

Law Office Of
WARREN K. HOPKINS
Attorney at Law

405 Maple Street, Suite B
Murray, Kentucky 42071

Telephone (270) 759-9504

Facsimile (270) 759-9821

August 1, 2017

Jack D. Rose, Mayor
City of Murray
104 North 5th Street
Murray, KY 42071

Re: Occupational License Tax and Referendum Election

Dear Mayor Rose:

I have reviewed the opinion letter and follow up clarification letter submitted to the City from Kentucky League of Cities, Deputy Executive Director, James D. Chaney, a licensed, practicing attorney for KLC, regarding placing the question of the enactment of an occupational license tax on the ballot for voter approval.

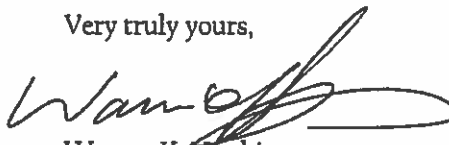
I have researched this matter and I concur with Mr. Chaney's opinion that the City is not authorized by statute to place this question on the ballot. As Mr. Chaney pointed out, KRS 83A.120(1) is clear that only a "public question authorized by statute may be submitted to the voters of a city". The City is authorized to impose the occupational license tax pursuant to KRS 92.280, which does not authorize a referendum, either permissive or by mandate. Given that other statutes do expressly provide for a referendum, KRS 92.280 is to be interpreted as not authorizing the City to place such a question on the ballot. Otherwise, the statute would expressly direct or allow the City to do so.

I further concur with Mr. Chaney's statement that the Attorney General Opinion issued on October 22, 1980 to Mayor Melvin Henley is still the same today. KRS 83A.120, Section One (1) partially quoted above, reads in its entirety exactly as it did upon enactment, effective July 15, 1980. The amendments to the statute in 1982 and 1996, both amended only paragraph six (6) of the statute, which applies to the manner in which a public question which is authorized by statute may be placed on a ballot.

The Attorney General Opinion issued to Mayor Henley clearly states that "Public questions can only be placed on the ballot where there exists a specific statute so authorizing..." Therefore, since no such specific statute exists, the City of Murray is not authorized to place the question of levying an occupational license tax on the ballot.

If you wish to discuss this matter further, please do not hesitate to contact my office.

Very truly yours,



Warren K. Hopkins
Attorney at Law



OFFICERS

President: Mayor Claude Christensen, City of Sodieville
First Vice President: Mayor Jim Barnes, City of Richmond
Second Vice President: Mayor Teresa Rochetti-Cantrell, City of Mayfield
Immediate Past President: Mayor Roddy Harrison, City of Williamsburg

EXECUTIVE STAFF

Executive Director/CEO: Jonathan Steiner
Deputy Executive Director, KLC: J.D. Chaney
Deputy Executive Director, KLCIS: Doug Gaforth
Chief Member Services Officer: Robin Cooper
Chief Financial Officer: Dawn Marlow
Chief Administrative Officer: Martha Cosby

July 24, 2017

Mayor Jack Rose
City of Murray, Kentucky
104 North 5th Street
Murray, KY 42071
VIA EMAIL TO: Jack.Rose@murrayky.gov

Dear Mayor Rose:

This letter is in response to your question posed in our phone conversation from earlier today about the legality of a Kentucky city government placing the question of the enactment of an occupational license tax on the ballot for voter approval. The short answer to the question is that the state law does not authorize this act, and therefore, neither the city nor the county clerk may proceed to place this issue on the ballot for a referendum election by the voters of the city. The legislative body of the city has the sole statutory authority to impose the occupational tax under KRS 92.280(2).

Based on media reports and our conversation, I understand that there may be some confusion in Calloway County about the meaning of KRS 83A.120, which is the general statute that governs the process for cities or citizens to place **authorized** public questions on the ballot for voter approval. KRS 83A.120(1) states that "*Any public question authorized by statute may be submitted to the voters of a city* by either a resolution of the city legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out in full the matter to be considered. The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the effect or impact of the proposal." (Emphasis added)

The first part of this section is very important. As you will note, the language of the statute emphasized above requires the public question to be separately and specifically authorized by another statute. No authorization or requirement exists under Kentucky law for the issue of a payroll or occupational tax to be submitted to the voters for approval or disapproval.

Ironically, this very same question was raised in the City of Murray in 1980 by its former mayor, Melvin Henley. I am enclosing a copy of the Kentucky Attorney General opinion that he sought on the same question of placing the payroll tax/occupational tax issue on the ballot, Kentucky OAG 80-564. The answer today is the same and is as simple as it was 37 years ago.

Since this type opinion from the attorney general does not hold the weight of law, it may be useful to point out other law supporting the legal conclusions reached in this letter and the cited OAG. In *Kimbley v. City of Owensboro*, 176 Ky. 532, 195 S.W. 1087 (1917), Kentucky's then highest Court declared ". . . the general rule is that elections cannot be held without affirmative

Mayor Jack Rose
City of Murray
July 24, 2017
Page 2

constitutional or statutory authority.” See also *Goodloe v. Baesler*, Ky., 539 S.W. 2d 298 (1976), *Baker v. City of Richmond*, 709 S.W.2d 472 (Ky. Ct. App. 1986), and *Jacober v. Bd. of Comm'rs of City of Covington*, 607 S.W.2d 126 (Ky. Ct. App. 1980). Each of these cases and the authority cited therein confirm that cities and political subdivisions of the state are not permitted to place questions on the ballot in the absence of an authorizing statute.

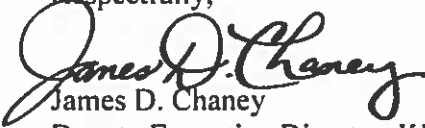
Some statutes allow or even require city issues and actions to be placed upon the ballot. For example, KRS 83A.160(1) specifically cites KRS 83A.120 as the mechanism for a change in the form of government, “Any city may become organized and governed under the mayor-council plan, the commission plan or the city manager plan only by popular vote in accordance with KRS 83A.120” and KRS 81A.420(2) requires a ballot question for nonconsensual annexation if a valid petition is presented.

As pointed out above, KRS 92.280 does not contain an authorization or a requirement for a vote of the citizens and vests the power for enactment of this tax solely with the legislative body. KRS 92.280(2) states, “The legislative body of an urban-county government and each city of the home rule class may impose license fees on stock used for breeding purposes, and on franchises, trades, occupations, and professions, and may provide for the collection of such fees.”

Therefore, any ballot measure to approve of the occupational tax would violate the requirements of KRS 83A.120(1) and may not be placed upon the ballot for the voter approval. Even if a petition meeting the requirements of KRS 83A.120 is presented, the question still may not be placed upon the ballot. With very limited exceptions as provided in state law, Kentucky is not a referendum state. Likewise, Kentucky’s local governments do not operate in that fashion. Unless the General Assembly has enacted a law to authorize or require an act to be submitted to the voters, cities, citizens, and election officials may not place questions on the ballot for voter approval.

Please do not hesitate to let me know if you have any additional questions on this matter.

Respectfully,


James D. Chaney
Deputy Executive Director, KLC

Enc.

Ky. OAG 80-564 (Ky.A.G.), 1980 WL 103215

Office of the Attorney General

Commonwealth of Kentucky

OAG 80-564

October 22, 1980

Honorable Melvin Henley
Mayor
City Hall Building
5th Street & Poplar
Murray, Kentucky 42071

Dear Mayor Henley:

This is in response to your letter of October 13 in which you raise the following questions:

"The City of Murray does not have a payroll or gross receipts tax. Several council members have asked if such a tax could be levied without the necessity of placing the question on an election ballot.

"If such a tax can be levied without referendum, would it be possible to place the question on the ballot anyway?"

In response to the above questions no statutory authority exists that would permit the question of levying a payroll or gross receipt tax to be placed on the ballot. The city council must determine whether or not such a tax will be levied by the passage of an appropriate ordinance.

Public questions can only be placed on the ballot where there exists a specific statute so authorizing. And in this respect, we refer you to KRS 83A.120 from which we quote in part the following:

"(1) Any public question authorized by statute may be submitted to the voters of a city by either a resolution of the city legislative body or a petition meeting the requirements of this section. . . ." (Emphasis added).

Sincerely,

Steven L. Beshear
Attorney General
By: Walter C. Herdman
Assistant Deputy Attorney General

Ky. OAG 80-564 (Ky.A.G.), 1980 WL 103215



OFFICERS

President: Mayor Claude Christensen, City of Sadieville
First Vice President: Mayor Jim Barnes, City of Richmond
Second Vice President: Mayor Teresa Rochetti-Cantrell, City of Mayfield
Immediate Past President: Mayor Roddy Harrison, City of Williamsburg

EXECUTIVE STAFF

Executive Director/CEO: Jonathan Steiner
Deputy Executive Director, KLC: J.D. Chaney
Deputy Executive Director, KLCIS: Doug Goforth
Chief Member Services Officer: Robin Cooper
Chief Financial Officer: Dawn Harlow
Chief Administrative Officer: Martha Cosby

July 31, 2017

Mayor Jack Rose
City of Murray, Kentucky
104 North 5th Street
Murray, KY 42071
VIA EMAIL TO: Jack.Rose@murrayky.gov

Dear Mayor Rose:

In light of a letter from the county attorney reaching the opposite legal conclusion, you asked for some additional clarification of my July 24, 2017 letter in which I analyzed whether a Kentucky city can place the question of the enactment of an occupational license tax on the ballot for referendum election by the city's voters. I have read Mr. K. Bryan Ernstberger's opinion stating that the city of Murray can legally submit the question of whether to impose an occupational license tax to the voters for a referendum vote by the enactment of a resolution. In addition, the county attorney's legal opinion would seem to also conclude that if a petition meeting the requirements of KRS 83A.120 is presented to the county clerk that the question must be voted upon by the citizens of Murray in the next regular election. Respectfully, the longstanding law in Kentucky does not support these conclusions.

Taken to its extreme, the county attorney's interpretation of KRS 83A.120 would mean that any city legislative act addressed in statute would constitute a "public question" that could be submitted to the voters by city resolution or may be required to be submitted to the voters if a petition meeting the statutory criteria is presented to the county clerk. Effectively, this makes all city legislative actions subject to potential referendum governed by Kentucky's general election laws. This was not the intended purpose of the legislature in enacting KRS 83A.120.

The county attorney discounts the value of the 1980 attorney general opinion issued to former Mayor Melvin Henley by stating that the opinion analyzed previous versions of KRS 83A.120 because the statute was amended. While the statute was amended in both 1982 and 1996, those legislative amendments in no way impacted Section (1) of the statute, which was the sole provision relied upon in the 1980 opinion. The 1982 amendment only changed Section (6) of the statute and dealt with the manner of placing the question on the ballot. The 1996 amendment also only amended Section (6), which dealt with the timing for the presentation of the resolution or petition and manner for placing the question on the ballot. I am enclosing both of these legislative changes for your review. Please note that Section (1) has remained untouched since its original enactment and contains the exact same requirements as it did in 1980 – namely, that for an issue to be placed upon the ballot that it must be a "public question authorized by statute."

I am also enclosing OAG 94-54, which addressed the nearly identical issue of whether the Lexington/Fayette Urban County Government could amend its charter to require an occupational license tax rate greater than 2% to be submitted to voters for a referendum vote. This opinion

Mayor Jack Rose
July 31, 2017
Page 2

cited Kimbley v. City of Owensboro, 195 S.W. 1087, 1089 (1917) and O'Bryan v. City of Owensboro, 68 S.W. 858, 861 (1902) for the proposition that elections cannot be conducted without express authority given by the constitution or by statute. In relevant part, the opinion found as follows:

Assuming that this statute operates as a constraint on charter amendments as well as ordinances, we find that the statutes provide a "comprehensive scheme of legislation" prohibiting referendums without legislative approval. In a statute dealing with city referendums, we find that a question may not be submitted to voters unless it is "authorized by statute." KRS 83A.120(1). In numerous other areas, such as annexation and ad valorem taxation, we find specific statutory procedures governing the placement of public questions on the ballot. Conversely, the statute that authorizes Lexington to impose the occupational tax, KRS 92.280, contains no language authorizing a referendum. The comprehensive scheme of legislation in this state plainly indicates that there shall be no referendums without specific legislative authorization.

While I readily agree these types of opinions from the Attorney General are not legally binding nor do they create a precedent for Kentucky's Courts, the opinions are helpful in the analysis of this legal question. They point out relevant case law supporting the conclusions that will undoubtedly guide the courts if confronted with the question. In addition, the consistency with which the multiple opinions interpret KRS 83A.120 is likely indicative that the court faced with this issue will also not miss the plain reading of the statutory language.

Please let me know if you have any additional questions.

Sincerely,



James D. Chaney
Deputy Executive Director, KLC

Enc.

Ky. OAG 94-54 (Ky.A.G.), 1994 WL 477775

Office of the Attorney General

Commonwealth of Kentucky

OAG 94-54

August 4, 1994

***1 Subject: Urban-county government: tax referendum**

Written by: Ross T. Carter

Requested by: Mary Ann Delaney

Syllabus: The charter of Lexington/Fayette Urban County Government may not be amended to provide that an occupational license tax rate greater than 2% must first be submitted to the voters for approval.

OAGs cited: OAG 80-564 (followed); OAG 78-629 (followed); OAG 78-553 (followed); OAG 76-736 (followed); OAG 72-137 (followed); OAG 76-559 (followed); OAG 76-428 (followed); OAG 76-368 (followed); OAG 75-382 (followed); OAG 75-75 (followed); OAG 74-695 (followed); OAG 74-403 (followed); OAG 74-60 (followed); OAG 73-272 (followed); OAG 73-246 (followed); OAG 72-453 (followed); OAG 72-360 (followed); OAG 70-576 (followed); OAG 68-286 (followed); OAG 67-75 (followed).

Statutes construed: KRS 67A.060; KRS 83A.120.

Opinion of the Attorney General

The following question has been presented:

May the charter of Lexington/Fayette Urban County Government be amended to provide that an occupational license tax rate greater than 2% must first be submitted to the voters for approval?

The answer is no.

Background

The charter of Lexington/Fayette Urban County Government provides for a process to amend the charter by petition and referendum. A petition has been filed which states:

We the undersigned, qualified voters of the Urban County Government of Lexington, Fayette County, Kentucky, and residing each at the place indicated opposite his/her name, do hereby petition and request that the following proposed amendment to the Charter of the Lexington-Fayette Urban County Government be submitted immediately to a vote of the people at the next regular general election. The proposed amendment would add the following paragraph to be numbered Paragraph 8.06(d) to the existing language of Section 8.06 of the Lexington-Fayette Urban County Government Charter. The proposed paragraph shall read as follows: Any tax of any kind on payroll and net profits shall not exceed the rate of two percent (2%) unless a rate greater than two percent (2%) is submitted for approval to the voters before becoming effective pursuant to Section 14.02 and 14.03 of said Charter. This amendment shall be effective July 1, 1995.

The charter of Lexington-Fayette Urban County Government (which is evidently the document called a comprehensive plan in KRS chapter 67A) provides at section 12.04 that "public questions shall be enacted in accordance with the provisions for initiative and referendum as specified in KRS 89.600 and 89.610." Both of those statutes have been repealed.

Discussion

We begin with the firmly-established principle that a question may not be placed on a regular election ballot unless there is specific authority, either in the constitution or statutes, authorizing the question. That is the law in Kentucky and the general law throughout the United States.

Two Kentucky cases unequivocally make this point:

*2 [T]he general rule is that elections cannot be held without affirmative constitutional or statutory authority.

Kimbley v. City of Owensboro, 176 Ky. 532, 195 S.W. 1087, 1089 (1917).

The general rule is that elections cannot be held without affirmative constitutional or statutory authority.

O'Bryan v. City of Owensboro, 113 Ky. 680, 68 S.W. 858, 861 (1902).

Other authorities state this proposition with equal clarity:

It is fundamental that a valid election cannot be called and held except by authority of the law. There is no inherent right in the people, whether of the state or of some particular subdivision thereof, to hold an election for any purpose. Accordingly, an election held without affirmative constitutional or statutory authority, or contrary to a material provision of the law, is a nullity, notwithstanding the fact that such election was fairly and honestly conducted.

26 AmJur2d, Elections § 183.

The right or power to hold an election must be based on authority conferred by law, and an election held without affirmative constitutional or statutory authority, or contrary to a material provision of the law, is universally recognized as being a nullity, even though it is fairly and honestly conducted. An election purporting to have been held under a statute which by its terms had not then gone into effect is void, as is also an election called under a void statute. A court lacks jurisdiction to authorize or compel the holding of a void election.

29 CJS, Elections § 66. The United States Supreme Court has recognized that the American system of elections does not derive from the common law and therefore exists only by constitutional or statutory authority:

Our system of elections was unknown to the common law, and the whole subject is regulated by constitutions and statutes passed thereunder.

Taylor v. Beckham, 178 U.S. 548, 44 L.Ed. 1187, 20 S.Ct. 890, 1009 (1900).

The expedient of avoiding difficult questions by placing them on the ballot has occurred to county and city legislative bodies frequently over the years. The Attorney General has stated on numerous occasions that various attempts to place such questions on the election ballot were not authorized by law. Questions that were proposed for the ballot include a payroll tax, OAG 80-564; location of a coal conversion plant, OAG 78-629; zoning, OAG 78-553, 76-736, and 72-137; a highway construction project, 76-559; a proposal to restrict parking on Main Street, 76-428; funding an anti-crime program, OAG 76-368; selection of utility commissioners, OAG 75-382; collective bargaining for teachers, OAG 75-75; recreation tax, OAG 74-695; Sunday closing, 74-403; school consolidation, OAG 74-60 and 73-272; ambulance service, OAG 73-246; construction of a lake, OAG 72-453; strip mining regulation, OAG 72-360; change in tax rate, OAG 70-576; purchase of a water company, OAG 68-286; and whether to fluoridate water, OAG 67-75.

These authorities establish beyond doubt that a unit of local government may not place a question on a ballot unless the constitution or a statute grants specific authority to place the question before the voters. We find no such authority in the statutes or constitution. The authorities on which the charter relies, *KRS 89.600* and *89.610*, have been repealed. Although the question addressed here is somewhat unique in that it is the voters, rather than the legislative body, who propose to grant authority to conduct a referendum, our conclusion is the same. Only the General Assembly or the state constitution may grant authority to conduct a tax referendum.

*3 We have examined the statutes dealing with urban-county government and find no legislative intent to grant urban-counties authority to hold referendums. *KRS 67A.070(2)* states:

Urban-county government ordinances shall be deemed to conflict with general statutes of this state only:

- (a) When the ordinance authorizes that which is expressly prohibited by a general statute; or
- (b) When there is a comprehensive scheme of legislation on the same subject embodied in a general statute.

Assuming that this statute operates as a constraint on charter amendments as well as ordinances, we find that the statutes provide a “comprehensive scheme of legislation” prohibiting referendums without legislative approval. In a statute dealing with city referendums, we find that a question may not be submitted to voters unless it is “authorized by statute.” [KRS 83A.120\(1\)](#). In numerous other areas, such as annexation and ad valorem taxation, we find specific statutory procedures governing the placement of public questions on the ballot. Conversely, the statute that authorizes Lexington to impose the occupational tax, [KRS 92.280](#), contains no language authorizing a referendum. The comprehensive scheme of legislation in this state plainly indicates that there shall be no referendums without specific legislative authorization.

Conclusion

Lexington-Fayette Urban County Government has no authority to amend its charter to provide for a referendum on occupational license taxes. The county clerk has no duty to place the proposed amendment on the general election ballot. *Goodloe v. Baesler*, 539 S.W.2d 298,300 (1970).

Chris Gorman
Attorney General
Ross T. Carter
Assistant Attorney General

Ky. OAG 94-54 (Ky.A.G.), 1994 WL 477775

1996 Legislative Change

Section 23. KRS 83A.120 is amended to read as follows:

<< KY ST § 83A.120 >>

- (1) Any public question authorized by statute may be submitted to the voters of a city by either a resolution of the city legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out in full the matter to be considered. The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the effect or impact of the proposal.
- (2) Any five (5) qualified voters of the city may commence petition proceedings by filing with the county clerk an affidavit stating they constitute the petition committee and will be responsible for circulating the petition and filing it in proper form. The affidavit shall state their names and addresses and specify the address to which all notices to the committee are to be sent. It shall set out in full the proposal to be considered by the voters. Promptly after the affidavit of the petition committee is filed, the county clerk shall notify the petition committee of all statutory requirements for petitions under this section and shall deliver a copy of the affidavit to the legislative body of the city.
- (3) All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall be signed by registered voters of the city equal in number to at least twenty percent (20%) of the total number of votes cast in the city in the last presidential election. When it is filed, each sheet of a petition shall have an affidavit executed by the circulator stating that he personally circulated the sheet, the number of signatures thereon, that all signatures were affixed in his presence, that he believes them to be the genuine signatures of registered voters in the city and that each signer had an opportunity before signing to read the full text of the proposal. Petitions shall contain or have attached throughout their circulation the full text of the proposal.
- (4) Within thirty (30) days after the petition is filed, the county clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall send a copy to the petition committee and to the city legislative body by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petition committee files a notice of intention to amend it with the county clerk within five (5) days after receiving the copy of his certificate and files a supplemental petition upon additional sheets within thirty (30) days after receiving the certificate. The supplemental petition shall comply with the requirements of subsection (3) and within ten (10) days after it is filed the county clerk shall complete

a certificate as to the sufficiency of the petition as amended and promptly send a copy of the certificate to the petition committee and to the city legislative body by certified mail.

(5) A final determination as to the sufficiency of a petition shall be subject to review in the Circuit Court of the county and shall be limited to the validity of the county clerk's determination. A final determination of insufficiency shall not prejudice the filing in accordance with this section of a new petition for the same purpose.

(6) <<+If, not later than the second Tuesday in August preceding the day established for a regular election, the county clerk receives a resolution requesting that the question be submitted to the voters or certifies that a petition is+>> <<-Upon receipt of a resolution requesting that the question be submitted to the voters or upon certification of a petition as->> sufficient, the county clerk shall have prepared to place before the voters of the city at the next regular election <<-that is held not earlier than ninety (90) days after receipt of the resolution or the certification of the petition->> the question, which shall be "Are you in favor of the proposal entitled ...? Yes ... No ...". The county clerk shall cause to be published in accordance with KRS Chapter 424, at the same time as the remaining voter information, the full text of the proposal. The county clerk shall cause to be posted in each polling place one (1) copy of the full text of the proposal.

(7) The provisions of general election law shall apply to public questions submitted to voters under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor and the certificate shall be entered upon the records of the city at the next regular meeting of the city legislative body.

(b) If less than seventy-five percent (75%) of the qualified voters in the area to be annexed oppose annexation, the unincorporated territory shall become a part of the city.

(c) If seventy-five percent (75%) or more of the qualified voters in the area to be annexed oppose annexation, the ordinance proposing annexation shall become ineffectual for any purpose.

(3) In not less than sixty (60) days after the enactment of the ordinance, if no petition has been received by the mayor as set out herein, or within sixty (60) days of the certification of election results in which less than seventy-five percent (75%) of the qualified voters in the area opposed annexation, the legislative body may enact an ordinance annexing to the city the territory described in the ordinance. Upon the enactment of this ordinance, the territory shall become part of the city for all purposes.

Section 21. KRS 81A.430 is amended to read as follows:

~~(1)~~ Whenever a city desires to annex all or part of a city of the second, third, fourth, fifth or sixth class, the legislative body of the city proposing to annex shall enact an ordinance stating the intention of the city to annex. Such ordinance shall accurately define the boundary of the city or portion thereof proposed to be annexed, declaring it desirable to annex the city or portion thereof and providing that the question of annexation shall be submitted to the qualified voters of the city or portion thereof to be annexed at the next regular election. The mayor of the city proposing to annex shall certify the action of the city to the county clerk, who shall have prepared for presentation to the voters ~~[printed on the ballots provided for use]~~ in the city or portion thereof proposed to be annexed, the question: "Are you in favor of annexing to the City of ?" If a majority of those voting on the proposition favor annexation, the city proposing to annex shall pass an ordinance declaring the other city or portion thereof annexed, and that city or portion thereof shall then be a part of the annexing city.

Section 22. KRS 83A.100 is amended to read as follows:

(1) The legislative body of a city may by ordinance divide the city into the same number of wards as the number of legislative body members. Wards shall be as nearly equal in population as practicable and their boundaries shall be fixed by the ordinance.

(2) The populations of wards shall be reviewed as necessary to insure that populations are as nearly equal as practicable, but in no event shall the populations of wards be reviewed for equalization less often than each regular federal census.

(3) Wards may be abolished by repeal of the ordinance creating them. No creation, alteration or abolition of wards shall occur within two hundred forty (240) days preceding a regular election.

(4) If a city is divided into wards, legislative body members shall be nominated and elected in the following manner:

(a) Members shall be elected in the regular November election at-large but each candidate shall reside in the ward he seeks to represent and shall be elected in such a manner that each ward is equally represented on the legislative body. The names ~~[ballot]~~ shall be presented in the election ~~[arranged]~~ to show for which ward each candidate is seeking election and voters ~~[above the names of the candidates]~~ shall be instructed to ~~[printed the words]~~ "vote for one candidate in each ward." The candidate receiving the highest number of votes cast in each ward shall be deemed to be elected from such ward.

(b) Persons seeking the nomination of a political party for the office of council member where a primary election is required for such political party, shall be voted upon exclusively by the eligible voters of the ward in which the person resides and seeks to represent.

Section 23. KRS 83A.120 is amended to read as follows:

(1) Any public question authorized by statute may be submitted to the voters of a city by either a resolution of the city legislative body or a petition meeting the requirements of this section. The resolution or petition shall set out in full the matter to be considered. The proposal shall be drafted in such a way that a vote in favor of adoption shall be a vote in favor of the effect or impact of the proposal.

(2) Any five (5) qualified voters of the city may commence petition proceedings by filing with the county clerk an affidavit stating they constitute the petition committee and will be responsible for circulating

the petition and filing it in proper form. The affidavit shall state their names and addresses and specify the address to which all notices to the committee are to be sent. It shall set out in full the proposal to be considered by the voters. Promptly after the affidavit of the petition committee is filed, the county clerk shall notify the petition committee of all statutory requirements for petitions under this section and shall deliver a copy of the affidavit to the legislative body of the city.

(3) All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall be signed by registered voters of the city equal in number to at least twenty percent (20%) of the total number of votes cast in the city in the last presidential election. When it is filed, each sheet of a petition shall have an affidavit executed by the circulator stating that he personally circulated the sheet, the number of signatures thereon, that all signatures were affixed in his presence, that he believes them to be the genuine signatures of registered voters in the city and that each signer had an opportunity before signing to read the full text of the proposal. Petitions shall contain or have attached throughout their circulation the full text of the proposal.

(4) Within thirty (30) days after the petition is filed, the county clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall send a copy to the petition committee and to the city legislative body by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petition committee files a notice of intention to amend it with the county clerk within five (5) days after receiving the copy of his certificate and files a supplemental petition upon additional sheets within thirty (30) days after receiving the certificate. The supplemental petition shall comply with the requirements of subsection (3) and within ten (10) days after it is filed the county clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of the certificate to the petition committee and to the city legislative body by registered mail.

(5) A final determination as to the sufficiency of a petition shall be subject to review in the circuit court of the county and shall be limited to the validity of the county clerk's determination. A final determination of insufficiency shall not prejudice the filing in accordance with this section of a new petition for the same purpose.

(6) Upon receipt of a resolution requesting that the question be submitted to the voters or upon certification of a petition as sufficient, the county clerk shall *have prepared to place before [upon] the voters of the city at [ballot for] the next regular election that is held not earlier than ninety (90) days after receipt of the resolution or the certification of the petition the question [to be submitted to the voters], which [question] shall be "Are you in favor of the proposal entitled? Yes No."* The county clerk shall cause to be published in accordance with KRS Chapter 424, at the same time as the *remaining voter information [sample ballot]*, the full text of the proposal. The county clerk shall cause to be posted in each polling place one (1) copy of the full text of the proposal.

(7) The provisions of general election law shall apply to public questions submitted to voters under this section. The certificate of the body authorized by law to canvass election returns shall be delivered to the mayor and the certificate shall be entered upon the records of the city at the next regular meeting of the city legislative body.

Section 24. KRS 83A.170 is amended to read as follows:

(1) In any city which has under the provisions of KRS 83A.050 required nonpartisan city elections, or in any city of the second class operating under the city manager form of government pursuant to KRS 83A.150, no person shall be elected to city office except as provided in this section.

(2) No person shall be elected to city office without being nominated in the manner provided in this section at a nonpartisan primary election to be held at the time prescribed by law for primary elections generally. Nonpartisan primary elections shall be conducted by the same officers, chosen and acting in the same manner, with the same rights and duties as in regular elections.

(3) Each applicant for nomination shall, at least fifty-five (55) days before the primary election, file with the county clerk a petition signed by at least one percent (1%) of the registered voters in the city or twenty (20) voters, whichever is less, in the following form:

"We the undersigned, qualified voters of the City of request that the name of be placed before [on] the voters of the city [ballot] as that of an applicant for nomination for the office of at the primary election