

Kansas House of Representatives

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House Committee on Elections

HB 2162 - Ballot language statements.

Dear Chairman Schwab and committee members,

I will start with a little background information to explain why this important legislation needs to go forward.

A year ago, Wichita had a special election on the Ambassador Hotel, whether or not to agree with the city councils' decision regarding an incentive offered by the city.

Here is the question that appeared on the ballot:

Shall charter ordinance 216 entitled: "A charter ordinance amending and repealing section 1 of charter ordinance No. 213, of the city of Wichita, Kansas, which amended and repealed section 1 of charter ordinance No. 183 of the city of Wichita which amended and repealed section 1 of charter ordinance No. 174 of the city of Wichita, Kansas pertaining to the application of revenues from the transient guest tax" take effect? YES or NO

What is a voter supposed to do in this case? Poll workers and the election office are prohibited from explaining the questions because it can be construed as biased or leading a voter. The information about the Ballot Measure is usually propagated by the media and ads whether their information is accurate or not. The voter must remember the details and their intent as they enter the voting booth. They cannot bring newspapers or flyers with information about the question to the polling site.

I spoke with one supervising judge that said some voters would come to vote, see the example ballot, get confused and have to leave the poll site to go study the issue and then return later to vote. There is no explanation legally available at the poll site in the status quo. Other questions on other elections have had similar controversies. This problem is not unique to this one election. Voters do have a desire to understand ballot measures but sometimes the questions are just so complex, the voter is essentially disenfranchised. This complexity may be technically necessary but does not need to stand alone.

There are many examples of complex ballot questions but some questions seem reasonable. Officials that write these questions do not know what they are allowed to do or say which is why a clarifying solution is needed. This bill would clarify Express Permission and give general authority to an election commissioner to ask for an official simple explanation by using a defined process. Using the city or county attorney as an expert close to the issue that understands it and secondary verification by someone not close to the issue will provide a check and balance. This process will develop and certify in a simple, elementary PLAIN LANGUAGE explainer that could be posted on a website or be available to voters at the poll site. It would not appear on the ballot.

Missouri currently does allow for ballot language explainers. Unfortunately, a party that advocates for a position and loses may turn to the courts to claim the results were a result of biased language or leading language in the ballot language explainer. This is why the process we develop with this legislation needs to have a liability protection included as well as certification as unbiased by two agencies, whether it is a local expert and the Secretary of State or other similar organizations.

In the end, status quo is broken so I urge you to sympathize with the frustrated voters and implement a good solution. I urge your support of HB2162.

Representative Jim Howell
Attachment 1 – Wichita Eagle Article

ATTACHMENT 1 – (Deleted some of article unrelated to the ballot language explainer issue)

The Wichita Eagle, Sunday, Feb. 26, 2012, Posted on Sat, Feb. 25, 2012

Ambassador Hotel ballot, more questions and answers

By RICK PLUMLEE

Q. What is the question on the ballot?

A. Here is what you'll see on the ballot:

Shall charter ordinance 216 entitled: "A charter ordinance amending and repealing section 1 of charter ordinance No. 213, of the city of Wichita, Kansas, which amended and repealed section 1 of charter ordinance No. 183 of the city of Wichita which amended and repealed section 1 of charter ordinance No. 174 of the city of Wichita, Kansas pertaining to the application of revenues from the transient guest tax" take effect? YES or NO

Q. What is the question asking?

A. It's asking whether a voter wants the city to rebate to the developers of the Ambassador Hotel 75 percent of the bed tax paid by the hotel's guests for 15 years. The total amount is estimated at \$2.25 million. A "yes" vote means you do, a "no" vote means you don't.

Q. Who wrote the question?

A. City Attorney Gary Rebenstorf.

Q. Why is the wording so confusing?

A. Rebenstorf is required to follow specific legal guidelines set by Article 12 of the Kansas Constitution when a charter ordinance question is on a ballot. Article 12's requirement is pretty short and simple. It says the question shall begin with the wording "Shall charter ordinance No. ____ entitled (title of the ordinance) take effect?" It's the wording that's required for the title of the ordinance that can make it sound confusing.

Rebenstorf was required to put the exact title of ordinance No. 216 in the question. The title became more complex because it includes three references to amendments and repeals. Article 12 also requires those changes be listed in the charter ordinance's new title, Rebenstorf said.

Q. Can't some clarification be added to the question?

A. The only words added that might give a voter a hint of what the question is about is at the tail end: "pertaining to the application of revenues from the transient guest tax."

Rebenstorf said he doesn't think he can legally add any more clarification because Article 12 doesn't say he can. He said clarification has been offered to the public at the city's website, www.wichita.gov.

"From the strict legal standpoint, what we were trying to do was make sure we were following the constitution," he said. "I want to make sure I follow it to the 'T.'"

He also said explanatory wording could do more harm than good.

"You have to be careful," Rebenstorf said. "You could spend a whole lot of conversation trying to explain it, and it still might not help answer the question. You don't want to be perceived as taking sides one way or other in fashioning some explanation."

Other ballots asking questions about charter ordinance changes in Wichita and around the state have followed the same interpretation that Rebenstorf has in writing Tuesday's question.