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ATTORNEY GENERAL OPINION NO. 2023-5

Honorable Stephen Owens
State Representative, 75th District
P.O. Box 606
Hesston, Kansas 67062

Re: Official Newspapers in Cities of Second and Third Classes;
Qualifications; Kan. Const. Art. 12, § 5, Cities' Powers of Home Rule

Synopsis: K.S.A. 12-1651(a) requires second and third class cities to designate an official city newspaper for the publishing of official city business, provided the newspaper meets the qualifications set forth in K.S.A. 12-1651(b). However, under the home rule provisions of the Kansas Constitution, Kan. Const. Art. 12, § 5, which allows cities to exempt themselves from nonuniform acts of the legislature, a city may exempt itself by charter ordinance from the requirements set forth in K.S.A. 12-1651 because the statute is not uniformly applicable as it applies only to second- and third-class cities.

Dear Representative Owens:

As a member of the Kansas House of Representatives, you ask whether second class cities may exempt themselves pursuant to the Kansas Constitution's home rule powers from K.S.A. 12-1651 which requires such cities to designate an official newspaper for the publication of official city business. You also ask whether such a city may designate its webpage as its "official city newspaper."

For reasons explained below, we conclude that a second class city may exempt itself by charter ordinance from the requirements of K.S.A. 12-1651, and once having done so, may then choose to publish official city business on its own webpage.

The home rule provisions of the Kansas Constitution empower cities to “determine their local affairs.”¹ “Taking effect in 1961, the home rule amendment empowered local governments to determine their local affairs and government by ordinance.”² This constitutional provision is to be liberally construed in order to give cities the largest measure of self-government.³ While a city’s home rule authority is not limitless, any city may by charter ordinance elect to have an enactment of the legislature not apply to such city if the enactment is not uniformly applicable to all cities.⁴

Applying the uniformity element, it is clear on the face of K.S.A. 12-1651 that it is not a uniformly applicable statute. K.S.A. 12-1651 contains two major provisions. Subsection (a) states as follows:

“The governing body of each city of the second and third class shall designate by resolution a newspaper to be the official city newspaper. Once designated the newspaper shall be the official city newspaper until such time as the governing body designates a different newspaper.”

Subsection (b) lists the qualifications a newspaper must have in order to qualify as an official city newspaper.

Subsection (a) refers only to cities of the second and third class, meaning the requirement in the statute is limited to only those types of cities, not to all cities. Thus, the statute is not uniform. For example, cities of the first class must abide by K.S.A. 64-101 when designating an official city newspaper. Accordingly, a city of the second class may exempt itself from the requirements of K.S.A. 12-1651 provided its governing body properly enacts a charter ordinance doing so.

As to the question of whether a city of the second class may instead designate its webpage as its “official city newspaper,” we see nothing in state law that prohibits a second class city, once it has exempted itself from K.S.A. 12-1651 by charter ordinance, from publishing official city business on its own website. However, we would note that publication by website would not be sufficient where some other form of publication is specifically mandated.⁵

¹ Kan. Const. Art. 12, § 5(b).

² *Dwagfys Mfg., Inc. v. City of Topeka*, 309 Kan. 1336, 1339, 443 P.3d 1052 (2019).

³ Kan. Const. Art. 12, § 5(d).

⁴ Kan. Const. Art 12, § 5(c); *City of Junction City v. Griffin*, 227 Kan. 332, 337, 607 P.2d 459 (1980).

⁵ See K.S.A. 79-2929 (governing body of city must allow taxpayers opportunity to be heard on budget by giving notice of such budget meeting by publication in a weekly or daily newspaper); K.S.A. 60-307(d) (service by publication requires notice be published in newspaper in county where lawsuit filed).

Sincerely,

/s/Kris Kobach

Kris W. Kobach
Attorney General

/s/Anthony J. Powell

Anthony J. Powell
Solicitor General