



DAVID E. WATERS
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August 2, 2023

**VIA HAND DELIVERY
AND EMAIL TO FRED.SHERMAN@JOCOGOV.ORG**

Mr. Fred Sherman
Johnson County Election Office
2101 E. Kansas City Rd.
Olathe, Kansas 66061

Re: City of Prairie Village, Kansas; Election Office Review of Petitions

Dear Mr. Sherman:

I serve as city attorney for the City of Prairie Village, Kansas (the "City"). On August 1, 2023, the following petition for adoption of a municipal ordinance was submitted to the City Clerk, copies of which will be included with the hand-delivered original of this letter we expect to deliver tomorrow:

- An Ordinance Regarding Limiting Rezoning That Would Allow Accessory Dwelling Units or Other Dwellings for More Than One Family to Reside on a Lot in a Single Family Residential Zoning District (the "Rezoning Petition").

I further understand that two other petitions may have been submitted to your office:

- Petition for an Election of the City of Prairie Village, Kansas to Vote on the Abandonment of the Mayor-Council Form of Government (the "Mayor-Council Abandonment Petition"); and
- Petition for an Election of the City of Prairie Village, Kansas to Vote on the Adoption of the Mayor-Council Manager Form of Government (the "Mayor-Council-Manager Adoption Petition").

Each of these petitions have been provided to your office for certification as to signatures and otherwise for your review as to legal requirements.

Rules Applicable to all Petitions.

We first offer the following summary of legal requirements applicable to your review of the petitions.

Signatures must include the residence address of each signer (K.S.A. 12-3013(a)), and above the spaces provided for signatures, the petitions must contain the following recital:

I have personally signed this petition. I am a registered elector of the state of Kansas and of the City of Prairie Village and my residence address is correctly written after my name.

K.S.A. 25-3602(b). The recital shall be followed by blank spaces for the signature, residence address and date of signing for each person signing the petition. *Id.* Per K.S.A. 12-3013(a), one person signing “each paper” must have made an oath before an officer competent to administer oaths that such person believes that each signature to the paper appended is a genuine signature of the person whose name it purports to be.

At the end of each set of documents carried by each circulator, the petition must contain a recital in substance as follows:

I am the circulator of this petition and I am qualified to circulate this petition and I personally witnessed the signing of the petition by each person whose name appears thereon.

(signature of circulator)

(circulator's residence address)

K.S.A. 25-3602(b)(4). This recital must be verified upon oath or affirmation before a notarial officer in the manner prescribed by K.S.A. 53-501 *et seq.* K.S.A. 25-3602(b)(4).

The “petition circulator” must be a United States citizen, at least 18 years of age, must not have been convicted of a felony unless such person has been pardoned or restored to such persons’ civil rights, and must submit to the jurisdiction of the state for purposes of subpoena enforcement regarding the integrity and reliability of the petition process. K.S.A. 25-3608. See *also* Kansas Secretary of State, Kansas Election Standards, Chapter 5, Petitions, pg. V-5.

There is a “staleness” factor applied to petitions. Per K.S.A. 25-3602(d), “any petition shall be null and void unless submitted to the county election officer or other designated official (city clerk under K.S.A. 12-3013) within 180 days of the date of the first signature on the petition.” The county clerk is the county election officer, except in those counties served by election commissioners. See K.S.A. 19-3422. Of course, Johnson County is served by an election commissioner, your office.

The county election officer is the entity that verifies signature requirements. See K.S.A. 25-3601(a):

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 through 25-3607, and amendments thereto, by the county election officer or such other official as designated in the applicable statute.

In addition to K.S.A. 25-3601(a), the Kansas Secretary of State acknowledges in its guidance that petitions are transmitted to the county election officer for processing because the election office has custody of the voter registration records. See <https://www.kssos.org/forms/elections/Petition%20Circ.%20Guide.pdf>. The Kansas Secretary of State also sets out guidelines for the verification of petitions in Chapter V of its published Elections Standards. See <https://sos.ks.gov/elections/election-standards/Kansas-Election-Standards-Chapter-V-Petitions.pdf>.

As to the Mayor-Council Abandonment Petition and the Mayor-Council-Manager Adoption Petition, the county election officer should also make all determinations as to whether other requirements of K.S.A. 25-3601 *et seq.* have been met, per K.S.A. 12-184(c):

*Any petition requesting the submission of a question hereunder shall be filed with the county election officer of the county in which the city is located. Such petition shall conform to the requirements of article 36 of chapter 25 of the Kansas Statutes Annotated and amendments thereto, and **its sufficiency shall be determined in the manner therein provided and shall be certified to the city clerk by the county election officer.** (Emphasis supplied.).*

Rezoning Petition

The Rezoning Petition appears to have been submitted under the authority of K.S.A. 12-3013. Per K.S.A. 12-3013(a) and K.S.A. 25-3602(b), the Rezoning Petition must have been validly signed by at least twenty-five percent (25%) of the electors who voted at the last preceding regular City election. The City would request verification from your office, as provided and in accordance with the requirements set forth above. The City offers the following comments to aid in your review:

- K.S.A. 25-3601(a) requires that the Rezoning Petition have been submitted to the county attorney or county counselor for a determination of the legality of the form of the question contained in the petition. The City understands that at least three (3) versions of the Rezoning Petition were so submitted, on March 20, 2023, then on April 6, 2023, and last on April 25, 2023. The Johnson County Legal Department provided its last response on May 1, 2023. Accordingly, to the extent any signatures pre-date the last version submitted to the County, it may be the case that such signatures were for a different form of Rezoning Petition than that submitted now to your office, and such signatures were subsequently appended to this later form.
- The circulator's recital at the end of the Rezoning Ordinance states:

I am the circulator of this petition, I believe the statements therein, and I am qualified to circulate this petition and I personally witnessed the signing of the petition by each person whose name appears thereon. I am a U.S. citizen, at least 18 years of age, have not been convicted of a felony, and agree to submit to the jurisdiction of the State of Kansas, including its agencies, political subdivisions and election officials, for purposes of subpoena enforcement regarding the integrity and reliability of the petition process.

Missing from this is the mandated language of K.S.A. 12-3013(a) that the circulator believes "that each signature to the paper appended is the genuine signature of the person whose name it purports to be." The upshot of this omission is that while the circulator may have witnessed a signature, there is no verification that the persons signing the petition were in fact who they purported to be.

- It appears that many of the signature pages do not contain the recital required by K.S.A. 25-3602(b). Those signatures must be invalidated because if someone signed a blank signature page, that page did not include the required affirmation.
- We note that the Rezoning Petition may not be placed on the ballot by your office without further actions or approvals by the City Council, including but not limited to a determination that the Rezoning Petition is administrative in nature. See K.S.A. 12-3013. The City Council reserves all of its rights in this respect.

Mayor-Council Abandonment Petition.

The Mayor-Council Abandonment Petition appears to have been submitted under the authority of K.S.A. 12-184 and K.S.A. 12-184b which, taken together, provide that a city must submit the question of abandoning its form of government if it receives a petition signed by at least 10% of all electors in the City. The City would request verification from your office, as provided and in accordance with the requirements set forth above. The City offers the following comments to aid in your review:

- K.S.A. 25-3602(a) provides that the petition must be filed with the county election officer or other official, if another official is designated in the applicable statutes. K.S.A. 12-184(c) requires that the petition be filed “with the county election officer of the county in which the city is located”. K.S.A. 12-184b does not provide for filing with any other official. If the Mayor-Council Abandonment Petition has not been filed with your office, then this statutory requirement would not have been satisfied.
- K.S.A. 25-3601(a) requires that the Mayor-Council Abandonment Petition have been submitted to the county attorney or county counselor for a determination of the legality of the form of the question contained in the petition. The City understands that at least three (3) versions of the Mayor-Council Abandonment Petition were so submitted, on March 20, 2023, then on April 6, 2023, and last on April 25, 2023. The Johnson County Legal Department provided its last response on May 1, 2023, and the County specifically stated that the form of the question does not comply with statutory requirements. This should, by itself, serve to not have the question placed on a ballot. A copy of the County’s May 1 letter is attached to or enclosed herewith.
- Furthermore, to the extent any signatures pre-date the last version submitted to the County (which, again, was rejected), it may be the case that such signatures were for a different form of Mayor-Council Abandonment Petition than that submitted now to your office, and such signatures were subsequently appended to this later form.
- In addition, and as stated by the County in rejecting the form of the Mayor-Council Abandonment Petition, 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 ...” 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, the form of the question does not comply with statutory requirements.
- Considering the Mayor-Council Abandonment Petition with the Mayor-Council-Manager Adoption Petition (discussed below), the County Counselor further stated that “this format leaves the possibility of an election result in which one of [the Mayor-Council Abandonment Petition and the Mayor-Council-Manager Adoption Petition] passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.” The City would agree and submits that your office should not approve petitions that could produce conflicting election results.
- It appears that many of the signature pages do not contain the recital required by K.S.A. 25-3602(b). Those signatures must be invalidated because if someone signed a blank signature page, that page did not include the required affirmation.

Mayor-Council-Manager Adoption Petition.

The Mayor-Council-Manager Adoption Petition appears to have been submitted under the authority of K.S.A. 12-184, K.S.A. 12-184b, and K.S.A. 12-1039 which, taken together, provide that a city must submit the question of adopting a manager form of government if it receives a petition signed by at least 10% of all electors in the City. The City would request verification from your office, as provided and in accordance with the requirements set forth above. The City offers the following comments to aid in your review:

- K.S.A. 25-3602(a) provides that the petition must be filed with the county election officer or other official, if another official is designated in the applicable statutes. K.S.A. 12-184(c) requires that the petition be filed “with the county election officer of the county in which the city is located”. Neither K.S.A. 12-184b or K.S.A. 12-1039 provide for filing with any other official. If the Mayor-Council-Manager Adoption Petition has not been filed with your office, then this statutory requirement would not have been satisfied.
- K.S.A. 25-3601(a) requires that the Mayor-Council-Manager Adoption Petition have been submitted to the county attorney or county counselor for a determination of the legality of the form of the question contained in the petition. The City understands that at least three (3) versions of the petition were so submitted, on March 20, 2023, then on April 6, 2023, and last on April 25, 2023. The Johnson County Legal Department provided its last response on May 1, 2023, and the County Counselor specifically stated that the form of the question does not comply with statutory requirements. This should, by itself, serve to not have the question placed on a ballot.
- Furthermore, to the extent any signatures pre-date the last version submitted to the County (which, again, was rejected), it may be the case that such signatures were for a different form of Mayor-Council-Manager Adoption Petition than that submitted now to your office, and such signatures were subsequently appended to this later form.
- In addition, and as stated by the County Counselor in rejecting the form of the Mayor-Council-Abandonment Petition, 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 ...” 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, the form of the question does not comply with statutory requirements.
- Considering the Mayor-Council-Manager Adoption Petition with the Mayor-Council Abandonment Petition (discussed above), the County Counselor further stated that “this format leaves the possibility of an election result in which one of [the Mayor-Council Abandonment Petition and the Mayor-Council-Manager Adoption Petition] passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.” The City would agree and submits that your office should not approve petitions that could produce conflicting election results.
- It appears that many of the signature pages do not contain the recital required by K.S.A. 25-3602(b). Those signatures must be invalidated because if someone signed a blank signature page, that page did not include the required affirmation.
- K.S.A. 12-1039(c) provides that, should the question presented by the Mayor-Council-Manager Adoption Petition pass (presumably, in this case, at the November 2023 election),

then “at the next regular city election [that being in 2025] the governing body of the city shall be elected as provided in the resolution or petition”. However, the Mayor-Council-Manager Adoption Petition conflicts with this statutory directive, in that it would have that, immediately upon approval of the question in 2023:

Only the 2023 elected City Council member from each ward shall continue to serve in the new City Council along with the currently elected at large Mayor.

The Mayor-Council-Manager Adoption Petition does not provide for waiting until the next regular election, as required by K.S.A. 12-1039(c), and seeks immediately to alter the membership of the governing body. Accordingly, the Mayor-Council-Manager Adoption Petition conflicts with Kansas statute and is not appropriate for the ballot.

- K.S.A. 12-1039(b) further requires that the “petition shall establish the membership and terms of office of the governing body”. As to the mayor (a member of the governing body), the Mayor-Council-Manager Adoption Petition merely states that the “the currently elected at large Mayor” would continue to serve, but that such “current at large Mayor shall serve two year terms” (emphasis supplied). However, the petition does not establish the terms of office for the position of mayor moving forward, or beyond the “current” person serving as mayor. Therefore, the Mayor-Council-Manager Adoption Petition does not satisfy the requirements of Kansas statute and is not appropriate for the ballot.

Thank you for your attention to these matters. Please do not hesitate to contact the undersigned if you have any questions.

Best regards,

SPENCER FANE LLP



By: David E. Waters

cc: The Honorable Eric Mikkelsen (via email)
Mr. Wes Jordan (via email)
Mr. Adam Geffert (via email)
Ms. Peg Trent, County Counselor (via email)

Enclosures

JOHNSON COUNTY
KANSAS
Legal Department

MARY BUHL
ASSISTANT COUNTY COUNSELOR
(913) 715-1900
MARY.BUHL@JOCOGOV.ORG

rsharp@midwest-law.com

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