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ATTORNEY GENERAL OPINION NO. 2025-18

Jeffrey A. Chubb
Independence City Attorney
204 E. Laurel – P.O. Box 747
Independence, KS 67301-0747

Re: Cities and Municipalities—Public Recreation and Playgrounds—Recreation Commission; Membership; Selection; Existing Commissions

Synopsis: Because the membership of the joint recreation commission between Independence and U.S.D. 446 was consistent with state law when it was established in 1979, K.S.A. 12-1926(b) allows the commission to continue as constituted, provided the majority of commissioners have not voted to reorganize the commission. Cited herein: K.S.A. 12-1907 (1979); K.S.A. 12-1926.

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Dear Mr. Chubb:

As City Attorney for Independence, you ask whether a joint resolution between the city and U.S.D. 446 establishing a recreation commission complies with state law in the qualifications it establishes for members of the commission.

K.S.A. 12-1926 provides that when a city and a school district jointly establish a recreation commission, "the governing bodies each shall appoint two persons who are residents of the taxing district to serve as members of the recreation commission, and the persons so selected shall select one additional person, and all of such persons shall constitute the recreation commission." But the joint resolution between Independence and U.S.D. 446 states:

> Said joint recreation commission shall consist of five (5) members, two of which shall be electors of the School District who shall be appointed by the Board of Education of the School District, two of which shall be electors of the City who shall be appointed by the Governing Body of the City and the four persons so selected and appointed shall select and appoint a fifth member of the recreation commission and all of such persons shall constitute the recreation commission.

In other words, the joint resolution requires that members appointed by the city be electors of the city, while K.S.A. 12-1926 merely requires that they be "residents of the taxing district." The "taxing district" in this case is the taxing district of U.S.D. 446, which includes both Independence and adjacent rural areas.[1] You ask whether it is permissible for the joint resolution to establish more restrictive membership qualifications than K.S.A. 12-1926.

The discrepancy appears to trace to the fact that the joint resolution was adopted in in 1979. At the time, K.S.A. 12-1907 provided that when a city and a school district establish a joint recreation commission, "the governing bodies shall each appoint two (2) of its electors to serve as members of the recreation commission, and the persons so selected shall select one additional person, and all of said persons shall constitute the recreation commission." Thus, the joint resolution between Independence and U.S.D. 446 reflected state law at the time it was adopted.

The laws governing recreation commissions were revised in 1987, and at that time, the requirement that the members appointed by the city and school district be "electors" of those entities was replaced with the requirement that members be "residents of the taxing district."[2] But the new act provided that "[a]ny recreation commission established pursuant to K.S.A. 12-1901 *et seq.*, and amendments thereto, prior to the effective date of this act may continue as constituted on the effective date of this act or may, upon a majority vote of the commissioners, reorganize into a five-member commission as provided by subsection (a)."[3] This provision remains in K.S.A. 12-1926(b) today.

Because the membership of the joint recreation commission between Independence and U.S.D. 446 was consistent with state law when it was established in 1979, K.S.A. 12-1926(b) allows the commission to continue as constituted, provided the majority of commissioners have not voted to reorganize the commission.

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[1] *See* K.S.A. 12-1922(d) (defining "taxing district" as "the area within the corporate limits of a city or the area within the boundary lines of a school district, whichever has the greater assessed valuation, in the case of a jointly established recreation system").
[2] L. 1987, ch. 71, § 5(a), § 15 (repealing K.S.A. 12-1907).
[3] L. 1987, ch. 71, § 5(b).

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Dwight R. Carswell

Dwight R. Carswell
Deputy Solicitor General