INTRODUCTION:

The 2021 Johnson County Charter Commission presents this Report to the Board of County Commissioners ("BOCC") pursuant to K.S.A. 19-2680 et seq. and Johnson County Home Rule Charter §6.04. This Report summarizes the creation, organization, and activities of the 2021 Charter Commission, including twenty-one (21) separate meetings and two public hearings. After significant effort, multiple presentations, and robust discussion, no proposed amendments received the required thirteen (13) affirmative votes. Therefore, no amendments to the Home Rule Charter are being forwarded to the BOCC for placement on the November 2022 ballot, indicating a majority belief that, taken as a whole, the existing Charter is functioning in an acceptable manner.

This Report reviews the membership, informational presentation, public hearings, and proposed amendments and recommendations considered by the Charter Commission. The Charter Commission proceedings were all made available virtually and the Charter Commission website (www.charter.jocogov.org) ensured that the public was fully informed of Commission meeting dates, agendas, minutes, video recordings of meetings, proposed amendments, the existing Home Rule Charter, and other resources. The Charter Commission is proud of the transparent nature of these proceedings as evidenced by the substantive and enthusiastic participation by a number of citizens, whether in-person, virtually, or through the web site.

It is important to note here that the Commission’s work could not have been accomplished without the strong support of County staff, most importantly Deputy County Clerk Lynda Sader, Deputy County Manager Maury Thompson, and Deputy Director of Legal Cynthia Dunham. In addition, County Information Services personnel, under the able leadership of Bill Nixon, Chief Information Officer and Director, provided outstanding technological support throughout, a particularly difficult effort given that we met in three different physical locations with different technology challenges in each location. We greatly appreciate the significant effort in time and resources the County dedicated to this once-a-decade effort.

CREATION AND ORGANIZATION OF THE COMMISSION

The Home Rule Charter requires the appointment every ten years of a 25-member Charter Commission. The Charter Commission is empowered to “conduct comprehensive studies of any or all phases of County government operations, including a review of the existing County Charter and major resolutions of the Commission as they affect the operation of Johnson County government.” Charter §6.04. In addition, the Commission may include suggested changes in the
administration of the County government, programs, and activities” and “may also include proposed amendments to the Charter.” Any proposed Charter amendments which receive a majority vote (i.e., 13) are to be submitted to the BOCC and then must be placed on the ballot for a vote at the next regularly scheduled election (so long as the proposed amendment is certified by a Kansas licensed attorney as “not in conflict with the constitution and general laws of the state” and is “allowed by law.”) See K.S.A. 19-2684 and Charter §6.04.

Pursuant to K.S.A.19-2682 and Home Rule Charter §6.04, the nominating authorities identified by statute appointed twenty-five Johnson County citizens who comprise the 2021 Charter Commission. Members of the Commission are as follows:

Kansas Senate Appointments: Wendy Bingesser, Jane Dirks, Karin Brownlee

Kansas House Appointments: Dawn Rattan, Zach Thomas, Ed Peterson

Johnson County Democratic Central Committee: Joy Koesten, Greg Shelton

Johnson County Republican Central Committee: Jim Denning, Greg Smith

Johnson County Board of County Commissioners:

- District 1 Kyle Russell
- District 2 Vicki Charlesworth
- District 3 Laura Klingensmith
- District 4 Brenda Sharpe
- District 5 Jimmy Gaona
- District 6 Brent McCune
- District 7 Eric Mikkelson
  Leslee Rivarola

Johnson County Chambers of Commerce: Tedrick Housh III, Greg Musil

Johnson County Cities/Council of Mayors: Mayor Mike Boehm, Mayor Don Roberts, Mayor Paula Schwach

Johnson County Planning Commission/Unincorporated Area: Randy Hutchins, Chris Iliff

The twenty-five members served without compensation for a schedule that included 22 meetings, two public hearings, and over 48 total hours of public meeting time.
The initial meeting of the Charter Commission was virtual and was hosted by BOCC Chair Ed Eilert on March 1, 2021. On April 12, 2021, the Commission met virtually and elected the following officers:

- Chair: Greg Musil
- Vice Chair: Dawn Rattan
- Secretary: Ed Peterson

The Charter Commission established its procedural rules. The rules were considered and adopted, as amended, at the Commission’s May 26, 2021 meeting. A copy of the Commission’s adopted rules was accessible to the public on the Commission’s website at:


WORK OF THE CHARTER COMMISSION

From April 12, 2021, through February 16, 2022, the Commission met regularly, typically on the second Monday and fourth Wednesday of each month and typically from 4:00-6:00 p.m. Regular meetings were held at the University of Kansas Edward Campus and the Johnson County Administration Building. Each meeting also provided a virtual, online option for both Commission members and members of the public.

The Home Rule Charter requires at least one public hearing. The Commission committed in early meetings to hold two public hearings. Public hearings were held on October 11 and October 27, 2021, both at the Olathe Embassy Suites Hotel and both scheduled for 5:30-7:30 p.m. At those hearings more than 50 citizens provided input to the Commission, either in-person or virtually. In addition to receiving input at public hearings, the Charter Commission website invited comments from the public. Over 850 separate submissions were made on the website.

During the months of April through August, the Commission heard presentations and were able to ask questions and seek information from the seven current County Commissioners, the County Manager, the former and first District 7 (county-wide) BOCC Chair, and numerous County governmental branches, departments and agencies, including the District Court- Chief Judge; the Sheriff; the District Attorney; Aging and Human Services; Airport Commission; Appraiser; Budget and Financial Planning; Corrections; Developmental Supports; Emergency Management-Med-Act; Planning, Housing and Community Development; Election Office; Financial Management and Administration; Health and Environment; Library; Mental Health, Parks and Recreation; Public Works; Treasury, Taxation and Vehicles; and Wastewater. The Commission also received written input from the two prior County Managers.
At its September meeting, the Charter Commission reviewed each section of the existing Home Rule Charter with the opportunity for questions and comments. As noted above, the October meetings were conducted as public hearings. Thereafter, in November and December 2021 and in January 2022 the Commission received, discussed and voted on proposed amendments and proposed recommendations.

**Proposed Amendments:**

The Commission established a deadline for Commission members to submit proposed Home Rule Charter amendments for consideration by the Commission. Fifteen (15) amendments were proposed by Commission members. Pursuant to the Commission’s adopted rules, all proposed amendments were proposed at a First Reading, followed by initial discussion. If a proposed amendment received nine (9) votes following First Reading, the amendment would proceed to Second Reading for additional discussion and, ultimately, a final vote. If an amendment failed to receive 9 votes on First Reading, it failed and was not considered further.  

The fifteen proposed amendments are generally described here, along with the resolution of each and a listing of the meetings where substantive discussions occurred.

1. Changing the election of the Sheriff from a partisan to a non-partisan basis.

   First Reading: This proposal advanced to Second Reading with a vote of 12 for and 13 against.

   Second Reading: This proposal was withdrawn by the sponsor following receipt of a legal opinion from the Charter Commission’s counsel. Discussion of this proposal occurred in meetings on December 6, 13, and 22, 2021.

---

1 Each vote by a Commission member on an amendment or a recommendation was a public vote and is recorded in the minutes of the meeting in which it occurred.

2 The Commission was benefitted by a partial record of the 2011 Charter Commission but was also hindered by the lack of a thorough history from either the 2000 or the 2011 Charter Commission efforts. The 2021 Commission hopes that by offering a more complete record of its work, as reflected and captured on the website, future Charter Commissions will benefit from our work. In addition, by identifying in this Report the meeting dates when a particular amendment or recommendation was discussed, citizens can more easily access the minutes and recordings of discussions on issues of interest to them.

3 The Commission engaged the Foulston Siefkin law firm to review certain proposed amendments and to provide a legal opinion regarding whether a proposed Home Rule Charter amendment complied with or was consistent with existing Kansas statutes and the Kansas Constitution. Those opinions would have technically been subject to the attorney-client privilege as confidential communications between the
2. Create a public health and safety advisory board to provide counsel for the public health department and county sheriff’s department. (Proposed amendments 2 and 9 were combined by the respective sponsors and ultimately considered as a single proposed amendment.)

See #9, below, for process information.

Discussion of this proposal occurred in meetings on November 8 and 17 and December 21 and 22, 2021.

3. Change the format of all county elections to a partisan basis.

First Reading: This proposal failed to receive the 9 votes required to move on to Second Readings with a vote of 8 for and 17 against.

Discussion of this proposal occurred in the meeting on December 6, 2021.

4. All vacancies on the BOCC should be filled by a special election unless the next scheduled election is within 90 days of the position becoming vacant.

First Reading: This proposal advanced to Second Reading with a vote of 10 for and 14 against.

Second Reading: This proposal failed to receive 13 votes, with the final vote of 9 for and 14 against. Discussion of this proposal occurred in meetings on November 8 and December 22, 2021.

5. Directors of the Library board, Parks and Recreation Board, Airport Commission, Mental Health Board and Developmental Supports Board shall be appointed by the BOCC based on education and experience and required to be a resident and qualified elector in Johnson County.

This proposal was withdrawn by the sponsor. Discussion of this proposal occurred in the meeting on November 8, 2021.

________________________________________________________________________

attorney (Foulston Siefkin) and the client (the 2021 Charter Commission). However, the 2021 Charter Commission voluntarily waived the attorney-client privilege in order for the opinions to be disclosed publicly both to provide context for the Commission’s deliberations and to provide guidance to future Charter Commissions on the specific subject matter. A list of the legal opinions received is attached as Exhibit 1.

This proposal was withdrawn by consensus. The Charter Commission consensus was that “clean-up” amendments would not be forwarded to the BOCC and placed on the ballot for a public vote unless at least one substantive amendment was also recommended and placed on the ballot.

7. County manager shall appoint department directors, division heads and the County Clerk, Register of Deeds, and Treasurer; District Attorney and Sheriff shall be elected on a non-partisan basis; the BOCC shall approve the Sheriff’s budget and the Sheriff shall be personnel policies and procedures adopted by the BOCC and all other administrative policies adopted by the BOCC not inconsistent with law.

The portion of this proposal relating to non-partisan election of the Sheriff was withdrawn by the sponsor following receipt of a legal opinion from the Charter Commission’s counsel.

First Reading: This proposal advanced to Second Reading with a vote of 14 for and 11 against.

Second Reading: The remainder of the proposal failed to receive 13 votes, with the final vote of 4 for and 21 against. Discussion of this proposal occurred in meetings on December 6, 13 and 22, 2021 and January 10, 2022.

8. Administrative “clean-up” of Home Rule Charter text;

This proposal was withdrawn by consensus. The Charter Commission consensus was that “clean-up” amendments would not be forwarded to the BOCC and placed on the ballot for a public vote unless at least one substantive amendment was also recommended and placed on the ballot.

9. Creation of a Public Health Advisory Council to provide guidance to the BOCC when its acts as the Public Health Board. (Proposed amendments 2, above, and 9 were combined by the sponsors and ultimately considered as a single proposed amendment as resubmitted on November 17, 2021.)

First Reading: This proposal advanced to Second Reading with a vote of 12 for and 10 against.
Second Reading: This proposal failed to receive 13 votes, with the final vote of 7 for and 16 against. Discussion of this proposal occurred in meetings on November 8 and 17 and December 13 and 22, 2021.

10. Establish an automatic increase in compensation for BOCC members based on the consumer price index and other parameters.

First Reading: This proposal advanced to Second Reading with a vote of 18 for and 5 against.

Second Reading: This proposal failed to receive 13 votes, with the final vote of 11 for and 12 against. Discussion of this proposal occurred in meetings on November 17 and December 13 and 22, 2021. A similar proposal was submitted and considered as a recommendation, as noted below.

11. Revised the process for electing the District 7 BOCC member (county-wide chair) by moving to an odd-year election (original proposal) or by moving to a six-year term (revised proposal as voted on).

First Reading: This proposal advanced to Second Reading with a vote count of 23 for and 0 against.

Second Reading: This proposal failed to receive 13 votes, with the final vote of 7 for and 18 against. Discussion of this proposal occurred in meetings on November 17 and December 13 and 22, 2021 and January 10, 2022.

12. BOCC approval of new hires or reappointments of department directors or division heads.

First Reading: This proposal advanced to Second Reading with a vote of 9 for and 14 against.

Second Reading: This proposal failed to receive 13 votes, with the final vote of 7 for and 16 against. Discussion of this proposal occurred in meetings on November 17 and December 22, 2021.

13. Change the positions of County Clerk, County Register of Deeds, and County Treasurer to elected positions from their current status as appointed positions.
First Reading: This proposal failed to receive the 9 votes required to move on to Second Reading with a vote of 8 for and 17 against. Discussion of this proposal occurred in the meeting on November 8, 2021.

14. Establishment of “Johnson County Unincorporated Trustee” position elected by the unincorporated citizens of Johnson County.

First Reading: This proposal advanced to Second Reading with a vote of 9 for and 16 against.

Second Reading: This proposal was modified and ultimately withdrawn during the Second Reading. Discussion of this proposal occurred in meetings on November 8 and December 13 and 22, 2021 and January 10, 2022. A legal opinion was requested and received on the proposal as originally submitted and as revised. A similar proposal was submitted and considered as a recommendation, as noted below.

15. Change the Head of the Johnson County Appraisal Office to an elected position.

This proposal was withdrawn by the sponsor. Discussion of this proposal occurred in the meeting on November 8, 2021.

Proposed Recommendations:

The Commission established a deadline for Commission members to submit proposed Home Rule Charter recommendations for consideration by the Commission. A total of 4 recommendations were proposed by Commission members. The recommendations are generally described here, along with the resolution of each and a listing of the meetings where substantive discussions occurred.

1. Reorganize sub-commissions so that those not currently under the direct control of the BOCC and the Charter Commission are under that control

This proposal failed to receive 13 votes, with the final vote of 1 for and 21 against. Discussion of this proposal occurred in meetings on January 10 and January 26, 2022.

2. Continue efforts to move forward on consolidation of rural fire districts in Johnson County.

This proposal failed to receive 13 votes, with the final vote of 6 for and 15 against. Discussion of this proposal occurred in meetings on January 10 and January 26, 2022.
3. Clarify the balance of authority between the BOCC and the Sheriff by ensuring the BOCC budgetary process includes a) a clear statement of the statutory duties of the Sheriff’s office, b) a line item budget identifying funds required to meet those statutory duties, c) a line item budget identifying funds used for discretionary programs and projects, and d) a budget total of those two funds which may not be exceeded without additional approval of the BOCC.

This proposal failed to receive 13 votes, with the final vote of 7 for and 15 against. Discussion of this proposal occurred in meetings on January 10 and January 26, 2022.

4. Expanded infrastructure funding for unincorporated areas in Johnson County.

This proposal failed to receive 13 votes, with the final vote of 7 for and 15 against. Discussion of this proposal occurred in meetings on January 10 and 26, 2022.

5. Establish an automatic compensation increase structure for the Board of County Commissioners.

This proposal failed to receive 13 votes, with the final vote of 10 for and 11 against. Discussion of this proposal occurred in the meeting on January 26, 2022.

MINORITY REPORT:

The rules of the Charter Commission provide the opportunity for any member of the Commission to submit a minority report. Two minority reports were submitted and are attached to this report.

CONCLUSION:

The work of the 2021 Charter Commission did not result in any proposed ballot amendments or proposed recommendations to the Board of County Commissioners. It did, however, provide for a comprehensive review of county government by a diverse group of twenty-five citizens, the opportunity for the Commission and citizens to learn and pose questions about the county’s governmental structure, multiple methods for comment and input by Johnson County citizens, a complete and transparent record of Commission activities, and a thorough discussion regarding numerous proposed amendments and recommendations. Given the diverse, informed, and energetic group of Charter Commission members, we believe this process and result reflect a general satisfaction with the current Charter and operations of County government under that Charter. The process and consideration of county government was completed according to the spirit and letter of the Home Rule Charter and Kansas Statute.
THIS REPORT WAS APPROVED WITH THE AFFIRMATIVE VOTE OF THIRTEEN OR MORE MEMBERS OF THE 2021 CHARTER COMMISSION ON FEBRUARY 14, 2022.

Respectfully submitted,

[Signature]

Greg L. Musil
Chair
Attachments

LEGAL OPINIONS RECEIVED

Attachment A: Opinion regarding whether the Charter Commission may change the election of the county sheriff from partisan to non-partisan.

Attachment B: Opinion regarding the creation of an elected trustee for the unincorporated areas of the county.

Attachment C: Opinion regarding the applicability of county personnel and administrative regulations and policies to the Sheriff and District Attorney.

Attachment D: Opinion regarding the election of the District 7 Commissioner (the chair) in an odd-number calendar year.

Attachment E: Opinion regarding mandating certain governmental subdivisions and the Board of County Commissioners to take actions related to the unincorporated areas of the county.
December 17, 2021

Sent via email to: GMusil@rousepc.com

Johnson County Charter Commission
c/o Greg Musil, Commission Chair
ROUSE FRETS WHITE GOSS
5250 W. 116th Place, Ste. 400
Leawood, KS 66211

Re: 2021 Johnson County Charter Commission, as created and authorized by K.S.A. 19-2680 et seq. and the Home Rule Charter of Johnson County.
Opinion regarding proposed ballot amendment on non-partisan election of sheriff

Dear Mr. Musil:

The 2021 Johnson County Charter Commission has engaged our firm to offer a legal opinion under Kansas law on whether a ballot amendment, if submitted for consideration by the electorate of Johnson County and passed by the voters, could change the election of Sheriff of Johnson County from a partisan election to a non-partisan election.

**Background on the Charter Commission**

On November 7, 2000, the voters of Johnson County adopted a Home Rule Charter. Section 6.04 authorizes the 2021 Charter Commission and gave it certain powers to propose Charter amendments to the electorate, as more fully set forth in the Home Rule Charter. Under K.S.A. 19-2681, the Charter Commission is established “for the purpose of studying, proposing, drafting or amending a charter for the government of such county.”

The 2021 Charter Commission has asked our firm to opine on the legality under Kansas law of certain amendments it may propose. One such potential amendment would submit for consideration by the electorate a change for the election of County Sheriff from partisan to non-partisan. Our firm has been asked to opine on whether such an amendment would be consistent with Kansas law.

**Summary of Our Opinion:**

It is our opinion that the state legislature has the authority to change the election of Sheriff from partisan to non-partisan. In our opinion, the County does not have that authority.
Discussion:

The position of Sheriff is listed among county officers who are to be elected in a general election. K.S.A. 25-101(a)(10). There are several Kansas statutes that address elections for county office. K.S.A. 25-202(a) requires that all candidates for county offices must be nominated by primary election or independent nomination petitions. K.S.A. 25-213 requires that official primary election ballots for county offices, expressly including Sheriff, be partisan. Similarly, K.S.A. 25-613 governs general elections and requires that each candidate’s political party be added next to the name of each candidate for any county office on a general election ballot.

K.S.A. 19-101a(6), the county home rule statute, requires that counties be subject to the statutes concerning election and the election of county officers. The statute authorizing the Charter Commission, K.S.A. 19-2680(a), permits, within certain limitations, the Charter Commission to fix the “method of election” for county commissioners, but it does not give similar authority regarding the method of election of the sheriff.


The partisan nature of county elective office is a creature of statute. By comparison, Kansas law requires school board elections to be non-partisan and permits city councils to determine whether city elections are partisan or non-partisan. There is no similar statutory authority for the sheriff to be chosen on a non-partisan basis.

Based on the above, it is our opinion that, so long as the sheriff is an elected position, it must be a partisan election unless Kansas election law is amended or the Kansas legislature gives broader authority to the charter commission.

Nature of an Opinion

As you are aware, we are offering an opinion as requested. Our opinion is not binding on any Court.

Please advise if you have any questions.

Sincerely,

FOULSTON SIEFKIN LLP

Anthony F. Rupp

AFR/rm
December 21, 2021

SENT VIA EMAIL TO: GMUSIL@ROUSEPC.COM

Johnson County Charter Commission
c/o Greg Musil, Commission Chair
ROUSE FRETS WHITE GOSS
5250 W. 116th Place, Ste. 400
Leawood, KS 66211

Re: 2021 Johnson County Charter Commission, as created and authorized by K.S.A. 19-2680 et seq. and the Home Rule Charter of Johnson County. Opinion regarding proposed ballot amendment on election of trustee.

Dear Mr. Musil:

The 2021 Johnson County Charter Commission has engaged our firm to offer a legal opinion under Kansas law on whether a ballot amendment, if submitted for consideration by the electorate of Johnson County and passed by the voters, could create a position described in the Proposed Amendment as “Establishment of ‘Johnson County Unincorporated Trustee’ Position Elected by the Unincorporated Citizens of Johnson County.”

The duties and responsibilities of the position are not defined in the Proposed Amendment. However, our understanding is that the purpose of the proposed amendment stems from an expressed concern in unincorporated areas over perceived poor road conditions, lack of county right-of-way maintenance, and limited capital infrastructure improvements. Broadly, the concept would be to delegate certain undefined authority and responsibility from the Board of County Commissioners, County Manager and Planning Commission to this new Trustee position with a particular goal of improving such road and infrastructure conditions.

After we received this assignment, the member of the Charter Commission who submitted this Proposed Amendment retained counsel independently. The member’s counsel has submitted an alternative Proposed Amendment in the form attached as Exhibit A, which has not yet been considered by the Charter Commission. It will be up to the Charter Commission to determine whether it wants an opinion on this alternate proposal.
Background on the Charter Commission:

On November 7, 2000, the voters of Johnson County adopted a Home Rule Charter. Section 6.04 authorizes the 2021 Charter Commission and gave it certain powers to propose Charter amendments to the electorate, as more fully set forth in the Home Rule Charter. Under K.S.A. 19-2681, the Charter Commission is established “for the purpose of studying, proposing, drafting or amending a charter for the government of such county.” In this instance, the Charter Commission has asked our firm to opine on the legality under Kansas law of certain amendments it may propose. One such potential amendment would create the newly elected position of Johnson County Unincorporated Trustee.

Summary of Our Opinion:

There are at least two legal obstacles to the creation of a Johnson County Unincorporated Trustee position.

First, it does not appear that there is statutory authority for the Charter Commission or the County to create a newly elected county officer without statutory approval.

Second, there is a legal question whether the election of such a position by only one segment of the County’s electorate would violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Generally speaking, principles of one person, one vote apply to county governments. There are potential arguments that may be raised in certain circumstances that may recognize the divergent interests of city residents and non-city residents in some local elections under rare circumstances. See, for example, Town of Lockport, New York v. Citizens for Community Action at Local Level, Inc., 430 U.S. 259, 97 S. Ct. 1047, 51 L. Ed. 2d 313 (1977). However, it is fair to assume that the election of such a position would at least raise the potential for legal challenge.

Having formed the opinion that there are potentially strong legal challenges to the Proposed Amendment for the reasons set forth above, we have ended our inquiry until we receive further guidance from the Charter Commission. We have not reached the question of whether the undefined authority and duties of the Johnson County Unincorporated Trustee would be permissible under the Kansas Constitution, statutes and other provisions of the Home Rule Charter.

Discussion:

K.S.A. 19-101a(6), a subsection of the county home rule statute, requires that counties be subject to statutes concerning elections and the election of county officers. K.S.A. 25-101(a)(10) lists the county offices for these purposes as county clerk, county treasurer, register of deeds, county or district attorney, sheriff and such other officers as provided by law. For example, K.S.A. 19-4605(c) authorizes the optional election of members of a county hospital board. There does not appear to be similar statutory authority for a county unincorporated trustee as proposed.

A county may hold binding elections only in accordance with statutory authority set out by the legislature. Blevins v. Board of County Commissioners of County of Douglas, 251 Kan. 374, Syl. ¶ 4 (1992).
An instructive opinion of the Kansas Attorney General was issued in 1996 in response to a proposal in Seward County to have general elections for a board of trustees of a fire district, rather than to have those trustees appointed by the Board of County Commissioners. In Kan. Atty. Gen. Op. 96-67, the attorney general’s office advised that a county may not exercise its home rule powers to provide for the election of fire district trustees because there was no constitutional or statutory authority for such an election.

In our opinion, the reasoning set forth in the Attorney General’s opinion also compels the conclusion that there is no constitutional or statutory authority for the County to create an elective office for the Johnson County Unincorporated Trustee identified above.

The second issue that could face a legal challenge is whether the creation of a Johnson County Unincorporated Trustee would violate one person, one vote principles under the equal protection clause. With certain exceptions, the one person, one-vote requirement applies to county governments when the elected officials exercise general governmental powers over the entire geographic area served by the body. There are exceptions for functionaries whose duties are far removed from normal governmental activities and disproportionately affect different groups. I would commend you to the Supreme Court opinion in *Ball v. James*, 451 U.S. 355 (1981) for discussion of this issue. Because the specific authority of the Johnson County Unincorporated Trustee is, at this point, undefined and the issue is complex, it would be beyond the scope of this opinion to predict how a court might resolve the constitutional issue here. However, it appears that there would be a potential dispute regarding the equal protection clause.

As noted in the Summary, we have not attempted to opine on whether authority can legally be ceded to such a Trustee. Please advise if you wish for us to go down that path.

**Nature of an Opinion:**

As you are aware, we are offering an opinion as requested. Our opinion is not binding on any Court.

Please advise if you have any questions.

Sincerely,

**FOULSTON SIEFKIN LLP**

[Signature]

Anthony F. Rupp

AFR/rm
2021 JOHNSON COUNTY CHARTER COMMISSION PROPOSED AMENDMENT TO HOME RULE CHARTER
Submitted by: Randy Hutchins Date: 12/22/2021 Description of proposed amendment: Amendment mandating that the Johnson County Planning and Zoning Commission, with the advice and consent of the Township Trustees, spend certain monies from the general fund, reserves, and public works funds of Johnson County, Kansas on the maintenance and upkeep of roads, bridges, culverts, and overall capital improvement in the unincorporated areas of Johnson County, Kansas.

Purpose and reason for proposed amendment: The US Government Structure was developed to ensure all citizens were fairly represented at ALL levels of Government to include Federal, State, County, City and Townships. That is not happening today for the Unincorporated citizens of Johnson County Kansas. Today’s Unincorporated Area represents ~40% of the total Johnson County land mass, but only ~10% of the population. Only two of the seven County Commissioners have Unincorporated Constituents in their District (3 and 6). This has created an environment where the Unincorporated Citizens are left without an impactful voice within our County Government Structure as it exists today. As a result, the Unincorporated Citizens have suffered the following consequences to include, but not limited to:

- Poor Road Conditions (Dusty/Muddy Roads)
- Lack of proper county right of way maintenance (Overgrowth, dangerous ditches)
- Limited to no capital infrastructure improvements
  - Paved Roads
  - Replaced bridges/Culverts
  - Lack of roadway development to properly support the Intermodal

This proposed amendment will utilize existing elected officials and provide for the reallocation of certain monies from the General Fund and Capital Budgets for employees, contractors, facilities, equipment, supporting staff, etc., to the maintenance and upkeep of roads, bridges, culverts, and overall capital improvement in the unincorporated areas of Johnson County, Kansas. More specifically, the amendment will state that beginning in fiscal year 2023, the Johnson County Commission shall spend an amount equal to at least 40% of the overall monies CARS possessed by Johnson County annually for the capital improvements in the unincorporated areas of Johnson County while maintaining the existing proposed/approved Public Works budget, adjusted annually for inflation for maintenance of the unincorporated area. The percentage shall adjust every five years to align with the % reduction of Unincorporated Road miles. Additionally, there shall be the following one-time expenditures in the first five fiscal years to bring the unincorporated areas up to incorporated infrastructure standards.

Year 1: $20M
Year 2: $15M
Year 3: $12M
Year 4: $10M
Year 5: $8M

The Elected Township Trustee(s) shall perform the following roles:

- Prioritize Capital Expenditure projects and Maintenance improvement needs
• Sign off on all Unincorporated Infrastructure RFQ, RFP and Contract Awards in their Township to ensure optimal use of budgetary funds
• Perform an annual assessment of the current Public Works department Operations cost and performance; provide readout in the Planning & Development led annual review to include any recommended improvement/changes necessary.
• Provide Advice and Consent of all Allocations of expense and capital funds.

The Planning and Development Department head shall lead a collaborative effort inclusive of the Township Trustees with Unincorporated citizens, Public Works, County Finance, County Commissioners, and the Planning/Development Commission with the responsibility of putting forth a recommendation to the County Commission for final approval. The County Commission shall not unreasonably withhold approval of the recommendation(s) put forth.

Charter Sections

County Departments or Agencies Affected:

• Planning & Development, Zoning Departments, Public Works
December 21, 2021

SENT VIA EMAIL TO: GMUSIL@ROUSEPC.COM

Johnson County Charter Commission
c/o Greg Musil, Commission Chair
ROUSE FRETS WHITE GOSS
5250 W. 116th Place, Ste. 400
Leawood, KS 66211

Re: 2021 Johnson County Charter Commission, as created and authorized by
K.S.A. 19-2680 et seq. and the Home Rule Charter of Johnson County.
Opinion regarding proposed ballot amendment on administrative and
personnel regulations.

Dear Mr. Musil:

The 2021 Johnson County Charter Commission has engaged our firm to offer a legal
opinion under Kansas law on whether a ballot amendment, if submitted for consideration by the
electorate of Johnson County and passed by the voters, could mandate that employees of the Sheriff
and District Attorney comply with county administrative and personnel regulations as passed by
the Board of County Commissioners.

The current Home Rule Charter has language requiring compliance by the offices of the
County Sheriff and the District Attorney with administrative policies adopted by the Board of
County Commissioners to the extent not inconsistent with law.

Section 5.05 of the Home Rule Charter states: “The offices of the elected County Sheriff
and District Attorney shall comply with administrative policies adopted by the Commission to the
extent not inconsistent with law.”

There is also relevant statutory law regarding the Sheriff but not the District Attorney.
K.S.A. 19-805(a) states that the sheriff may appoint, promote, demote and dismiss deputies and
assistants necessary to carry out the duties of the office. K.S.A. 19- 805(d) reads: “Any personnel
action taken by the sheriff under this section shall be subject to the following: (1) Personnel
policies and procedures established by the board of county commissioners for all county
employees other than elected officials; (2) any pay plan established by the board of county
commissioners for all county employees other than elected officials; … and (4) the budget for the
financing of the operation of the sheriff’s office as approved by the board of county
commissioners.”
The draft version of the Proposed Amendment pertaining to the Sheriff reads, in relevant part, “The Sheriff’s office is subject to the personnel policies and procedures established by the BOCC and all other administrative policies adopted by the Commission to the extent not inconsistent with law.”

The draft version of the Proposed Amendment pertaining to the District Attorney reads, in relevant part, “While the District Attorney of the 10th Judicial District is not a county official, this elected state position shall comply with administrative policies adopted by the Commission not inconsistent with law.”

**Background on the Charter Commission:**

On November 7, 2000, the voters of Johnson County adopted a Home Rule Charter. Section 6.04 authorizes the 2021 Charter Commission and gives it certain powers to propose Charter amendments to the electorate, as more fully set forth in the Home Rule Charter. Under K.S.A. 19-2681, the Charter Commission is established “for the purpose of studying, proposing, drafting or amending a charter for the government of such county.” In this instance, the Charter Commission has asked our firm to opine on the legality under Kansas law of certain amendments it may propose. One such potential amendment would mandate that employees of the County Sheriff’s office and District Attorney’s office comply with county administrative and personnel regulations as passed by the Board of County Commissioners.

**Summary of Our Opinion:**

The statute granting Home Rule powers to counties contains certain limitations. One such limitation is that counties may not exempt from or effect changes in K.S.A. 19-805, which is the statutory provision pertaining to deputies and undersheriffs. K.S.A. 19-101a(14). Accordingly, the question that we must ask is whether the Proposed Amendment seeks to exempt or effect changes in K.S.A. 19-805.

In our opinion, the Proposed Amendment to the Home Rule Charter would be legal because it doesn’t appear to exempt the County from or effect changes in K.S.A. 19-805, which requires that any personnel action taken by the Sheriff be subject to the personnel policies or procedures established by the Board of County Commissioners. However, because the Proposed Amendment appears to be consistent with current law, it would appear to be duplicative in that both state statutory law and the current Home Rule Charter contain similar requirements.

As noted in the Discussion below, nothing about the Proposed Amendment would alter the statutory authorization for the County Sheriff to appoint, promote, demote and dismiss deputies and assistants necessary to carry out the duties of the office. K.S.A. 19-805(a).

The District Attorney falls into a different category because the District Attorney is “hereby declared to be an executive officer of the judicial district in which he is elected, with said office constituting a separate entity within said district for administrative purposes, and in no event shall said district attorney be deemed an officer of any county.” K.S.A. 22a-101(a). The legal authority for the Proposed Amendment related to the District Attorney is therefore less clear. Given that the current Home Rule Charter requires the District Attorney to comply with “administrative policies adopted by the Commission to the extent not inconsistent with law,” it appears that the Proposed Amendment regarding the District Attorney is likely duplicative.
Discussion:

The Kansas Supreme Court has held that K.S.A. 19-805(d) doesn’t give county commissioners the authority to supersede a sheriff’s power to demote or dismiss his personnel. Board of County Commissioners of County of Lincoln v. Nielander, 275 Kan. 257, Syl. ¶ 6 (2003). This means that county commissioners may not fire a sheriff’s deputy over the objection of the sheriff. Id. at 267. But the Court also said that the county sheriff is the official responsible for his department and is to follow personnel policies of the county in relation to the county employees under his supervision. Id. at 265.

It should be noted that elected officials—including the Sheriff or District Attorney—may not be personally subject to county personnel policies, though the Sheriff, by statute, must follow them when taking personnel action. K.S.A. 19-805(d)(1). For these purposes, a district attorney is not an officer of the county. K.S.A. 22a-101(a). Although funded by the Board of County Commissioners, the district attorney has the authority to appoint his or her staff and set compensation for each employee. K.S.A. 22a-106(a). There is no statute requiring the District Attorney to follow personnel policies and procedures established by the Board of County Commissioners.

It appears to us that the current Home Rule Charter and K.S.A. 19-805(d) require compliance by the sheriff with personnel policies and procedures established by the Board of County Commissioners for all county employees other than elected officials. There is ambiguity regarding how courts will enforce or interpret the interplay of K.S.A. 19-805(a) and 19-805(d). Because the proposed amendment is consistent with the existing Home Rule Charter and K.S.A. 19-805(d), we believe it complies with Kansas law about the duties of the sheriff. However, we also note that it appears to be duplicative of existing law.

Likewise, because there is no specific statutory direction to the District Attorney to comply with county personnel rules, there is ambiguity there that is not likely to be resolved by an amendment to the Home Rule Charter.

Nature of an Opinion:

As you are aware, we are offering an opinion as requested. Our opinion is not binding on any Court.

Please advise if you have any questions.

Sincerely,

FOULSTON SIEFKN LLP

Anthony F. Rupp

AFR/m
January 4, 2022

Sent via email to: GMusil@rousepc.com
Johnson County Charter Commission
c/o Greg Musil, Commission Chair
ROUSE FRETS WHITE GOSS
5250 W. 116th Place, Ste. 400
Leawood, KS 66211

Re: 2021 Johnson County Charter Commission, as created and authorized by K.S.A. 19-2680 et seq. and the Home Rule Charter of Johnson County.
Opinion regarding proposed ballot amendment to term of commission chair elect the Seventh District Commissioner to a five-year term in 2022, after which term the Seventh District Commissioner shall thereafter be elected to four-year terms beginning in November 2027.

Dear Mr. Musil:

The 2021 Johnson County Charter Commission has engaged our firm to offer a legal opinion under Kansas law on whether a ballot amendment, if submitted for consideration by the electorate of Johnson County and passed by the voters, could amend the Home Rule Charter such that the Seventh District Commissioner (County Chairperson) shall be elected to a five-year term in 2022, after which term the Seventh District Commissioner shall thereafter be elected to four-year terms beginning in November 2027.

The legal question is whether the County Chair, who serves as a member of the County Commission, can be elected at a general election occurring in an odd-numbered year.

Kansas statutes plainly require county commission elections to occur in even-numbered years. This issue requires us to offer an opinion on whether the Legislature has granted to the Charter Commission the authority to propose a Charter amendment contrary to the statutory even-numbered year requirement. This authority, if it exists, would be derived from the authority given to the Charter Commission to address the “term” and “method of election” of County Commissioners to the extent “not inconsistent” with the “general law” and Kansas Constitution. K.S.A. 19-2680 permits the County Charter to “[f]ix the boundaries of each county commissioner’s district, provide a method for changing them from time to time, and fix the number, term and compensation of the commissioner and their method of election....” Accordingly, the Charter Commission has discretion to propose amendment of the Home Rule Charter regarding the “term” of the Seventh District Commissioner and the “method” of election so long as the proposal does not rule afoul of the Kansas Constitution or Kansas general law, both of which remain applicable.
Background on the Charter Commission

On November 7, 2000, the voters of Johnson County adopted a Home Rule Charter. Section 6.04 authorizes the 2021 Charter Commission and gives it certain powers to propose Charter amendments to the electorate, as more fully set forth in the Home Rule Charter.

Under K.S.A. 19-2681, the Charter Commission is established "for the purpose of studying, proposing, drafting or amending a charter for the government of such county." In this instance, the Charter Commission has asked our firm to opine on the legality under Kansas law of certain amendments it may propose. One such potential amendment would revise the term of the Seventh District Commissioner as described above.

Summary of Our Opinion:

There is no binding precedent in any Kansas case that definitively answers the question.

In our view, there are several persuasive arguments that suggest the authority of the Charter Commission does not extend to submitting this ballot question. First, the Legislature has spoken about the "time" of the general election for county commissioners, which appears to be different than the "term" or "method of election" of county commissioners (although there is room for argument).

Second, the authority granted to the Charter Commission requires it to make proposals "not inconsistent" with the general law or Constitution. For reasons discussed below, the proposal appears to be inconsistent with Kansas law.

K.S.A. 25-101(a) addresses the "time" for general elections, officers to be elected, and vacancies. It statutorily requires that county commissioner elections take place on the Tuesday succeeding the first Monday in November of each even-numbered year. In addition, Kan. Const. Art. 4 §2 states that general elections are to occur in even-numbered years, referencing county commissions.

Therefore, we are unable to opine with any confidence that it would be legal to set the time for election of the Seventh District Commissioner to be conducted at general elections occurring in odd-numbered years, as proposed. Recognizing that there is an argument to the contrary, we do not go so far as to opine that it would be illegal. Such a dispute regarding the legality of the proposal would require judicial interpretation.

Discussion:

K.S.A. 25-101(a) requires the "time" of county commissioner elections to be in even-numbered years. The Charter Commission has been given statutory authority regarding the
“term” and the “method of election” of county commissioners, so long as the proposed amendment is consistent with general law and the Constitution of the State of Kansas.

A change to the “time” of the election of the Seventh District Commissioner to an odd-numbered year appears to be different from a change to the “term” or “method of election” of the commissioners and is likely beyond the authority of the Charter Commission. In addition, such a change may also be interpreted as “inconsistent” with the “general law” of Kansas and possibly Kan. Const. Art. 4 §2.

The Kansas Constitution (Kan. Const. Art. 4 §2) addresses General Elections with two sentences.

The first sentence reads as follows: “General elections shall be held biennially on the Tuesday succeeding the first Monday in even-numbered years.”

Given that the first sentence appears to require elections in even-numbered years, one could certainly make the argument that general elections for county office may only occur in even-numbered years. However, Kansas statutes recognize that some elections (school boards, city offices) can happen at general elections that occur in odd-numbered years. Accordingly, there is a reasonable argument that the Legislature has authority to allow some general elections to occur in odd-numbered years. In other words, there must be a general election in even-numbered years, but this does not preclude the Legislature from also permitting some general elections in odd-numbered years. The Legislature here has spoken about the timing of county commissioner elections (even-numbered years).

The second sentence addresses county commissioners specifically and reads: “Not less than three county commissioners shall be elected in each organized county in the state, as provided by law.” Given that the Constitutional provision at issue specifically references County Commissions in the section related to even-numbered elections, those favoring an interpretation that requires such elections in even-numbered years have persuasive support. However, there is no caselaw on this issue and it remains open for judicial interpretation.

When there is room for argument on the constitutional question, we next turn to whether there are statutes that address this issue. There are. Kansas statutory law states that a general election shall be held “[o]n the Tuesday succeeding the first Monday in November of each even-numbered year” to elect county officers, including county commissioners. K.S.A. 25-101(a)(10) and (11).

State statutes differ for school officers, who are elected at a “general election” in odd-numbered years. K.S.A. 25-2006. This is also different from city elections in which a general election shall be held on the Tuesday following the first Monday in November “of each odd-numbered and even-numbered year, if needed…” K.S.A. 25-2107(a).
Because Kansas law appears to require the "time" for elections for county office to occur in even-numbered years and the authorizing statute requires county charters to be consistent with Kansas general law, there is a reasonable possibility that a court would conclude that a county may only permit such elections in even-numbered years.

There does not appear to be any specific authority granted to the county to amend the timing of the general election for county commissioners. However, there would be an argument that by granting to the County the right to change the "term" and the "method" of election, the Legislature may arguably be delegating to the County the authority to choose a "term" that requires an election in an odd-numbered year.

Because the Legislature did not specifically authorize the County to enact a Home Rule Charter that alters the statutory requirement that county commissioners be elected in even-numbered years, our opinion is that a Court would more likely than not deem this to mean that any change to the Home Rule Charter regarding the term of any commissioner would still require the Charter to be consistent with the requirement of elections in even-numbered years.

The authority granted to alter the "method of election" by amendment to the Charter is not specifically defined. However, in other contexts, the Legislature has defined "method of election" to reference whether elections are by district or at-large. Accordingly, it is unlikely that the reference to the "method of election" is intended to grant the Home Rule Charter the authority to contradict Kansas statutory law regarding the timing of the election.

We have found no specific caselaw that answers the question before us.

Finally, we look to whether the Attorney General has offered an opinion on the issue. Attorney General opinions are persuasive, but not binding, on a Court.

In 1999, counsel for the Johnson County Charter Commission sought an opinion from the Attorney General regarding whether the Chairman of the Board of County Commissioners could be elected at-large by the voters in the county. In opining that Johnson County could properly permit an at-large election of the chairman of the board of county commissioners, the Attorney General stated, "K.S.A. 25-101 provides that county commissioners are to be elected at a general election. As long as the at-large election for chairman is conducted at a general election, it would comply with this statute. There are no provisions in the Kansas Constitution that are inconsistent with an at-large election of a county commission chairman." Kan. Att. Gen. Op. No. 99-58. We note that the specific reference to the requirement of a general election referenced in the Attorney General opinion is the reference to K.S.A. 25-101, which is the requirement for such elections to occur in even-numbered years.

For the reasons described above, we believe there is no absolute answer. However, there are persuasive arguments against the legality of the proposed amendment, and we cannot certify that the amendment would be legal.
Nature of an Opinion

As you are aware, we are offering an opinion as requested. Our opinion is not binding on any Court.

Please advise if you have any questions.

Sincerely,

FOULSTON SIEFKIN LLP

Anthony F. Rupp

AFR/rn
January 7, 2022

SENT VIA EMAIL TO: GMUSIL@ROUSEPC.COM

Johnson County Charter Commission
c/o Greg Musil, Commission Chair
ROUSE FRETS WHITE GOSS
5250 W. 116th Place, Ste. 400
Leawood, KS 66211

Re: 2021 Johnson County Charter Commission, as created and authorized by K.S.A. 19-2680 et seq. and the Home Rule Charter of Johnson County.

Opinion regarding Proposed Amendment to mandate that the Johnson County Planning and Zoning Commission, with the advice and consent of the Township Trustees, spend certain monies from the general fund, reserves, and public works funds on maintenance and upkeep of roads, bridges, culverts, and overall capital improvement in unincorporated areas.

Dear Mr. Musil:

The 2021 Johnson County Charter Commission has engaged our firm to offer a legal opinion under Kansas law on whether a ballot amendment, if submitted for consideration by the electorate of Johnson County and passed by the voters, could amend the Home Rule Charter as follows: “Amendment mandating that the Johnson County Planning and Zoning Commission, with the advice and consent of the Township Trustees, spend certain monies from the general fund, reserves, and public works funds of Johnson County, Kansas on the maintenance and upkeep of roads, bridges, culverts, and overall capital improvement in the unincorporated areas of Johnson County, Kansas.” For ease of description, we will refer to this amendment as the “Maintenance and Upkeep Amendment.” A copy is attached as Exhibit A.

The written proposal for this Amendment states that “Unincorporated Citizens are left without an impactful voice” under the current Charter and proposes certain spending mandates annually with additional one-time expenditures in the first five fiscal years.

The description of the purpose of the proposed Amendment provides additional information:

[T]he amendment will state that beginning in fiscal year 2023, the Johnson County Commission shall spend an amount equal to at least 40% of the overall monies CARS possessed by Johnson County annually for the capital improvements in the
unincorporated areas of Johnson County while maintaining the existing proposed/approved Public Works budget, adjusted annually for inflation for maintenance of the unincorporated area. The percentage shall adjust every five years to align with the % reduction of Unincorporated Road miles. Additionally, there shall be the following one-time expenditures in the first five fiscal years to bring the unincorporated areas up to incorporated infrastructure standards.

Year 1: $20M
Year 2: $15M
Year 3: $12M
Year 4: $10M
Year 5: $8M

The Elected Township Trustee(s) shall perform the following roles:

- Prioritize Capital Expenditure projects and Maintenance improvement needs.
- Sign off on all Unincorporated Infrastructure RFQ, RFP and Contract Awards in their Township to ensure optimal use of budgetary funds.
- Perform an annual assessment of the current Public Works department Operations cost and performance; provide readout in the Planning & Development led annual review to include any recommended improvement/changes necessary.
- Provide Advice and Consent of all Allocations of expense and capital funds.

The Planning and Development Department head shall lead a collaborative effort inclusive of the Township Trustees with Unincorporated citizens, Public Works, County Finance, County Commissioners, and the Planning/Development Commission with the responsibility of putting forth a recommendation to the County Commission for final approval. The County Commission shall not unreasonably withhold approval of the recommendation(s) put forth.

**Background on the Charter Commission:**

On November 7, 2000, the voters of Johnson County adopted a Home Rule Charter. Section 6.04 authorizes the 2021 Charter Commission and gives it certain powers to propose Charter amendments to the electorate, as more fully set forth in the Home Rule Charter.

Under K.S.A. 19-2681, the Charter Commission is established "for the purpose of studying, proposing, drafting or amending a charter for the government of such county." In this instance, the Charter Commission has asked our firm to opine on the legality under Kansas law of certain amendments it may propose. One such potential amendment would create the mandate as described above.
Summary of Opinion:

It appears to us that the Amendment, as proposed, is not in a final format but is rather a series of concepts pertaining to the potential of accomplishing more money for roads in unincorporated areas through an Amendment to the Home Rule Charter.

These concepts include:

- Expanded authority of the Planning Commission (paragraph 1).
- Advice and Consent of the Township Trustees (paragraph 1 and Description of Purpose).
- Mandate to the Board of County Commissioners to spend 40% of certain monies for improvements in unincorporated areas while maintaining current public works budget adjusted for inflation (Description of Purpose).
- Mandate to the Board of County Commissioners to make additional one-time expenditures (Description of Purpose).
- Significant expansion of authority of Township Trustees to have sign off and contracting authority (Description of Purpose).
- Recommendations on spending from an advisory Committee inclusive of Township Trustees with Unincorporated citizens, Public Works, County Finance, County Commissioners and Planning/Development Commission (Description of Purpose).
- Direction that the Board of County Commissioners “not unreasonably withhold approval of the recommendations.” (Description of Purpose).

Our opinion is that the County may legally create an advisory committee for the purpose of “advising” the Board of County Commissioners. The extent of authority granted beyond advice creates legal issues described below.

Some of these changes would require a vote of the majority of the electorate to rescind the county road unit system. In the absence of such a vote, some of these changes could not be legally accomplished.

The County has a certain amount of leeway to restructure county government and define the legislative and administrative authority. Given the wide-ranging concepts involved here, we have not attempted to run to ground the complete detail of each structural change that would need to be made to restrict the legislative authority of elected county commissioners and vest such authority in others. If this is the desire of the Charter Commission, additional research and analysis would be required.

Our Opinion:

The written language of the Maintenance and Upkeep Amendment appears to delegate to the appointed Planning and Zoning Commission, with the advice and consent of the Township Trustees, the authority to spend certain monies from the County general fund. There are legal concerns about such a delegation both to the Planning Commission and to the Township Trustees.
However, this does not appear to be a ballot-ready proposal but rather a series of concepts to consider creating intergovernmental cooperation through something akin to an advisory board making recommendations on spending on these issues to the Board of County Commissioners.

Generally, the County has the authority to create advisory boards and thus the Charter Commission could propose an Amendment to create an advisory board. In our opinion, the creation of an advisory board could be legally accomplished. However, further analysis and drafting regarding the role of the advisory board and the authority granted to it would need to be undertaken. Ballot language would be important depending upon what the Charter Commission seeks to accomplish. To the extent that the concept goes beyond creating an advisory board and seeks to grant policymaking and spending authority, such analysis goes beyond the scope of this current assignment and would require further analysis.

To the extent that the Maintenance and Upkeep Amendment seeks to grant Township Trustees authority regarding the construction or maintenance of roads, the Amendment likely would not be legal without further voter approval to rescind the county road unit system. In 1971, the Johnson County Board of County Commissioners adopted by resolution the county road unit system as authorized by K.S.A. 68-515b. When a county adopts a county road unit system, townships have no further authority to construct or maintain any roads. That authority rests solely with the county commissioners. Patterson v. Cowley County, 53 Kan. App. 2d 442, 474 (2017). By statute, upon adoption of a county road unit system, the townships relinquished to the county commissioners all money and equipment accumulated by them for road construction and maintenance. K.S.A. 68-516a, 68-516b. A county road unit system may be abandoned only by election at any general election. K.S.A. 68-517. If a majority of the votes cast in such an election are against the county road unit system, then the county shall be restored to the original county and township road system. K.S.A. 68-518. In the absence of a county road unit system, the township trustee had the power to “ensure all moneys belonging to the township are properly spent for road or other purposes.” K.S.A. 80-301(b).

Additionally, if the Charter Commission proposes to go further than the establishment of an advisory board and to restructure the county government to cede legislative power from the elected Board of County Commissioners to the appointed planning commission or to specifically mandate in the County Charter certain levels of spending on unincorporated areas, the potential issues are complex and beyond the scope of the current engagement.

**Nature of an Opinion:**

As you are aware, we are offering an opinion as requested. Our opinion is not binding on any Court. Please advise if you have any questions.

Sincerely,

FOULSTON SIEFKIN LLP

Anthony F. Rupp
2021 JOHNSON COUNTY CHARTER COMMISSION PROPOSED AMENDMENT TO HOME RULE CHARTER
Submitted by: Randy Hutchins Date: 12/22/2021 Description of proposed amendment: Amendment mandating that the Johnson County Planning and Zoning Commission, with the advice and consent of the Township Trustees, spend certain monies from the general fund, reserves, and public works funds of Johnson County, Kansas on the maintenance and upkeep of roads, bridges, culverts, and overall capital improvement in the unincorporated areas of Johnson County, Kansas.

Purpose and reason for proposed amendment: The US Government Structure was developed to ensure all citizens were fairly represented at ALL levels of Government to include Federal, State, County, City and Townships. That is not happening today for the Unincorporated citizens of Johnson County Kansas. Today’s Unincorporated Area represents ~ 40% of the total Johnson County land mass, but only ~10% of the population. Only two of the seven County Commissioners have Unincorporated Constituents in their District (3 and 6). This has created an environment where the Unincorporated Citizens are left without an impactful voice within our County Government Structure as it exists today. As a result, the Unincorporated Citizens have suffered the following consequences to include, but not limited to:

- Poor Road Conditions (Dusty/Muddy Roads)
- Lack of proper county right of way maintenance (Overgrowth, dangerous ditches)
- Limited to no capital infrastructure improvements
  - Paved Roads
  - Replaced bridges/Culverts
  - Lack of roadway development to properly support the Intermodal

This proposed amendment will utilize existing elected officials and provide for the reallocation of certain monies from the General Fund and Capital Budgets for employees, contractors, facilities, equipment, supporting staff, etc., to the maintenance and upkeep of roads, bridges, culverts, and overall capital improvement in the unincorporated areas of Johnson County, Kansas. More specifically, the amendment will state that beginning in fiscal year 2023, the Johnson County Commission shall spend an amount equal to at least 40% of the overall monies CARS possessed by Johnson County annually for the capital improvements in the unincorporated areas of Johnson County while maintaining the existing proposed/approved Public Works budget, adjusted annually for inflation for maintenance of the unincorporated area. The percentage shall adjust every five years to align with the % reduction of Unincorporated Road miles. Additionally, there shall be the following one-time expenditures in the first five fiscal years to bring the unincorporated areas up to incorporated infrastructure standards.

Year 1: $20M
Year 2: $15M
Year 3: $12M
Year 4: $10M
Year 5: $8M

The Elected Township Trustee(s) shall perform the following roles:

- Prioritize Capital Expenditure projects and Maintenance improvement needs
• Sign off on all Unincorporated Infrastructure RFQ, RFP and Contract Awards in their Township to ensure optimal use of budgetary funds
• Perform an annual assessment of the current Public Works department Operations cost and performance; provide readout in the Planning & Development led annual review to include any recommended improvement/changes necessary.
• Provide Advice and Consent of all Allocations of expense and capital funds.

The Planning and Development Department head shall lead a collaborative effort inclusive of the Township Trustees with Unincorporated citizens, Public Works, County Finance, County Commissioners, and the Planning/Development Commission with the responsibility of putting forth a recommendation to the County Commission for final approval. The County Commission shall not unreasonably withhold approval of the recommendation(s) put forth.

Charter Sections

County Departments or Agencies Affected:

• Planning & Development, Zoning Departments, Public Works
MINORITY REPORTS
2021-2022 Johnson County Charter Commission
Minority Report
Concerning Compensation for BOCC Members


Overview

Although the Charter Commission’s final Report is accurate regarding its work during the past year, we the undersigned members of the Charter Commission believe a Minority Report is appropriate regarding the single issue of the need for increased compensation for members of the Board of County Commissioners (“BOCC”). Throughout the Charter Commission’s deliberative process, this issue consistently received more support than any other proposed amendment to the Home Rule Charter or proposed recommendation to the BOCC. The issue was first introduced as a proposed amendment to the Home Rule Charter. That amendment failed to gain approval with 11 members voting in favor and 12 against (with two members absent). The concept was later reintroduced as a proposed recommendation, when it again failed with 10 members voting in favor and 11 voting against (this time with four members absent). Based on the voting record, at least 12 of the 25 Charter Commission members support increased pay for BOCC members, either as a proposed charter amendment or a formal recommendation. Although this issue could have been addressed through an amendment to the Home Rule Charter, the BOCC does have the power to address it without such an amendment, and the Charter Commission members who join in this report strongly urge the BOCC to do so promptly.

Basis for the Proposed Charter Amendment and Recommendation

Pursuant to Kansas Statute § 19-2680 (a), the Home Rule Charter may “fix the number, term and compensation of the commissioners.” The current version of the Johnson County Home Rule Charter provides only that, “The Commission shall continue to determine the salary and benefits of its members by resolution,” and, “The Chair shall receive additional compensation no less than 25 percent of the base compensation of Commissioners.” Home Rule Charter, Section 2.05. Therefore, it is clearly within the Charter Commission’s authority to propose an amendment to the voters that would provide for increases in compensation for BOCC members (including the Chair) in future years.

History of BOCC Compensation. During the Charter Commission’s work, it came to our attention that compensation for the BOCC Chair and its other members had increased by 3 percent per year between 2003 and 2008. After no increase in 2009 or 2010, the salary for all BOCC members (including the Chair) was reduced by 5 percent in 2011, and the Chair’s salary was reduced by an additional 9% in 2012. As a result, the current salary of the Chair ($75,000.00 per year) is less than it was at any time from 2004 to 2011. The current salary of the other BOCC
members ($47,349.38 per year) is less than it was from 2007 to 2010, and that is without considering any increase in the cost of living. See Exhibit A to this report for the full salary history of the BOCC members and Chair since 2003.

From the beginning of 2003 until the end of 2021, the Consumer Price Index for Urban Wage Earners and Clerical Workers (“CPI-W”) has gone from 177.7 to 273.925 – an increase of 54.1 percent over that 18-year period. During the same period, the salary for the BOCC Chair has stayed the same (after increases followed by decreases), and the salary for the other BOCC members has increased 10 percent – less than one-fifth the increase in the CPI-W. From January 2010 through December 2021, the CPI-W went from 212.568 to 273.925 – an increase of nearly 29 percent. During that same time, the salary of the BOCC Chair has decreased by 13.7 percent, from $86,945.56 to its current level of $75,000.00. The salary for BOCC members has likewise decreased by 5 percent, from $49,841.00 to its current level of $47,349.38. See Exhibit B to this report for the historical values of the CPI-W from 2003 through 2021.

Pay for Comparable Positions Elsewhere. If salaries for the BOCC Members had kept pace with the CPI-W since 2003 (as the County generally has done for its employees from year to year during that time frame), the 2022 salary for the BOCC Chair would be approximately $115,575.00, and the salary for the other BOCC members would be approximately $66,250. In addition, it has been brought to our attention that Sedgwick County (population 521,128, smaller than Johnson County) currently offers its county commissioners a salary of $101,000 per year, and Riley County (population 73,272) currently offers its commissioners $55,000 per year.

We realize that citizens should not run for BOCC or any elected positions because of the compensation, and we are not encouraging anyone to do so. However, we also believe the compensation for these important leadership positions should reflect the importance of the role and the time commitment involved. In addition, we believe the BOCC’s failure to keep up with the cost of living with respect to its own compensation for the last two decades has likely discouraged many qualified candidates from seeking these positions. A continued failure to increase BOCC pay as the cost of living – as well as pay for county employees – continues to go up will likely result in even more otherwise qualified candidates declining to run because the compensation is not commensurate with the responsibility and time commitment involved.

Conclusion

Inadequate compensation for BOCC members is a problem that needs to be fixed as soon as possible so that present and future BOCC members are paid fairly for the time that their work requires and the responsibilities that they undertake as community leaders. We attempted to fix this problem by proposing an amendment to the Home Rule Charter for approval by the voters, followed by a formal recommendation to the BOCC. With both of those efforts narrowly failing to gain the required number of votes, we urge the BOCC to act within its authority and pass a resolution adopting a standing policy to adjust compensation for BOCC members each year beginning in 2023 by the lower of (a) the change in the CPI-W for the trailing 12 months; or (b) the average budgeted compensation adjustment for all county employees.
## Exhibit A

### Pay for BOCC Members - 2003-present

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairman</td>
<td>$75,000.00</td>
<td>$79,295.16</td>
<td>$79,587.56</td>
<td>$73,952.65</td>
<td>$66,849.56</td>
<td>$66,847.56</td>
<td>$64,645.46</td>
<td>$64,645.46</td>
<td>$67,988.39</td>
<td>$75,000.00</td>
<td>$75,000.00</td>
<td>$75,000.00</td>
<td>$75,000.00</td>
<td>$75,000.00</td>
<td>$75,000.00</td>
<td>$75,000.00</td>
<td>$75,000.00</td>
</tr>
<tr>
<td>% Change</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>-5%</td>
<td>0%</td>
<td>-5%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>-5%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Commissions</td>
<td>$42,919.60</td>
<td>$44,283.48</td>
<td>$45,612.06</td>
<td>$45,920.56</td>
<td>$48,649.48</td>
<td>$49,841.48</td>
<td>$49,841.48</td>
<td>$47,349.38</td>
<td>$47,349.38</td>
<td>$47,349.38</td>
<td>$47,349.38</td>
<td>$47,349.38</td>
<td>$47,349.38</td>
<td>$47,349.38</td>
<td>$47,349.38</td>
<td>$47,349.38</td>
<td>$47,349.38</td>
</tr>
<tr>
<td>% Change</td>
<td>0%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>0%</td>
<td>-5%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>
Exhibit B
Value of CPI-W from 2003 through 2021

<table>
<thead>
<tr>
<th>Year</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>177.7</td>
<td>179.2</td>
<td>180.3</td>
<td>179.8</td>
<td>179.4</td>
<td>179.6</td>
<td>180.3</td>
<td>181.0</td>
<td>180.7</td>
<td>180.2</td>
<td>179.9</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>180.9</td>
<td>181.9</td>
<td>182.9</td>
<td>183.5</td>
<td>184.7</td>
<td>185.3</td>
<td>184.9</td>
<td>185.0</td>
<td>185.4</td>
<td>186.5</td>
<td>186.8</td>
<td>186.0</td>
</tr>
<tr>
<td>2005</td>
<td>186.3</td>
<td>187.3</td>
<td>188.6</td>
<td>190.2</td>
<td>190.0</td>
<td>191.0</td>
<td>192.1</td>
<td>195.0</td>
<td>195.2</td>
<td>193.4</td>
<td>192.5</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>194.0</td>
<td>194.2</td>
<td>195.3</td>
<td>197.2</td>
<td>198.2</td>
<td>198.6</td>
<td>199.2</td>
<td>199.6</td>
<td>198.4</td>
<td>197.0</td>
<td>196.8</td>
<td>197.2</td>
</tr>
<tr>
<td>2007</td>
<td>197.559</td>
<td>198.544</td>
<td>200.612</td>
<td>202.130</td>
<td>203.906</td>
<td>203.700</td>
<td>203.199</td>
<td>203.889</td>
<td>204.338</td>
<td>205.891</td>
<td>205.777</td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>206.744</td>
<td>207.254</td>
<td>209.147</td>
<td>210.698</td>
<td>212.788</td>
<td>215.223</td>
<td>216.304</td>
<td>215.247</td>
<td>214.935</td>
<td>212.182</td>
<td>207.296</td>
<td>204.813</td>
</tr>
<tr>
<td>2009</td>
<td>205.700</td>
<td>206.708</td>
<td>207.218</td>
<td>208.774</td>
<td>210.972</td>
<td>211.566</td>
<td>211.156</td>
<td>211.322</td>
<td>211.549</td>
<td>212.003</td>
<td>211.703</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>216.400</td>
<td>217.535</td>
<td>220.024</td>
<td>223.326</td>
<td>223.688</td>
<td>223.043</td>
<td>222.813</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>226.520</td>
<td>228.677</td>
<td>229.323</td>
<td>228.949</td>
<td>229.399</td>
<td>230.002</td>
<td>230.084</td>
<td>230.357</td>
<td>229.735</td>
<td>229.133</td>
<td>229.174</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>228.294</td>
<td>229.421</td>
<td>231.055</td>
<td>231.520</td>
<td>232.908</td>
<td>233.804</td>
<td>233.806</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>236.854</td>
<td>237.477</td>
<td>237.656</td>
<td>238.432</td>
<td>238.609</td>
<td>238.813</td>
<td>238.617</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>241.919</td>
<td>242.988</td>
<td>243.463</td>
<td>244.607</td>
<td>245.770</td>
<td>246.196</td>
<td>246.155</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2019</td>
<td>245.133</td>
<td>246.218</td>
<td>247.768</td>
<td>249.332</td>
<td>249.871</td>
<td>249.747</td>
<td>250.236</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2020</td>
<td>251.361</td>
<td>251.935</td>
<td>251.375</td>
<td>249.515</td>
<td>249.521</td>
<td>251.054</td>
<td>252.636</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2021</td>
<td>255.296</td>
<td>256.843</td>
<td>258.935</td>
<td>261.237</td>
<td>263.612</td>
<td>266.412</td>
<td>267.789</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: https://data.bls.gov/timeseries/CWUR0000SA0?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true
Minority Report for 2021-22 Charter Commission

February 8, 2022

Signed by Karin Brownlee, Wendy Bingesser, Jim Denning, Jane Dirks, Randy Hutchins, Laura Klingensmith and Greg Smith

When the charter commission legislation was created in 1999, the goal was to provide the public an avenue to impact Johnson County government and address any needed structural changes not being addressed by the Board of County Commissioners (BOCC). BOCC actions and decisions responding to the COVID pandemic resulted in the public wanting to engage in the charter review process at a historical high level of interest.

A great deal of time was consumed during this charter commission reviewing current practices and budgets in Johnson County government. This was done without first reviewing the current charter. Conducting a thorough review of the Charter at the beginning of the process would have set the tone for thoughtful discussion on anything that might legitimately need consideration for an update. Interestingly enough, none of the department heads or county elected leaders mentioned possible changes to their departments.

Every ten years likely has the cultural notions of that time. This charter commission had the pandemic frustrations to sort through but also coming from another political perspective, the idea that law enforcement needs increased scrutiny and needs to be “re-imagined.” The position of the elected county sheriff became the focus of attention.

Kansas statute protects the position of the county sheriff as necessarily being elected and elected on a partisan basis. Further, the practice across the country in 3500 counties is that more than 85% of sheriffs are elected on a partisan basis. More importantly, the citizens of Johnson County spoke loudly and clearly that they want to continue to elect their sheriff on a partisan basis.

The sentiment of the public was on full display at an announced September, 2021 public meeting which was set in a facility requiring masks and “social distancing.” The chair of the charter commission assessed that the crowd of roughly 150 people was not in compliance and the meeting was abruptly ended. In all due respect, the Chair had little choice but to make the decision to cancel the meeting as the meeting was in clear violation of the host building’s policy. The meeting probably should have been conducted in a larger facility that recommended (but not required) masks and distancing. Six charter commission members remained at the facility to listen to those who so desperately wanted their opinions heard. It was amazing to see the anger of the crowd dissipated as each speaker was allowed to present their views in an orderly fashion.

In any body that is voting to make decisions, the majority rules. We all understand this. For some of us, we wanted to make what we viewed as positive changes to the county charter and were unable to garner the votes to do so. For others, there was a commitment to leave everything the same. This worked well in the case of the repeated targeting of the elected sheriff. For those who wanted partisan elections of county commissioners, this did not work well.
Yet there were also meetings where the ideological leanings of the charter commission members did not seem to dictate the outcome of the vote. Thoughtful consideration was given to what was being offered and discussed. We take heart that this can occur again.

The bottom line is that Johnson County citizens need to be involved in the election of their commissioners and other county elected officials. Running for public office and being involved in this process remains the most effective manner to effect the needed changes.