

FILED  
APP DOCKET NO. \_\_\_\_\_

2020 JUL 29 P 12:47

CLERK OF DIST COURT  
18<sup>TH</sup> JUDICIAL DISTRICT  
SEDGWICK COUNTY, KS

BY \_\_\_\_\_

**COPY**

SHARON L. DICKGRAFE  
Chief Deputy City Attorney  
City Hall - 13th Floor  
455 N. Main  
Wichita, Kansas 67202  
(316) 268-4681

IN THE EIGHTEENTH JUDICIAL DISTRICT COURT  
SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT

CITY OF WICHITA, KANSAS )  
a Municipal Corporation )  
 )  
Plaintiff, )

v. )

Case No. 20CV1217

KARL PETERJOHN, )  
AND CELESTE RACETTE )  
INDIVIDUALLY AND AS )  
REPRESENTATIVES OF )  
"SAVE CENTURY 2 COMMITTEE", )  
 )  
Defendants. )

**PETITION FOR DECLARATORY JUDGMENT**

COMES NOW, the City of Wichita, Kansas, by and through its attorney, Sharon L. Dickgrafe, Chief Deputy City Attorney, pursuant to K.S.A. 60-1701 *et seq.* and K.S.A. 25-3601, and alleges and states the following:

1. Plaintiff is a municipal corporation and City of the First Class organized and existing under the laws of the State of Kansas.
2. Defendant, Karl Peterjohn, is a resident of Sedgwick County, Kansas, and can be served at 11328 W. Texas, Wichita, Kansas 67209.

3. Defendant, Celeste Racette, is a resident of Sedgwick County, Kansas and can be served at 2239 N. Tee Time, Wichita, Kansas 67205.

4. On January 10, 2020, Defendant, Karl Peterjohn, submitted a proposed petition to the Sedgwick County Counselor's office for review pursuant to K.S.A. 25-3601.

5. Defendant, Celeste Racette, individually and as a representative of "Save Century 2 Committee", signed and circulated the petition, attached hereto as Exhibit A, requesting the enactment of an ordinance which would require an affirmative public vote before any "prominent city owned building of historical importance or architectural significance ... be demolished, replaced or otherwise adversely affected."

6. Pursuant to "applicable Kansas law," a petition was filed with the City Clerk on July 10, 2020, which stated the following:

Shall the following ordinance become effective:

BE IT ORDAINED THAT THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

No prominent city owned buildings of historical importance or architectural significance (regardless of historic register status), including Century II and the adjoining former Public Library, shall be demolished, replaced or otherwise adversely affected without a public vote of approval by the qualified voters in the City of Wichita and further, no interest in such city owned buildings, including Century II and the adjoining former Public Library, shall be leased, sold bartered, traded, conveyed or assigned and thereafter demolished, replaced or otherwise adversely affected without a public vote of approval by the qualified voters in the City of Wichita.

(Exhibit A)

7. On July 17, 2020, the petition was delivered to the Sedgwick County Election Commissioner by the City Clerk.

8. K.S.A. 12-3013, 25-3601 and 25-3602 *et seq.* set forth the legal requirements for election and referendum petitions.

9. The statutory requirements for referendum petitions are mandatory and substantial compliance with the statutory provisions is insufficient. *Schmidt v. City of Wichita*, 303 Kan. 650 (2016).

10. On January 10, 2020, the Office of the Sedgwick County Counselor issued an opinion to Defendant Peterjohn, stating that the form of the question contained in the petition was legally sufficient. (Exhibit B).

11. The opinion issued on January 10, 2020, by the County Counselor is a rebuttable presumption that the form of the question presented complies with K.S.A. 25-3601. *See*: K.S.A. 25-3601(a).

12. This action is brought by the City of Wichita pursuant to K.S.A. 16-1701 *et seq.* and K.S.A. 25-3601(b) challenging the validity of the petition filed with the City Clerk.

13. Pursuant to K.S.A. 25-3601(e), the filing of this petition is timely, as it is filed within twenty (20) days of receipt of the question by the County Election Commissioner. The Court must make a determination as to the validity of the form of the question within twenty (20) days of filing this petition.

14. K.S.A. 25-3601(d) requires initiative petitions comply with the provisions of K.S.A. 12-3013.

15. The form of the question presented in the petition fails to comply with the legal requirements set forth in K.S.A. 12-3013(a) which provides that the petition “shall contain a request that the governing body pass the ordinance or submit the same to a vote of the electors.” No such language is contained in the petition filed with the City Clerk. The petition fails to request that the proposed ordinance be passed by the City Council or that an election be called by the City Council and, as such, the petition is invalid.

16. The form of the question presented in the petition fails to comply with the legal requirements set forth in K.S.A. 12-3013(b). The petition fails to include the required language “Shall the following be adopted?”

17. The petition is invalid as it pertains to more than a single issue or proposition. *See* K.S.A. 25-3602. The petition seeks to address the maintenance, construction, remodeling or demolition of any city owned structure or building which is of “historical or architectural significance.” The City of Wichita owns more than five hundred (500) buildings or structures.

18. The maintenance and construction of City buildings are funded by a variety of sources, including: general obligation bonds, transient guest tax revenues, federal grants, and property tax revenues.

19. In funding and contracting for the construction and maintaining city facilities, the City is required to comply with a number of statutory provisions including, but not limited to: Kansas Cash-Basis Law, K.S.A. 10-1101 *et seq.*, and the Kansas Budget Law, K.S.A. 69-2925 *et seq.*

20. State statutes prescribe separate design, public bidding and demolition/construction phases for any public works project undertaken by Cities of the First Class.

21. K.S.A. 12-1736 authorizes cities to erect or construct public buildings. Further, the statute authorizes cities to alter, remodel, replace or make additions to public buildings.

22. K.S.A. 12-1738 authorizes the governing body of a city to lease any public building which has been declared to have “unusual historical or cultural value” to a corporation or association desiring to restore and preserve such building for its historical or cultural value for any term which the governing body may deem to be in the best interests of the City.

23. K.S.A. 12-1739 authorizes the governing body of a city to sell any publically owned building upon such terms an in such manger as the governing body may deem to be in the “best interest” of the city.

24. The petition is invalid as the proposed ordinance is an administrative ordinance. Administrative ordinances are not authorized to be adopted by the referendum process. K.S.A. 12-3013(e)(1).

25. Decisions regarding the maintenance, construction, improvements and demolition of public buildings require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make rational choices regarding the maintenance of such buildings.

26. The proposed ordinance is administrative in nature in that it seeks to implement the power delegated to cities to purchase, hold and dispose of city property pursuant to K.S.A. 12-101, *et seq.*

27. The proposed ordinance is void as it is in conflict with K.S.A. 12-1736, K.S.A 12-1738 and K.S.A. 12-1739 which grant governing bodies the authority to control, maintain, lease and sell public owned buildings and property as they deem are in the “best interests” of the City.

28. Article 4 of the Kansas Constitution provides that all elections by the people shall be by ballot or voting device or both as the legislature shall by law provide. Art. IV, Kansas Constitution, Section 1.

29. In Kansas, an election can only be held if statutory authority exists for the calling of an election.

30. The proposed ordinance is void, as it exceeds the City's legal and statutory authority to call for a binding election for approval of decisions regarding publically owned buildings which are of historical or architectural significance.

31. The proposed ordinance is invalid as it conflicts with the requirements of K.S.A. 12-3013. The proposed ordinance requires that an election be held, in the future, each time the City seeks to remodel or demolish any city owned building of historical or architectural significance. In essence, the ordinance is specifying that the City agrees to submission of these decisions to a vote of the public by the way of a referendum without any compliance with the requirements of K.S.A. 12-3013 regarding the submission of petitions with significant signatures to mandate such an election. As such, the proposed ordinance is in conflict with state law and is void.

32. The ordinance, as written, is overly broad and unconstitutionally vague. The ordinance fails to define or provide any criteria to define what buildings are "of historical importance or architectural significance." The City Council would be required to submit to a public vote nearly any renovation, lease, construction or general maintenance of its public buildings which could "adversely affect the building." As written, any public building could be determined to be of historical importance or architectural significance and any material change could be viewed as "adversely affecting" the building.

33. The City is not required by law to call for an election of a proposed ordinance that is void or unconstitutional.

34. Pursuant to K.S.A. 25-3601(e), the District Court has jurisdiction to determine the validity of the proposed ordinance and the form of the question presented.

35. Pursuant to K.S.A. 25-3601(e), the District Court is to render an opinion in this matter within twenty (20) days of the filing of this matter.

36. Pursuant to the Declaratory Judgment Act, K.S.A. 16-1701 *et seq.*, this Court has jurisdiction to determine the validity of the proposed ordinance.

37. The function of a Declaratory Judgment action is to provide a speedy determination of the rights and obligations of the parties.

38. Unless a timely adjudication of the rights of the parties is made by this Court, the parties will expend time and resources, and will ultimately engage in extensive litigation regarding the enforceability of the proposed ordinance.

WHEREFORE, Plaintiff prays the Court for an order determining the validity of the petition submitted, whether the proposed ordinance is an administrative ordinance not subject to passage by referendum, whether the proposed ordinance is void as it exceeds the City's statutory authority to call for a binding election and whether the proposed ordinance is unconstitutionally vague and overbroad.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY

/s/ Sharon L. Dickgrafe

Sharon L. Dickgrafe, #14071

Chief Deputy City Attorney

City Hall - 13th Floor

455 North Main

Wichita, Kansas 67202

(316) 268-4681

[sdickgrafe@wichita.gov](mailto:sdickgrafe@wichita.gov)

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing on the 28th day of July, 2020, with the Clerk of the Court by using the CM/ECF system, which will provide a notice of electronic filing to counsel of record. A copy was sent via personal service and U.S. Mail to the Defendants below:

Karl Peterjohn  
11328 W. Texas  
Wichita, Kansas 67209

Celeste Racette  
2239 N. Tee Time  
Wichita, Kansas 67205

/s/ Sharon L. Dickgrafe  
Sharon L. Dickgrafe, #14071

**PETITION TO THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS**  
Pursuant to Applicable Kansas Law

RECEIVED  
JAN 10 2020

Shall the following ordinance become effective:

BE IT ORDAINED THAT THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

BY: .....

No prominent city owned buildings of historical importance or architectural significance (regardless of historic register status), including Century II and the adjoining former Public Library, shall be demolished, replaced or otherwise adversely affected without a public vote of approval by the qualified voters in the City of Wichita, and further, no interest in such city owned buildings, including Century II and the adjoining former Public Library, shall be leased, sold, bartered, traded, conveyed or assigned and thereafter demolished, replaced or otherwise adversely affected without a public vote of approval by the qualified voters in the City of Wichita.

I have personally signed this petition.

I am a registered elector of the State of Kansas and the City of Wichita, County of Sedgwick, and my residence address is correctly written after my name.

#	Date	Signature	Printed Name	Printed Address
1				Wichita, KS
2				Wichita, KS
3				Wichita, KS
4				Wichita, KS
5				Wichita, KS
6				Wichita, KS
7				Wichita, KS
8				Wichita, KS
9				Wichita, KS
10				Wichita, KS

State of Kansas     )  
                              ) ss:  
County of Sedgwick    )

I am the circulator of this petition and a resident of the State of Kansas and possess the qualifications of an elector of the State of Kansas. I have personally witnessed the signing of the petition by each person whose name appears thereon. I believe the statements made herein and that each signature appended to the paper is the genuine signature of the person whose name it purports to be.

\_\_\_\_\_  
Signature of Circulator

\_\_\_\_\_  
Circulator's Residence Address

Signed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_  
Circulator Print Name

My appointment expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public





*Sedgwick County...*  
*working for you*

## Office of the County Counselor

Michael D. Pepoon County Counselor

525 North Main, Suite 359, Wichita, KS 67203-3790 – TEL: 316-660-9340 – FAX: 316-383-7007

Michael.Pepoon@sedgwick.gov

January 10, 2020

Karl Peterjohn

Delivered by email: kpeterjohn@sbcglobal.net

Windell G. Snow

Law Offices of Windell G. Snow, P.A.

8100 E 22<sup>nd</sup> Ste 2100-2

Wichita, KS 67220

Also delivered by: Email: wgaslaw@yahoo.com

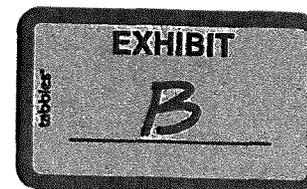
Fax: 316-613-3884

Re: Written Opinion on the Sufficiency of the Form of the Question - Initiative Petition Submitted under K.S.A. 12-3013 and 25-3601, et seq. – **the form of the question contained in the petition complies with the statutory requirements**

Dear Mr. Peterjohn and Mr. Snow:

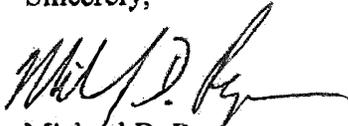
On January 10, 2020, Karl Peterjohn submitted the enclosed petition by hand-delivery to the Office of the County Counselor. K.S.A. 25-3601 requires this office to provide a written advisory opinion within 5 business days as to the legality of the form of the question. It is my opinion that the form of the question stated on the petition complies with the requirements of K.S.A. 12-3013 and 25-3601, *et seq.*

I would note that K.S.A. 25-3601(a) provides that this advisory opinion only establishes a rebuttable presumption of compliance with the requirements of the applicable statutes. Furthermore, the review that the County Counselor's Office has undertaken is limited to the proper form of the question contained within the petition. As a result, this letter is not intended to indicate whether the content of the question of the petition is or is not appropriate under Kansas law.



Please contact me if you have any questions about this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Pepon", with a long horizontal flourish extending to the right.

Michael D. Pepon  
County Counselor

Enclosure

Cc: Tabitha Lehman, Sedgwick County Election Commissioner  
Jennifer Magaña, City Attorney, City of Wichita

MP/JW/dh