Approved: 3-3-99
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairman Senator Janice Hardenburger at 1:30 p.m. on February 18, 1999 in Room 529-S of the Capitol.

All members were present except: Senators Lawrence

Committee staff present: Dennis Hodgins, Legislative Research Department
Mike Heim, Legislative Research Department
Ken Wilke, Revisor of Statutes
Graceanna Wood, Committee Secretary

Conferees appearing before the committee: Senator Stan Clark
Lester Harenza, Citizen

Others attending: See attached list

Chairman Hardenburger opened hearing on **SB 244 Concerning elections; relating to petitions.**

Senator Stan Clark briefed the Committee on **SB 244** stating under current law, before a person circulates a petition. There is a requirement for the petitioners to submit the petition to the County Attorney who determines if the question is proper before approving or disapproving the question. Senator Clark's bill makes the County Attorney provide some assistance in defining the question on the petition. Also the bill would state that, if petitioners do not go to the County Attorney with the petition, it cannot be sole grounds for voiding the entire petition.

Mr. Lester Harenza of Colby gave testimony in favor of **SB 244**. He advised the Committee that last summer, the Thomas County Commission adopted a resolution prepared by the County Attorney to increase the property tax for road and bridge improvements. Mr. Harenza had much frustration in getting a petition approved by the County Attorney in order to begin the process for circulating it. (Attachment #1)

Senator Stan Clark testified before the Committee in favor of **SB 244**, advising the Committee that if the County Attorney is late in approving a petition, this could cause the issue to miss the specific publication time frame and delay the vote until the next election. (Attachment #2)

The Committee discussed if the County Attorney should make the final decision on how the issue is to be presented on a petition and the time period.

Chairman Hardenburger appointed Sub-Committee to study **SB 244**. She closed the hearing on this bill and opened the hearing on **SB 245 concerning certain municipalities authorizing the calling of certain elections.**

Senator Clark presented testimony to the Committee as a proponent on **SB 245**. He advised the Committee this bill would allow the elected officials to bring a property tax issue directly to the vote of the electorate instead of passing a local resolution that is subject to a protest petition. (Attachment #3)

Chairman Hardenburger closed hearings on **SB 245.** An amendment was suggested by changing language referring to general bond law to KSA 10-120.

Senator Huelskamp moved that the bill be passed with suggested amendment, seconded by Senator Steineger. Motion carried.

Meeting was adjourned at 2:30 p.m. Next meeting scheduled for February 22, 1999.

ELECTIONS & LOCAL GOVERNMENT COMMITTEE
GUEST LIST

DATE: FEBRUARY 18, 1999

NAME	REPRESENTING
Lester L Hargrett	Citizen
Conrad Reed	Self
Tom Bruno	Allen + Assoc.
JAKE FISHER	WHITNEY DAMRON
Mark Hamann	Div. of the Budget
Brad Bryant	Sec. of State
Sabrina Cole	Sen. Tyson - Talum

Testimony of Lester Haremza, Colby, Kansas
Before Senate Elections and Local Government Committee

S.B. 244

February 18, 1999

Chairman Hardenburger and Members of the Committee:

Last summer, the Thomas County Commission **adopted** a resolution prepared by the County Attorney to increase the property tax for road and bridge improvements.

On July 8 and July 15, 1998, the resolution was published in the Colby Free Press. We called the County Attorney's office and found that he was on vacation and would not return until the 1st of August.

On July 27th, John Galli and I went to Stan Clark to ask him to write a petition so that we could present it to the County Attorney for his approval. Our materials for Senator Clark included a petition which our County Attorney previously said was in proper form (attachment 1) and it stated this question:

> "Shall Tax Levy Resolution 97-1215, passed by the Board of Education of Unified School District #315, **be approved**?"

Senator Clark wrote out a petition (attachment 2), and we delivered it to the County Attorney's office. The question stated was:

> "Shall the Thomas County Board of Commissioners be allowed to exempt the Thomas County Road and Bridge Fund in an amount not to exceed 2 mills over and above the current level of spending from the Kansas Property Tax Lid law?"

On August 3rd, we received a reply (attachment 3) that stated: "I conclude that the proposed petition does not comply with the provisions of K.S.A. 25-620. The issue upon which you request an election is in the form of a question, but it does not appear as it should upon the ballot and fails to include the language set forth in K.S.A. 25-620."

Senate Elections & Local Government
Attachment: # 1-1
Date: 2-18-99

Later that day, we went to Senator Clark and we revised the question to read (attachment 4):

> "Shall Charter Resolution No. 9 passed by the Thomas County Board of Commissioners which exempts the Thomas County Road and Bridge Fund in an amount not to exceed 2 mills over and above the current level of spending from the Kansas Property Tax Lid **be approved**?"

The County Attorney replied (attachment 5) on August 4th that, "Both the statute and the guide specifically state that each petition must state the proposition or question preceded by the following words: "Shall the following **be adopted**."

On August 7th, after consulting with our attorney, Tony Potter, we submitted a third petition (attachment 6). Our question read:

> "Shall Charter Resolution No. 9, passed by the Board of County Commissioners of Thomas County, Kansas, on July 6, 1998, **be adopted** and **take effect**?"

Our attorney, in a letter the same day, also wrote us (attachment 7) and stated: "You will notice that I have changed the language from the Petitions you sent to me, including the question to be submitted. The problem with the language as set forth by Mr. Taylor and K.S.A. 25-620 is that it does not exactly tract with K.S.A. 19-101b and that the resolution has already been "**adopted**" by the Board of County Commissioners. The issue in the election will be whether or not the resolution should be allowed to **take effect**. I have enclosed a copy of the latter statute for your review and have included language from both statutes and drafted the question to include whether or not the ordinance should **be adopted** and **take effect**."

On August 11th, the County Attorney rejected the petition. The same day our 4th petition was faxed to the County Attorney, which he rejected (attachment 8) on August 14th.

The same day, another petition (attachment 9) was faxed along with a letter (attachment 10) about the phrases, "**take effect**" and "**be adopted.**" The attorneys finally agreed the next day with the final attachment (attachment 11):

"Shall the following **be adopted**?"

"Shall Charter Resolution No. 9, a charter resolution providing the Board of County Commissioner of Thomas County, Kansas, substitute and additional provisions to K.S.A. 79-5028, and amendments thereto, which charter resolution will remove the aggregate levy amount limitation from the Thomas County Road and Bridge Fund, as passed by the Board of County Commissioner of Thomas County, Kansas, on July 6, 1998, **take effect**?"

We passed the petition and were successful in the election but, members of the Committee, no one should experience the frustration that I experienced in getting a petition approved in order to begin the process of circulating it. As you can see, we lost 29 days in getting the County Attorney's approval. This bill allows for an extension of time – see page 1, lines 35-37.

This bill also provides that the County Attorney assist the parties in drafting the question – page 1, lines 37-40.

I ask you to approve, **adopt** or allow this bill to **take effect**. I will stand for questions.

PETITION

TO: ROSALIE SEEMANN
COUNTY ELECTION OFFICER
THOMAS COUNTY, KANSAS

1. That the undersigned registered electors residing within the Unified School District #315 of Thomas County, Kansas, hereby express their opposition to the implementation of Tax Levy Resolution 97-1215 of the Board of Education of said School District which provides that an annual tax levy in an amount not to exceed four (4) mills may be assessed upon the taxable tangible property in said District for the purposes stated in said Resolution. Further, we petition, pursuant to K.S.A. 72-8801, et seq, that the County Election Officer call an election of the electors in said School District at the next general election, as specified by the Board of Education of the said School District, on the following question:

To vote in favor of any question submitted upon this ballot, make a cross or check mark in the square to the left of the word "Yes"; to vote against any question, make a cross or check mark in the square to the left of the word "No".

Shall Tax Levy Resolution 97-1215, passed by the Board of Education of Unified School District #315, be approved?

[ ] YES

[ ] NO

2. That the County Election Officer call an election, for submission of the above and foregoing question to the registered electors of said School District, to be held at the next succeeding primary or general election as defined by K.S.A. 25-2502, and amendments thereto, in which said School District is participating, all as provided by K.S.A. 25-3602(e).

I have personally signed this Petition. I am a registered elector of the State of Kansas and of Unified School District #315, Thomas County, Kansas, and my residence address is correctly written after my name.

Name	Residence Address	Date
Bev Stang	1124 Flint Colby Ks.	1-31-98, 1998
Dee Hale George	1121 Flint Colby Ks	1-31-98, 1998
~~Kandi Hixon~~	~~1114 Flint Colby Ks~~	~~1-31, 1998~~
~~Betty Nelson~~	~~955 E Hall~~	~~1-31, 1998~~

1-4

Attachment 1

PETITION

We, the legally qualified electors of Thomas County, State of Kansas, whose signatures appear below, hereby petition the Election Officer of Thomas County, Kansas to place a Resolution on a ballot to state, " Shall the Thomas County Board of Commissioners be allowed to exempt the Thomas County Road and Bridge Fund in an amount not to exceed 2 mills over and above the current level of spending from the Kansas Property Tax Lid law?" at the next General Election to be held in Thomas County, to determine the majority vote by election on this proposition all pursuant to K.S.A. 79-5028 and amendments.

I have personally signed this petition. I am a registered elector of the State of Kansas and of Thomas County and my residence address is correctly written after my name.

	SIGNATURE	PRINTED NAME	RESIDENCE ADDRESS	DATE
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				

VERIFICATION

I,_____, the circulator of this petition, personally witnessed the signing by each person, whose name appears hereon. I further state that I am a resident of Thomas County, where the election is sought to be held.

Signed_____

NOTARY PUBLIC

The foregoing signature was witnessed by me on. _____, 1998.

My commission expires: _____.

Signed: _____ Date: _____

Attachment 2

Legal Notice

CHARTER RESOLUTION NO. 9

A CHARTER RESOLUTION PROVIDING THE BOARD OF COUNTYCOMMISSIONERS OF THOMAS COUNTY, KANSAS, SUBSTITUTE AND ADDITIONAL PROVISIONS TO K.S.A. 79-5028 AND AMENDMENTS THERETO, WHICH CHARTER RESOLUTION WILL REMOVE THE AGGREGATE LEVY AMOUNT LIMITATION FROM THE THOMAS COUNTY ROAD AND BRIDGE FUND.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THOMAS COUNTY, KANSAS:

Section 1. The County of Thomas, by the power vested in it by K.S.A. 19-101a and as provided by K.S.A. 79-5036(b) and amendments thereto, hereby elects to add the Thomas County Road and Bridge Fund as an additional exemption from the aggregate levy amount set out in K.S.A. 79-5028 K.S.A. 79-5028 is part of an enactment commonly known as the Kansas Property tax lid law, which enactment applies to this county but does not apply uniformly to all counties.

Section 2. The following is hereby added to the provisions of K.S.A. 79-5028 and amendments thereto as it applies to Thomas County, Kansas: (i) expenses incurred for road and bridge fund, in an amount not to exceed 2 mills over and above the current level of spending for said fund.

Section 3. This Charter Resolution shall be published once each week for two consecutive weeks in the official county newspaper.

Section 4. This Charter Resolution shall take effect 60 days after final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the Resolution as provided in K.S.A. 19-101b in which this Charter Resolution shall become effective upon approval by a majority of the electors voting thereon.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF THOMAS COUNTY, KANSAS this 6th day of July , 1998.

Glenn H. Kersenbrock, Chairman

Ronald G. Evans, Member

Duane Dawes, Member

Atttest:
Rosalie Seemann, County Clerk

(Published in the Colby Free Press on July 8 & 15, 1998)

Attachment 2

Laurence A. Taylor
Thomas County Attorney

1480 West Fourth, P.O. Box 509
Colby, KS 67701

Tele.: 785-462-4580
Fax.: 785-462-6738

August 3, 1998

Lester Haremza
P.O. Box 213
Colby, KS 67701

Re: Petition -- Exempting Thomas County Road and Bridge Fund from Aggregate Levy Amount Limitation

Dear Lester:

I am in receipt of the proposed Petition you filed with my office on July 29, 1998, and have reviewed the same. A copy of the filed proposed Petition is attached to this letter.

As Thomas County Attorney, pursuant to K.S.A. 25-3601, I am now required to furnish a written opinion as to the legality of the form of the question submitted and identified in that proposed petition. Please understand this opinion addresses only whether the question the petitioners seek to bring to an election is in the form of a question, appears as it should upon the ballot, and includes the language set forth in K.S.A. 25-620. Nothing in this opinion should be construed as advice concerning the content of the petition you have submitted, the validity of the signatures that may be attached to that petition or to advise you concerning the sufficiency of the petition.

Having offered those admonitions, I conclude that the attached proposed petition does not comply with the provisions of K.S.A. 25-620. The issue upon which you request an election is in the form of a question but it does not appear as it should upon the ballot and fails to include the language set forth in K.S.A. 25-620. I have attached a copy of K.S.A. 25-620 for your information.

Yours truly,

Laurence A. Taylor

LAT:cls

1-7

cc: Rosalie Seemann, Clerk ✓

Attachment 3

PETITION

We, the legally qualified electors of Thomas County, State of Kansas, whose signatures appear below, hereby petition the Election Officer of Thomas County, Kansas to place a Resolution on a ballot to state:

Shall Charter Resolution No. 9 passed by the Thomas County Board of Commissioners which exempts the Thomas County Road and Bridge Fund in an amount not to exceed 2 mills over and above the current level of spending from the Kansas Property Tax Lid be approved? [ ] YES [ ] NO

at the next General Election to be held in Thomas County, to determine the majority vote by election on this proposition all pursuant to K.S.A. 79-5028 and amendments. I have personally signed this petition. I am a registered elector of the State of Kansas and of Thomas County and my residence address is correctly written after my name.

	SIGNATURE	PRINTED NAME	RESIDENCE ADDRESS	DATE
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

VERIFICATION

I,_____, the circulator of this petition, personally witnessed the signing by each person, whose name appears hereon. I further state that I am a resident of Thomas County, where the election is sought to be held.

Signed_____

NOTARY PUBLIC

The foregoing signature was witnessed by me on. _____, 1998.

My commission expires: _____

Signed: _____ Date: _____

Attachment 4

Legal Notice

CHARTER RESOLUTION NO. 9

A CHARTER RESCLUTION PROVIDING THE BOARD OF COUNTYCOMMISSIONERS OF THOMAS COUNTY, KANSAS, SUBSTITUTE AND ADDITIONAL PROVISIONS TO K.S.A. 79-5028 AND AMENDMENTS THERETO, WHICH CHARTER RESOLUTION WILL REMOVE THE AGGREGATE LEVY AMOUNT LIMITATION FROM THE THOMAS COUNTY ROAD AND BRIDGE FUND.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THOMAS COUNTY, KANSAS:

Section 1. The County of Thomas, by the power vested in it by K.S.A. 19-101a and as provided by K.S.A. 79-5036(b) and amendments thereto, hereby elects to add the Thomas County Road and Bridge Fund as an additional exemption from the aggregate levy amount set out in K.S.A. 79-5028 K.S.A. 79-5028 is part of an enactment commonly known as the Kansas Property tax lid law, which enactment applies to this county but does not apply uniformly to all counties.

Section 2. The following is hereby added to the provisions of K.S.A. 79-5028 and amendments thereto as it applies to Thomas County, Kansas: (i) expenses incurred for road and bridge fund, in an amount not to exceed 2 mills over and above the current level of spending for said fund.

Section 3. This Charter Resolution shall be published once each week for two consecutive weeks in the official county newspaper.

Section 4. This Charter Resolution shall take effect 60 days after final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the Resolution as provided in K.S.A. 19-101b in which this Charter Resolution shall become effective upon approval by a majority of the electors voting thereon.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF THOMAS COUNTY, KANSAS this 6th day of July , 1998.

Glenn H. Kersenbrock, Chairman

Ronald G. Evans, Member

Duane Dawes, Member

Atttest:
Rosalie Seemann, County Clerk

(Published in the Colby Free Press on July 8 & 15, 1998)

Attachment 4

Laurence A. Taylor
Thomas County Attorney

1480 West Fourth, P.O. Box 509
Colby, KS 67701

Tele.: 785-462-4580
Fax.: 785-462-6738

August 4, 1998

John Galli, Jr.
2380 North Range Ave.
Colby, KS 67701

Lester Haremza
P.O. Box 213
Colby, KS 67701

Re: Proposed Petition -- Exempting Thomas County Road and Bridge Fund from Aggregate Levy Amount Limitation

Dear John and Lester:

On Monday, August 3, 1998, you brought a proposed petition to my office and I have attached a copy of the same to this letter.

As Thomas County Attorney, pursuant to K.S.A. 25-3601, I am now required to furnish a written opinion as to the legality of the form of the question submitted and identified in that proposed petition. Please understand this opinion addresses only whether the question the petitioner seeks to bring to an election is in the form of a question, appears as it should upon the ballot, and includes the language set forth in K.S.A. 25-620. Nothing in this opinion should be construed as advice concerning the content of the petition you have submitted, the validity of the signatures that may be attached to that petition, or to advise you concerning the sufficiency of the petition.

Having offered those admonitions, I conclude that the attached proposed petition does not comply with the provisions of K.S.A. 25-620. The proposition or question is, in fact, in the form of a question and does appear as it should upon the ballot but it fails to include the language set forth in K.S.A. 25-620. I previously provided you with a copy of K.S.A. 25-620 and it is my understanding you picked up a guide to petition requirements from Rosalie Seemann. Both the statute and the guide specifically state that each petition must state the proposition or question preceded by the following words: "Shall the following be adopted?"

1-10

Attachment 5

PETITION

TO: ROSALIE SEEMANN
COUNTY ELECTION OFFICER
THOMAS COUNTY, KANSAS

1. That the undersigned, as registered electors residing within Thomas County, Kansas, hereby express their opposition to the implementation of Charter Resolution No. 9 as passed and adopted by the Board of County Commissioner of Thomas County, Kansas, on July 6, 1998. Further, we petition, pursuant to K.S.A. 19-101b, et seq, that the County Election Officer call an election of the electors in said County, on the following question:

To vote in favor of any question submitted upon this ballot, make a cross or check mark in the square to the left of the word "Yes"; to vote against any question, make a cross or check mark in the square to the left of the word "No".

Shall Charter Resolution No. 9, passed by the Board of County Commissioners of Thomas County, Kansas, on July 6, 1998, be adopted and take effect?	[ ] YES [ ] NO

2. That the County Election Officer call an election, for submission of the above and foregoing question to the registered electors of Thomas County, to be held at the next succeeding primary or general election as defined by K.S.A. 25-2502, and amendments thereto, all as provided by K.S.A. 25-3602(e) and K.S.A. 19-101b.

I have personally signed this Petition. I am a registered elector of the State of Kansas, and of Thomas County, Kansas, and my residence address is correctly written after my name.

Name	Residence Address	Date
_____	_____	_____, 1998
_____	_____	_____, 1998
_____	_____	_____, 1998
_____	_____	_____, 1998
_____	_____	_____, 1998
_____	_____	_____, 1998

1-11

Attachment 6

POTTER LAW OFFICE, P.A.

323 North Pomeroy Ave. P.O. Box 278
Hill City, Kansas 67642-0278

TONY A. POTTER
Attorney at Law

Telephone: (785) 421-2129
Facsimile: (785) 421-3603

August 7, 1998

Mr. Lester Haremza
P.O. Box 213
Colby, KS 67701

Re: Petition Opposing Charter Ordinance No. 9

Dear Mr. Haremza:

Enclosed you will find the Petition opposing the implementation of Charter Ordinance No. 9 as passed by the Thomas County Board of Commissioner on July 6, 1998.

You will notice that I have changed the language from the Petitions you sent to me, including the question to be submitted. The problem with the language as set forth by Mr. Taylor and K.S.A. 25-620 is that it does not exactly tract with K.S.A. 19-101b and that the resolution has already been "adopted" by the Board of County Commissioners. The issue in the election will be whether or not the resolution should be allowed to take effect. I have enclosed a copy of the latter statute for your review and have included language from both statutes and drafted the question to include whether or not the ordinance should be adopted and take effect.

Please remember to submit this Petition to Mr. Taylor for his review and approval before circulating the same. I have included two copies of the Petition, one for submission to Mr. Taylor and one for you to make copies from. Please note that you may make extra copies of the signature page, the second page, in order to obtain more signatures per Petition. However, each Petition must contain the first page and the last page and be properly executed by the circulator.

If you have any questions, please contact me before the Petition is circulated to save the effort that would be made.

Sincerely,

Tony A. Potter

TAP

1-12

Attachment 7

*9554 K.S. § 19-101b

KANSAS STATUTES
CHAPTER 19. COUNTIES AND COUNTY OFFICERS
ARTICLE 1. GENERAL PROVISIONS

Current through End of 1996 Reg. Sess.

19-101b. Same; charter resolutions; exemption of county from acts of legislature; procedure; election.

(a) Any county, by charter resolution, may elect in the manner prescribed in this section that the whole or any part of any act of the legislature applying to such county other than those acts concerned with those limitations, restrictions or prohibitions set forth in subsection (a) of K.S. 19-101a, and amendments thereto, shall not apply to such county.

(b) A charter resolution is a resolution which exempts a county from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject. Such charter resolution shall be so titled, shall designate specifically the act of the legislature or part thereof made inapplicable to such county by the passage of the resolution and shall contain any substitute and additional provisions. Such charter resolution shall require the unanimous vote of all board members unless the board determines prior to passage it is to be submitted to a referendum in the manner hereinafter provided, in which event such resolution shall require a 2/3 vote of the board. In counties with five or seven county commissioners, such charter resolution shall require a 2/3 vote of all board members unless the board determines prior to passage it is to be submitted to a referendum in the manner hereinafter provided, in which event such resolution shall require a majority vote of the board. Every charter resolution shall be published once each week for two consecutive weeks in the official county newspaper. A charter resolution shall take effect 60 days after final publication unless it is submitted to a referendum in which event it shall take effect when approved by a majority of the electors voting thereon.

(c) If within 60 days of the final publication of a charter resolution, a petition signed by a number of electors of a county equal to not less than 2% of the number of electors who voted at the last preceding November general election or 100 electors, whichever is the greater, shall be filed in the office of the county election officer demanding that such resolution be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by the electors. An election if called, shall be called within 30 days and held within 90 days after the filing of the petition. The board, by resolution, shall call the election and fix the date. Such resolution shall be published once each week for three consecutive weeks in the official county newspaper, and the election shall be conducted in the same manner as are elections for officers of such county. The proposition shall be: "Shall charter resolution No. _____, entitled (title of resolution) take effect?" The board may submit any charter resolution to a referendum without petition in the same manner as charter resolutions are submitted upon petition, except elections shall be called within 30 days and held within 90 days after the first publication of the charter resolution. Each charter resolution which becomes effective shall be recorded by the county election officer in a book maintained for that purpose with a statement of the manner of adoption, and a certified copy shall be filed with the secretary of state, who shall keep an index of the same.

*9555 (d) Each charter resolution passed shall control and prevail over any prior or subsequent act of the board and may be repealed or amended only by charter resolution or by an act of the legislature uniformly applicable to all counties.

History: L. 1974, ch. 110, § 3; L. 1987, ch. 100, § 1; July 1.

Search this disc for cases citing this section.

1-13

Attachment 7

Laurence A. Taylor
Thomas County Attorney

1480 West Fourth, P.O. Box 509
Colby, KS 67701

Tele.: 785-462-4580
Fax.: 785-462-6738

August 14, 1998

Mr. Tony A. Potter
Potter Law Office, P.A.
P.O. Box 278
Hill City, KS 67642

Re: Proposed Petition -- Exempting Thomas County Road and Bridge Fund from Aggregate Levy Amount Limitation

Dear Tony:

On Monday, August 10, 1998, Les Haremza delivered to the Thomas County Attorney's office a proposed petition relating to the above. In accordance with your letter to the Thomas County Attorney dated August 11, 1998, which was received via facsimile on that date, this proposed petition will be disregarded.

On Tuesday, August 11, 1998, a proposed petition was received from you via facsimile. A copy of the proposed petition is attached to this letter.

Pursuant to K.S.A. 25-3601, the Thomas County Attorney is required to furnish a written opinion as the legality of the form of the question submitted and identified in the petition. Please understand this opinion addresses only whether the question the petitioner seeks to bring to an election is in the form of a question, appears as it should on the ballot, and includes the language set forth in K.S.A. 25-620. Nothing in this opinion should be construed as advice concerning the content of the petition you have submitted, the validity of the signatures that may be attached to the petition, or to advise you concerning the sufficiency of the petition.

Having offered those admonitions, I conclude that the attached proposed petition does not comply with provisions of K.S.A. 25-620. The proposition or question is in the form of a question but it fails to set forth the language specifically required by K.S.A. 25-620. The statute specifically requires that the petition must state the proposition or question preceded by the following words: "Shall the following be adopted?" A copy of

1-14

Attachment 8

the Thomas County Attorney's opinion letter dated August 4, 1998, is attached to this letter for further reference.

Yours truly,

Laurence A. Taylor

LAT:bkw
Enclosures
cc: Rosalie Seemann, County Clerk

Attachment 8

PETITION

TO: ROSALIE SEEMANN
COUNTY ELECTION OFFICER
THOMAS COUNTY, KANSAS

1. That the undersigned, registered electors residing within Thomas County, Kansas, hereby demand that Charter Resolution No. 9, "A charter resolution providing the Board of County Commissioners of Thomas County, Kansas, substitute and additional provisions to K.S.A. 79-5028, and amendments thereto, which charter resolution will remove the aggregate levy amount limitation from the Thomas County Road and Bridge Fund", as passed by the Thomas County Board of County Commissioners on July 6, 1998, be submitted to a vote of the electors of Thomas County, Kansas, and that said resolution not take effect until submitted to a referendum and approved by the electors. The proposition shall be:

To vote in favor of any question submitted upon this ballot, make a cross or check mark in the square to the left of the word "Yes"; to vote against any question, make a cross or check mark in the square to the left of the word "No".

Shall Charter Resolution No. 9, "A charter resolution Providing the Board of County Commissioners of Thomas County, Kansas, substitute and additional provisions to K.S.A. 79-5028, and amendments thereto, which charter resolution will remove the aggregate levy amount limitation from the Thomas County Road and Bridge Fund", as passed by the Board of County Commissioners of Thomas County, Kansas, on July 6, 1998, take effect?

[ ] YES

[ ] NO

I have personally signed this Petition. I am a registered elector of Thomas County, Kansas and the State of Kansas, and my residence address is correctly written after my name.

Name	Residence Address	Date
_____	_____	_____, 1998
_____	_____	_____, 1998
_____	_____	_____, 1998
_____	_____	_____, 1998
_____	_____	_____, 1998

1-16

Attachment 9

POTTER LAW OFFICE, P.A.

323 North Pomeroy Ave. P.O. Box 278
Hill City, Kansas 67642-0278

TONY A. POTTER
Attorney at Law

Telephone: (785) 421-2129
Facsimile: (785) 421-3603

August 14, 1998

Mr. Laurence A. Taylor
Thomas County Attorney
(785) 462-6738

VIA FACSIMILE

Re: Charter Ordinance No. 9 Petition

Dear Allen:

I have reviewed your letter dated August 14, 1998, regarding the Petition submitted to you for review, via facsimile, on August 11, 1998. I am requesting that you review the following Petition and approve the same for circulation.

Specifically, K.S.A. 19-101b(c) states that the language of the proposition shall be: "Shall charter resolution No. ____, entitled (title of resolution) take effect?". Obviously, we have a conflict between the language set forth in K.S.A. 25-620 and K.S.A. 19-101b. I chose to use the language in K.S.A. 19-101b because the language in K.S.A. 25-620, concerning the word "adopted" is not accurate in that the commissioner have already adopted the resolution. The question now is whether or not the resolution should take effect, as per K.S.A. 19-101b. In my mind, the charter resolution statute would govern, given the fact that the question is clearly set forth.

I have no strong objection to including the language that you request, and can change the phrase from "take effect?" to "be adopted?" if you so chose. The issue is circulating a petition that you have approved. I would suggest simply stating the question as I have proposed, changing the last words to "be adopted and take effect?". I have changed the Petition accordingly and ask that you review it and deliver an opinion to me forthwith.

Sincerely,

Tony A. Potter

TAP

1-17

Attachment 10

PETITION

TO: ROSALIE SEEMANN
COUNTY ELECTION OFFICER
THOMAS COUNTY, KANSAS

1. That the undersigned, as registered electors residing within Thomas County, Kansas, hereby demand that Charter Resolution No. 9, a charter resolution providing the Board of County Commissioners of Thomas County, Kansas, substitute and additional provisions to K.S.A. 79-5028 and amendments thereto, which charter resolution will remove the aggregate levy amount limitation from the Thomas County Road and Bridge Fund, as passed and adopted by the Board of County Commissioner of Thomas County, Kansas, on July 6, 1998, be submitted to a vote of the electors of Thomas County, Kansas, and that said resolution not take effect until submitted to a referendum and approved by the electors. The proposition shall be:

To vote in favor of any question submitted upon this ballot, make a cross or check mark in the square to the left of the word "Yes"; to vote against any question, make a cross or check mark in the square to the left of the word "No".

Shall the following be adopted?

Shall Charter Resolution No. 9, a charter resolution providing the Board of County Commissioner of Thomas County, Kansas, substitute and additional provisions to K.S.A. 79-5028, and amendments thereto, which charter resolution will remove the aggregate levy amount limitation from the Thomas County Road and Bridge Fund, as passed by the Board of County Commissioner of Thomas County, Kansas, on July 6, 1998, take effect?	[ ] YES [ ] NO

2. That the Board of County Commissioners of Thomas County, Kansas, pass a resolution directing that an election be called submitting the above proposal to the electors of Thomas County, Kansas.

I have personally signed this Petition. I am a registered elector of the State of Kansas, and of Thomas County, Kansas, and my residence address is correctly written after my name.

Name	Residence Address	Date
_____	_____	_____, 1998
_____	_____	_____, 1998

1-18

Attachment 11

40TH DISTRICT

KANSAS SENATE

Stan Clark

COMMITTEE ASSIGNMENTS
VICE CHAIR: UTILITIES
COMPUTERS & TELECOMMUNICATIONS
MEMBER: AGRICULTURE
FINANCIAL INSTITUTIONS & INSURANCE
RULES & REGULATIONS

TESTIMONY BEFORE THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT

SENATE BILL NO. 244
FEBRUARY 18, 1999

Chairman Hardenburger and members of the committee:

This is an issue that is not new to you. It was interesting reading the testimony and minutes from the House committee in 1992 that last addressed this issue. Representative Sherman Jones was the chair of the committee and Representative Sandy Praeger was a member of the committee. The struggle is how best to balance protecting our citizen's constitutional right to petition with having a clearly stated question to place on the ballot for voter referendum. I appreciate Chris McKenzie's ideas for clarifying the unintended consequences and I have visited several times with Arden Ensley. Only because of a prior commitment is Arden not here to give the history of this statute.

The Legislature in 1992 hoped that by inserting the language requiring submittal to the county or district attorney for an opinion as to the legality of the form of the question would have solved the problem. We assumed that the County Attorney would also be helpful in correcting any shortcoming he might find. We have found that isn't always the case, hence the suggested language on lines 34-40 of the first page of the bill. Incidentally, I think this is the only election that I ever voted for a tax increase and was on the losing side.

Arden has pointed out one possible problem with this section of the bill. We all know that there are specific time frames for legal notices before an election. The constitutional amendment that was passed two weeks ago in the Senate had specific time constraints for it to be on the April ballot. If the county attorney is lackadaisical about assisting the petitioners, then the extension of an additional calendar day for each calendar day of delay by the

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Senate Elections & Local Government
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county attorney could cause the issue to miss the specific publication time frames and therefore delay the vote until the next election or cause a mail ballot election. The next bill on your agenda can remedy that situation or the following rewriting of the proposed language might satisfy that objection:

> (starting on line 34) If the county or district attorney does not furnish an opinion within such five-day period there shall be a rebuttable presumption that the form of any question approved by the county or district attorney complies with the requirements of this act. If the county or district attorney determines the form of the question submitted is illegal, the county or district attorney shall assist the parties filing this petition in drafting the question in a form that complies with the applicable laws of this state. The applicable statutory time period for circulating a petition shall be extended an additional calendar day for each calendar day of delay by the county or district attorney.

My preference is the way the bill has it but it is a policy decision you need to be aware of.

Line 43 on the first page, continuing through line 4 of the second page addresses a related issue. Arden said that it was the intent of the Legislature to assist the petitioners in having the proper legal form on the petitions. He called Rick Smith in the AG's office who agreed. By inserting this proposed language, which holds that failure to submit a petition for prior review shall not be the sole grounds for invalidation, we specifically spell out the assumption that the right to petition is primary and the requirement for prior review is secondary. I have attached a copy of a newspaper article from the December 29, 1998 Hays Daily News (attachment 1). In the article the court found that the failure to have a prior review, even though the County Attorney stated before the Court that the petition was correct in form, invalidated the entire petition. The interrogative is my attachment 2.
I disagree with the court's finding and ask you make this change by passing this bill.

Judge grants school district permission to collect funding

By PHYLLIS J. ZORN
HAYS DAILY NEWS

Ellis County District Judge Edward Bouker has given Colby USD 315 the go-ahead to collect capital outlay funding for 1999.

Bouker's decision in a case filed by Conrad Reed, William Engelhardt and Lloyd Theimer against Thomas County Clerk Rosalie Seemann and the school district ends a year of controversy over a capital outlay tax levy passed by the school board.

Not only did Bouker decide in favor of the school district, he levied court costs against the three who filed the lawsuit.

The dispute surfaced in December 1997, when the school board adopted a resolution for a capital outlay levy, amounting to 4 mills.

A petition protesting the tax was circulated within the 40 days allowed by law.

The signatures were presented to Seeman on Feb. 2. She notified Reed that the petitions contained enough signatures to bring the tax levy to a vote.

But nine days later Seeman sent another letter that ruled the petitions invalid because they had not been approved by the Thomas County attorney prior to ciruclation.

The protesters sued, alleging their protest petitions were valid, the school district's publication notice did not follow state law and that the amount of money to be raised by the levy exceeded a limit defined by law.

Both sides presented argument in Ellis County District Court Nov. 9. Bouker's decision, filed Monday, considered all three issues raised by the protesters and agreed with arguments made by the school district's attorney, John Gatz.

Gatz argued that the protesters should have filed the petition with the county attorney's office.

The protesters, however, contended the statute did not apply to them.

"The plain language of (the statute) required plaintiffs to obtain the opinion of the Thomas County attorney concerning the legality of the question presented by the petitions prior to their circulation," Bouker wrote. "This was not done and the petitions are therefore invalid."

On the issue of whether the school district's publication of their intention to collect the tax levy constituted publication "once a week for two consecutive weeks," Bouker wrote, "there is nothing in the language of (the law) which would require same-day-each-week publication."

As to the protesters' argument that the school would be collecting more money than allowed by law, Bouker ruled that the term "statutorily prescribed mill rate," would not force the school district to collect the lesser amount of revenue.

IN THE DISTRICT COURT OF THOMAS COUNTY, KANSAS

CONRAD REED, WILLIAM ENGELHARDT, and LLOYD E. THEIMER, Residents of Unified School District No. 315, Thomas County, Kansas, and Rawlins County, Kansas,

Plaintiffs,

v.

Case No. 98-C-19

ROSALIE SEEMAN, Thomas County Clerk and Election Officer,

Defendant,

and

UNIFIED SCHOOL DISTRICT NO. 315, Thomas County, Kansas, and Rawlins County, Kansas,

Defendant.

REQUEST FOR ADMISSION

Plaintiffs, Conrad Reef, William Engelhardt and Lloyd E. Theimer, by and through their attorney, Tony A. Potter, proffer the following Request for Admission, pursuant to K.S.A. 60-236, for answering by Laurence A. Taylor, Thomas County Attorney. This request is to be answered by Mr. Taylor, under oath, and served upon Plaintiff's attorney within thirty (30) days of the receipt thereof. Said request shall be continuing in nature and, pursuant to K.S.A. 60-226(e), require timely additions or supplementation as further answers, information and/or documentation become available to Mr. Taylor.

EXHIBIT "D"

2-4

REQUEST No. 1

a. **Do you admit that the "Petition in Opposition" circulated by Plaintiffs and submitted to Rosalie Seemann, Thomas County Clerk and Election Officer, in one group, on February 2, 1998, conform to the statutory requirements set forth by the Kansas Statutes?**

b. If you do not admit that said "Petition in Opposition" met said requirements, what requirement was not met? Please be specific with your answer and include each and every communication, fact and circumstance and each and every legal theory that you think evidence or supports such a contention.

a. **Yes as to form.**
No as to procedure.

b. The form of the petition appears to comply with K.S.A. 25-3602. The procedure for circulating said petition has not been met for failure to comply with K.S.A. 25-3601 which specifically states as follows:

> "Before any petition other than a recall petition as described in K.S.A. 25-4301, et seq., and amendments thereto, requesting an election in any political or taxing subdivision of the state is circulated, a copy thereof containing the question to be submitted shall be filed in the office of the County Attorney of the county or District Attorney of the district in which all or the greater portion of the political or taxing subdivision is located for an opinion as to the legality of the form of such question."

A copy of the petition was not filed in or received by this office until after February 2, 1998.

CERTIFICATE OF SERVICE

I do hereby certify that on the 27th day of May, 1998, a true and correct copy of answers to Request for Admissions submitted to Laurence A. Taylor, Thomas County Attorney, was mailed, postage prepaid and properly addressed to:

Tony A. Potter, #16907
Attorney at Law
P.O. Box 278
Hill City, KS 67642

Starkey & Gatz
Attn: John D. Gatz
P.O. Box 346
Colby, KS 67701

and the original to:

Clerk of District Court
P.O. Box 805
Colby, KS 67701

Laurence A. Taylor, #9496
Thomas County Attorney

40TH DISTRICT

KANSAS SENATE

Stan Clark

COMMITTEE ASSIGNMENTS
VICE CHAIR: UTILITIES
COMPUTERS & TELECOMMUNICATIONS
MEMBER: AGRICULTURE
FINANCIAL INSTITUTIONS & INSURANCE
RULES & REGULATIONS

TESTIMONY BEFORE THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT

SENATE BILL NO. 245
FEBRUARY 18, 1999

Chairman Hardenburger and members of the committee.

Senate Bill 245 is a bill that allows the elected officials to bring a property tax issue directly to the vote of the electorate instead of passing a local resolution that is subject to a protest petition.

Why?

Some issues the elected officials know that petitions will be passed and they would prefer to present an organized campaign to win the confidence of the voters instead of having to overcome the "spin" by the opponents which had the first opportunity to present their side of the issue when they circulated the petitions.

Another reason is that some governing bodies might want the electorate to vote on the issue instead of making the decision themselves. Tax increases are controversial and instead of taking a stand on a direction they might determine to seek the electorate's will.

I think the key 2 words in the bill are found in line 23. They are "may submit". This does not **require** a vote, it **allows** a vote.

Also the provision in line 29 is noteworthy. If the proposition is unsuccessful, it cannot be resubmitted for one year.

In consulting with Chris McKenzie on this bill, he pointed out that cities in KSA 12-137 can currently do this. With this bill, counties, schools and all other property taxing bodies also could. Yesterday we passed SB 252, which abolished the levy, limits for cities and counties. Left in place were

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Date: 2-18-99

many of the limits on schools, townships and some other governing bodies. I think this is a good optional tool for these local units of government.

One additional item for your consideration, yesterday I read Mr. Clark's testimony on SB 230. He had comments on this bill which included line 32. He suggested striking "*general bond law*" and inserting "*K.S.A. 10-120.*" This inserts the specific statutory reference to the general bond law.