

LEGAL FORUM

Legal Forum
by Sandy Jacquot



Common Sense Primary Elections...

In 2008, the Legislature amended the city primary elections law at the request of the County Clerks' Association, which drastically changed the policy of when primary elections are to be held. LKM worked to get the law changed back to the original language, but the bill did not pass this session. Therefore, LKM is recommending that if cities do not want to comply with the changes in the primary election law, they pass a charter ordinance to return to the original language. The primary election laws are nonuniform and have been for many years, so the use of a charter ordinance is available to Kansas cities that do not wish to follow the statutory process. For example, K.S.A. 25-2110 specifies different filing requirements for cities of the first and second class versus cities of the third class, as does K.S.A. 25-2110a, making the city election statutes nonuniform. In fact, many cities have already passed charter ordinances to eliminate primary elections totally.

The new language of K.S.A. 25-2108a reads as follows: "A primary election shall be held if needed to reduce the number of candidates for each office in the general election to no more than three candidates. No primary election of city officers shall be held unless by holding such primary two or more persons will be eliminated as candidates for office. In the event there are not more than three times the number of candidates as there are officers to be elected, the names of the candidates for such office shall not appear on the primary election ballots, and there shall be no primary election for such office, but the names of such candidates shall be placed on the general city election ballot." The previous statutory language required a primary only if there were more than two candidates for office and only if one or more persons would be eliminated.

Trying to interpret the new language is difficult at best, and the Secretary of State's office has opined that a primary only reduces the total number of candidates for the general election to three. While LKM believes this interpretation to be incorrect, because logically primaries reduce the number of candidates to two per position, it is easy to see the policy problem. Where once two candidates went head-to-head in the general election, now there may be three candidates. It only takes two viable candidates taking votes from each other to hand the election to the third candidate who does not even receive a majority of the votes. That is not much of a mandate from the public. Such a policy change deserves thoughtful discussion, rather than being mandated by an effort to reduce the number of primary elections. While the reduction of primary elections for small cities may be an admirable goal from a fiscal standpoint, the new process is confusing, sets dubious policy, and is generally unworkable.

Cities should now seriously consider passing a charter ordinance to either return to the prior statutory language or eliminate primary elections totally. Here are the two different versions of a charter ordinance. They are available electronically on the LKM website at www.lkm.org.

[Use this version to return to the previous primary election process]

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE EXEMPTING THE CITY OF _____, KANSAS, FROM THE PROVISIONS OF K.S.A. 25-2108a RELATING TO PRIMARY ELECTIONS, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____:

Section 1. The City of _____ by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas hereby elects to and does exempt itself a make inapplicable to it K.S.A. 25-2108a which applies to this city, but is part of an enactment which does not apply uniformly to all cities.

Section 2. There shall be a primary election of city officers on the Tuesday preceding by five weeks the first Tuesday in April of every year that such city has a city election, except as otherwise provided in Section 3.

Section 3. No primary election of city officers shall be held unless by holding such primary one or more persons will be eliminated as candidates for office. In the event there are not more than two candidates for any one office, the names of the candidates for such office shall not appear on the primary election ballots, and there shall be no primary election for such office, but the names of such candidates shall be placed on the general city election ballot. Two candidates for each position shall advance to the general election.

Section 4. This charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 5. This charter ordinance shall take effect 61 days after final publication, unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subsection (c)(3) of the Constitution of Kansas, in which case the ordinance shall become effective if approved by the majority of the electors voting thereon.

Passed by the Governing Body, not less than two-thirds of the members-elect voting in favor thereof, the ____ day of _____, 2009.

Attest: _____

City Clerk

Mayor

[Use this version to totally eliminate holding primary elections]

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE EXEMPTING THE CITY OF _____, KANSAS, FROM THE PROVISIONS OF K.S.A. 25-2108a RELATING TO PRIMARY ELECTIONS. BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____:

Section 1. The City of _____ by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas hereby elects to and does exempt itself a make inapplicable to it K.S.A. 25-2108a which applies to this city, but is part of an enactment which does not apply uniformly to all cities.

Section 2. This charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper.


Section 3. This charter ordinance shall take effect 61 days after final publication, unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subsection (c)(3) of the Constitution of Kansas, in which case the ordinance shall become effective if approved by the majority of the electors voting thereon.

Passed by the Governing Body, not less than two-thirds of the members-elect voting in favor thereof, the ____ day of _____, 2009.

Attest: _____

City Clerk

Mayor

 Sandy Jacquot is Director of Law/General Counsel for the League of Kansas Municipalities. She can be reached at sjacquot@lkm.org or (785) 354-9565.