emphasis added). K.S.A. 19-204, as amended, provides for a petition regarding a change in the number of commissioners for a board of county commissioners. Among the provisions of that statute is the following:

"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

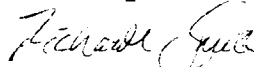
to be submitted to the voters of the county at the next general election, following not less than 60 days the presentation of such petition, in which all of the qualified electors of the county are entitled to vote." K.S.A. 19-204, as amended (emphasis added).

It is well established that time and place are of the substance of an election. Gossard v. Vaught, 10 Kan. 162, 167 (1872); Wycoff v. Board of County Commissioners, 191 Kan. 658, 665 (1963); 26 Am.Jur.2d Elections § 226 (1966). When the legislature has named a day on which an election is to be held, or placed bounds within which it must be held, a proclamation naming a day other than that fixed by the statutes is void and the election confers nothing. Gossard, 10 Kan. at 167. K.S.A. 19-204, as amended, provides that an election regarding a change in the number of county commissioners is to be conducted on the day of the general election, following not less than 60 days the presentation of the petition. A proclamation calling for such an election to be conducted prior to expiration of the 60-day period would be void and the election of no effect. Because November 3, 1992, falls within that 60-day period, an election regarding a change in the number of county commissioners for Chase county may not be called for November 3, 1992, but rather, must be called for the date of the general election to be conducted in November, 1994.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Richard D. Smith
Assistant Attorney General

RTS:JLM:RDS:jm