

JOHNSON COUNTY
KANSAS
Legal Department

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May 1, 2023

SENT BY U.S. MAIL AND ELECTRONICALLY

Rex A. Sharp
Sharp Law
4820 W. 75th Street
Prairie Village, KS 66208

Re: Review of Petition Forms Submitted on April 25, 2023

Dear Mr. Sharp:

This office received your cover letter and five petition forms on Tuesday, April 25, 2023. Your cover letter and the petition forms were hand delivered to the office. Your letter lists the five petition forms as: Initiative Regarding Rezoning, Initiative Regarding Rental Safety, Initiative Regarding Term Limits, For Abandonment of the Mayor-Council Form of Government, and For Adoption of Mayor-Council-Manager Form of Government.

As before, I have reviewed the petition forms for County Counselor Peg Trent. The Johnson County District Attorney's Office has also reviewed the petition forms. You have submitted five forms, although we approved, with caveats, the form of the question for some on previous submissions. Therefore, we are treating these as new petition forms. The petition forms differ from each other, in part, and differ from previous submissions; therefore, we will address each petition form individually.

K.S.A. 25-3601, et seq., requires that a copy of a petition be submitted to the county counselor for an opinion as the legality of the form of the question, and our opinion is limited to that issue. In our review of your petition question form, we have considered certain legal authority, including K.S.A. 25-3601, et seq., K.S.A. 25-620, K.S.A. 12-184 et seq., K.S.A. 12-3013, K.S.A. 12-1039, et seq., and K.S.A. 12-10a01, et seq.

Kansas law provides for the determination of the sufficiency of the substantive portions of the petition, which requires the exercise of discretionary judgment, as the responsibility of the

governing body of the public entity to which the petition is addressed. Accordingly, the sufficiency of the petition and of the questions stated, and form in which the question is presented, will be determined by the City of Prairie Village. However, a letter from this office that approves the legality of the form of the question would give a rebuttable presumption that the form of the question complies with the requirements of K.S.A. 25-3601, et seq.

I. Initiative Regarding Rezoning:

As noted above, K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if 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., and amendments thereto shall apply."

Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, et seq., the provisions of the more specific statute shall control.

This petition form states a request that the City of Prairie Village pass an ordinance and references an ordinance set forth above the remaining petition form.

K.S.A. 12-3013 (b) states that "[e]ach proposed ordinance set forth in full or submitted by title generally descriptive of the contents thereof shall be preceded by the words "[s]hall the following be adopted?" The form you have submitted presents an ordinance preceded by the words "[s]hall the following be adopted?" as required by K.S.A. 25-620 and K.S.A. 12-3013.

Therefore, we believe that the form of the question presented in this petition form conforms with statutory requirements, with these caveats: the ballot question must include the entire ordinance or the ordinance title "generally descriptive of the contents," as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law.

Please note that we do not provide an opinion as to whether the petition form is appropriate under K.S.A. 12-3013, whether the petition or ordinance you have submitted is in proper form, or whether the statements made in the ordinance are accurate, including whether Kansas statutes delegate rezoning issues to a governing body.

In addition, we offer the following comments for your consideration. The petition form adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. K.S.A. 25-3602(b) and K.S.A. 12-3013. Some of the "Whereas" clauses seem to be in incorrect order. The circulator's recital appears to be missing language required by K.S.A. 12-3013.

Although this opinion is limited to the form of the question, we again recommend careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

II. Initiative Regarding Rental Safety:

As previously stated, K.S.A. 25-3601 (a) requires that "Subject to the provisions of subsection (d), if 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., and amendments thereto shall apply." Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

This petition form states a request that the City of Prairie Village pass an ordinance and references an ordinance set forth above the remaining petition form.

K.S.A. 12-3013 (b) states that "[e]ach proposed ordinance set forth in full or submitted by title generally descriptive of the contents thereof shall be preceded by the words "[s]hall the following be adopted?" The form you have submitted presents an ordinance preceded by the words "Shall the following be adopted?" as required by K.S.A. 25-620 and K.S.A. 12-3013.

Therefore, we believe that the form of the question presented in this petition form conforms with statutory requirements, with these caveats: the ballot question must include the entire ordinance or the ordinance title "generally descriptive of the contents," as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law.

Please note that we do not offer an opinion as to whether the petition form is appropriate under K.S.A. 12-3013, whether the petition or ordinance you have submitted is in proper form, or whether the statements made in the ordinance are accurate.

In addition, we offer the following comments for your consideration. The petition adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. The circulator's recital appears to be missing language required by K.S.A. 12-3013.

Although this opinion is limited to the form of the question, we recommend a careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

III. Initiative Regarding Term Limits:

As before, K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if 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., and amendments thereto shall apply."

Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

K.S.A. 12-3013(b) states that "Each proposed ordinance set forth in full or submitted by title generally descriptive of the contents thereof shall be preceded by the words "[s]hall the following be adopted?" The form you submitted presents an ordinance preceded by the words "Shall the following be adopted?" as required by K.S.A. 25-620 and K.S.A. 12-3013.

Therefore, we believe that the form of the question presented on this petition form conforms with statutory requirements, with these caveats: the ballot question must include the entire ordinance or the ordinance title "generally descriptive of the contents," as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law.

Please note that we do not offer an opinion as to whether your petition form is appropriate under K.S.A. 12-3013, whether the petition or ordinance you have submitted is in proper form, or whether the statements made in the ordinance are accurate.

In addition, we offer the following comments for your consideration. The petition adds certain language that either does not match statutory language or is in addition to required statutory language. The form does not contain a request to the governing body. K.S.A. 12-3013(a). The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. The heading for the address does not reference the statutory language indicating a residence street and number. K.S.A. 25-3602(b) and K.S.A. 12-3013. The circulator's recital is missing language required by K.S.A. 12-3013.

Although this opinion is limited to the form of the question, we recommend a careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

IV. For Abandonment of the Mayor-Council Form of Government:

Again, K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if 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., and amendments thereto shall apply." Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

The title to this petition form states the purpose is to vote on the abandonment of the "Mayor-Council" form of government. The petition form cites K.S.A. 12-184 as its authority. It is our understanding that the City of Prairie Village is a mayor council form of government. K.S.A. 12-184b and, by reference, K.S.A. 12-184, permits the certification of a petition requesting the submission of a question to the voters. K.S.A. 12-184(a). A petition would need to comply with K.S.A. 25-3601, et seq.

K.S.A. 25-3602 (b)(1) requires the petition to "...[s]tate the question which the petitioners seek to bring to an election in the form of a question as it should appear on the ballot in accordance with the requirements of K.S.A. 25-620 and K.S.A. 25-3601" If the statutory authorization provided different direction, the more specific statute would govern; however, we do not see that in this instance. K.S.A. 25-620 requires that the language "Shall the following be adopted?" precede the proposition or question to be voted on. Because this petition form does not include the language required by K.S.A. 25-620, we do not believe the form of the question complies with statutory requirements.

In addition to this issue, we add these caveats. K.S.A. 12-184b(b) states, in part: "Any city which has operated for four or more years under a form of government may abandon such form and adopt a different form of government." We believe that Prairie Village has operated for more than four years under its current form of government; however, if it has not, our opinion would change because K.S.A. 12-184b and K.S.A. 12-184 would not provide the authority for this petition. Also, please note that we do not offer an opinion as to whether the petition or ordinance you have submitted is in proper form, and whether the statements made in the ordinance are accurate.

The following comments are for your consideration. Your petition adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. Finally, this format leaves the possibility of an election result in which one of the last two petition forms submitted (IV and V), passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.

Although this opinion is limited to the form of the question, we recommend a careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

V. For Adoption of the Mayor-Council-Manager Form of Government:

K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if 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., and amendments thereto shall apply." Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

The title to this petition form states the purpose is to vote on the adoption of the "Mayor-Council Manager" form of government. The petition form cites K.S.A. 12-1030 as authority its authority.

K.S.A. 25-3602 (b)(1) requires the petition to "...[s]tate the question which the petitioners seek to bring to an election in the form of a question as it should appear on the ballot in accordance with the requirements of K.S.A. 25-620 and K.S.A. 25-3601" If the statutory authorization provides different direction, the more specific statute would govern. K.S.A. 12-1039(c) provides "the form of the ballot." However, K.S.A. 12-1039(a) also provides that the petition shall conform to requirements of Article 36 of Chapter 25. K.S.A. 25-3602(b)(1) requires that the question shall comply with K.S.A. 25-620, which requires that the language "Shall the following be adopted?" precede the proposition or question to be voted on. Because this petition form does not include the language required by K.S.A. 25-620, we do not believe the form of the question complies with statutory requirements.

In addition to this issue, we add these caveats. We do not offer an opinion as to whether the petition or ordinance you have submitted is in proper form, and whether the statements made in the ordinance are accurate.

We offer the following comments for your consideration. The petition form adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. Finally, this format leaves the possibility of an election result in which one of the last two petition forms submitted (IV and V), passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.

This opinion is limited to the form of the question, and we again recommend careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we again caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

Sincerely,


Mary Martin Buhl
Assistant County Counselor

Cc: Shawn Minihan, Asst. District Attorney
Jacob Gontesky, Asst. District Attorney
Peg Trent, Chief Counsel, Johnson County
David E. Waters, City Attorney, Prairie Village