FILE

Subject Counties
Home Rule Amendment

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

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Opinion No. 74- 141

Honorable T. D. Saar, Jr.
Senator, Thirteenth District
903 Free King's Highway
Pittsburg, Kansas 66762

Dear Senator Saar:

You inquire, first, whether section 2(a), seventh, of 1974 Senate Bill 175 prohibits the exercise of county home rule powers to abolish an elective office. Section 2(a) states in pertinent part thus:

> "Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties . . . seventh, counties shall be subject to all acts of the legislature concerning general elections and the election of county officers. . . ."

Provisions for county officers are not susceptible of useful broad generalizations, for all statutes creating county officers are not uniformly applicable to all counties. We consider herein one such statute which is so applicable. K.S.A. 19-301 provides that "[a] county clerk shall be elected in each county of this state . . . ." This is a statute uniformly applicable to all counties. When enacted, it was but one section of several in a legislative enactment dealing with counties. Whether this section itself and standing alone constitutes an "act" of the legislature need not be decided at this time, for reasons which

will appear. For purposes of this opinion, we shall assume that this section does constitute an "act" of the legislature, without forming any conclusion thereon. On the face of the first clause of the section quoted above, a county may not exercise its powers under this bill to alter or in any way change the application of this provision, because it is uniformly applicable to all counties, and because counties exercise the powers granted under this bill subject to such acts.

Senate Bill 175 has been widely referred to as granting "home rule" powers to counties. This mode of description is unfortunate and misleading, because it gives rise to confusion between the powers of self-government granted Kansas cities by Article 12, § 5 of the Kansas Constitution, and this legislative grant of local self-government. Senate Bill 175 provides not a constitutional, but a legislative, grant of powers, a difference which is not to be neglected in the evolving construction of the scope of the powers actually granted by the bill. Thus, this bill is subject to all the traditional rules of statutory construction historically resorted to in the determination of so-called legislative intent.

Contemporaneously with the enactment of this bill, the Legislature also enacted Senate Bill 59, the purpose of which is stated in section 1 thereof:

> "It is the purpose of this act to authorize and permit political and taxing subdivisions of this state to more efficiently and effectively serve the needs of their constituents by consolidating or cooperating in the consolidation of operations, procedures and functions of offices and agencies of such subdivisions which may be more efficiently and effectively exercised or provided by a single office or agency."

Section 3 bears upon the question of the abolition of an elective county office:

> "Whenever the governing body of any political or taxing subdivision of this state shall by resolution determine that duplication exists in the operations, procedures or functions of any of the offices or agencies of such subdivision or that the operations, procedures or functions of any of the offices or agencies thereof can be more efficiently and effectively exercised or provided as a consolidated activity performed by a single

> office or agency, . . . such governing body or governing bodies are hereby authorized to consolidate any or all of the operations, procedures or functions performed or carried on by such offices or agencies by the passage of a resolution or identical resolutions setting out the time, form and manner of consolidation and designating the surviving office or agency. The elimination of an elective office by consolidation under the provisions of this act shall be subject to the approval of a majority of the electors of the political or taxing subdivision served by such office . . . "

Under clause first of § 2(a) of Senate Bill 175, it appears initially that counties may not exercise the power of local self-government granted thereby to abolish an office which is created by a statute uniformly applicable to all counties. Under Senate Bill 59, however, in the interest of elimimating duplication, or, even absent duplication, in the interest of more efficient and effective "operation, procedure or functions," an elective office may be eliminated by consolidation, subject to the approval of the voters. These seemingly contradictory provisions must be reconciled.

Insofar as regards the specific question of abolition of elective offices, the first clause of § 2(a) of Senate Bill 175 is nonspecific. It is a statement of general limitation upon the power of self-government which may be exercised thereunder which, because of its generality, need not be regarded as specifically controlling on the question here at issue if deference is required to be given to more specific provisions elsewhere in the bill or in contemporaneous legislation, Senate Bill 59. Under clause seventh, that power is specifically stated to be "subject to all acts of the legislature concerning general elections and the election of county officers." The precise thrust of this limitation is itself ambiguous, and given one construction, is likewise facially contradictory to the power to abolish an elective office by consolidation granted by Senate Bill 59. The direction that "counties shall be subject to all acts of the legislature concerning general elections" appears to mean no more than that in the conduct of any election, whether of officers or upon questions submitted, that counties are subject to the election laws found in art. 25, K.S.A. It further provides, of course, that the exercise of the powers of local self-government shall be subject to "all acts of the legislature concerning . . . the election of county officers . . . ." This may be construed as including those acts which mandate the election of any officer of the county, e.g., K.S.A. 19-301, "[a] county clerk shall be elected in each county . . . ." [Emphasis

supplied.] Alternatively, it may be construed, in order to recocnile this provision if at all possible with seemingly conflicting language in Senate Bill 59, to mean only, once again, that in the conduct of elections of county officers who are required to be elected, whether by state statute or as determined by the county in the exercise of any lawful powers granted elsewhere, such elections as are held shall be conducted in accordance with applicable laws, such as art. 25, K.S.A. Although this construction may agree somewhat less comfortably with the language than the first one suggested above, it is at least reasonably arguable, and enjoys the added virtue of accommodating the terms of Senate Bill 175 with the power to abolish elective offices expressly and unambiguously granted by the last sentence of section 3 of Senate Bill 59.

Accordingly, we conclude that an elective office may be eliminated and abolished "by consolidation" under the provisions of Senate Bill 59. It is necessary to continue to distinguish between the powers granted by Senate Bill 175, and those granted by Senate Bill 59. It is impossible to conclude that the power of local self-government granted by Senate Bill 175 itself includes the power to abolish an elective office which is created by an act of the legislature applicable uniformly to all counties. It is possible to conclude, however, and we so do, that the limitations expressed in Senate Bill 175 as discussed above do not inhibit the exercise of the power expressly granted by § 3 of Senate Bill 59 to abolish such an elective office by consolidation. Thus, the procedure to be followed in such an abolition is governed by Senate Bill 59, and not by Senate Bill 175. Specifically, an elective office created by a legislative act applicable uniformly to all counties may not be abolished by a charter resolution, unless the question is submitted to the voters of the county as required by Senate Bill 59. In general, a charter resolution is not required to exercise and implement the powers granted by Senate Bill 59.

We further conclude that if a county office is created by an act of the legislature which is not applicable uniformly to all counties, that office may be abolished by charter resolution in the exercise of the powers granted by Senate Bill 175, upon which resolution an election is not required unless ordered by the board of county commissioners or unless called for by a sufficient petition filed as provided in Senate Bill 175.

You inquire, secondly, whether Senate Bill 175 "prohibit[s] the County Commission from consolidating two offices, such as County Clerk and Register of Deeds, into one office of Clerk and Recorder." Each of these offices is created by a statute appli-

cable uniformly to all counties. K.S.A. 19-301 and 19-1201. In accordance with the foregoing, these offices may not be abolished in the exercise of any powers granted by Senate Bill 175. They may be eliminated by consolidation, however, pursuant to § 3 of Senate Bill 59, and the office which results, or survives, may be given such designation as the county commissioners deem appropriate, as, e.g., in this instance, Clerk and Recorder.

You inquire thirdly, whether the

> "records and duties now in the Clerk's office having to do with assessment and computation of taxes [may be transferred] to the County Assessor's office so that the entire process of assessing and application of levies can be completed by the County Assessor and go directly to the County Treasurer."

Prior to its amendment by 1974 House Bill 1657, K.S.A. 1973 Supp. 19-401 provided that in each county having a population of over one hundred thousand, there shall be elected a county assessor. In counties of lesser population, the county clerk was ex officio county assessor. Section 1 of House Bill 1657 states thus, in pertinent part:

> "On the fifteenth day of January, 1977, and on the first day of July of each fourth year thereafter the board of county commissioners of each county shall by resolution appoint a full-time county appraiser for such county . . . ."

The powers and duties of the office are prescribed therein, largely by reference to existing statutes. The county appraiser appointed thereunder is subject to removal from office by the Director of Property Valuation for failure or neglect to properly perform the duties of his office.

Section 2(a) of Senate Bill 175 empowers counties to "transact all county business and perform such powers of local legislation and administration as they deem appropriate . . . ." [Emphasis supplied.] The powers granted hereunder extend only to business of the county, and to matters of local legislation and administration, as distinguished from business of the state, and matters of state legislation and/or administration. Assessment of property for taxation is not a matter of purely local administration. The court made this clear in McManaman v. Board of County Commissioners, 205 Kan. 118, 468 P.2d 243 (1970), pointing out that the Kansas "constitution and statutes demand not only equality of assessment as between property owners with-

in a county, but also as between property owners of the state." 205 Kan. at 125. The court spoke directly to the point:

> "The legislature, being specifically charged by the constitution with providing an equal rate of assessment, also has the authority to provide the means and agencies for enforcing its responsibilities . . . .
>
> "As we indicated earlier, the primary responsibility for assessment of real estate and tangible personal property subject to taxation rests with the county . . . .
>
> "More germane . . . are the statutory enactments designed to enforce the constitutional demand that assessments be uniform and equal in the various counties throughout the state . . . ."
>
> "Of even greater importance, in our opinion, is that the legislature saw fit to vest ultimate supervisory responsibility for the administration of the assessment and tax laws of the state squarely on the director of property valuation with attending enforcement power and authority . . . . [Emphasis supplied.] [T]he director has general supervision and direction over the county assessors in the performance of their duties . . . . He is empowered to exercise general supervision over assessors, boards of county commissioners, county boards of equalization, and all other boards of levy and assessment, to the end that all assessments of property . . . be made relatively just and uniform and at 30% of justifiable value. . . ." [Emphasis by the court.]

Clearly, assessment and appraisal of property for purposes of taxation is not a matter of local legislation. Although locally administered, it is state directed. It is not, accordingly, a matter concerning which counties may exercise the powers granted by Senate Bill 175. This limitation does not inhibit the consolidation of operations, procedures or functions pursuant to Senate Bill 59, however, for it contains no such inherent limitation upon the powers to be exercised thereunder. However, any consolidation such as described in your question would be subject to section 6 thereof, which states thus:

> "In the event that any consolidation proceeding or agreement between political or taxing subdivisions made pursuant to this act shall affect functions or services over which an officer or agency of the

> state government has constitutional or statutory powers of control, the consolidation proceeding or agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction."

Accordingly, we conclude that a consolidation such as you describe is permissible under S.B. 59, but is subject to the conditions of section 6, quoted above.

Lastly, you inquire thus:

> "Can the County Commission create a new office for the sale and collection of all license fees, such as car, cycle, truck, and other vehicles now sold by the Treasurer, and also fishing and hunting licenses now sold by the Clerk's office; this office to be appointive and subject to regular bonding and other regulations as set forth by the statutes?"

K.S.A. 32-104 provides essentially, with manifold exceptions not pertinent here, that no person may hunt or fish without a license to do so. Such licenses are issued by or through the county clerks. However, under K.S.A. 32-104b,

> "All such licenses shall be issued in accordance with regulations and upon forms prescribed by the forestry, fish and game commission . . . ."

Registration of motor vehicles is required by state law. K.S.A. 8-127. Local officials, such as county treasurers, are assigned duties and responsibilities in the administration of the vehicle registration laws. Again, however, under K.S.A. 8-176, the Secretary of Revenue is directed to adopt rules and regulations for the administration of the Kansas motor vehicle registration laws, and prescribe and furnish forms for the use of county officials.

The issuance of such licenses and collection of fees therefor are not "county business" under Senate Bill 175. Nor are these matters the subject of "local legislation and administration." Under comprehensive statutory directions, state departments, such as the Department of Revenue, and state agencies, such as the Kansas Forestry, Fish and Game Commission, are charged with the administration of these licensure laws. Officers such as county clerks and treasurers serve as instrumentalities of

the state itself when performing their duties and responsibilities under these statutory provisions. Thus, Senate Bill 175 has no application to this question. Rather, any agreement or proceeding of consolidation affecting such functions or services would be subject to section 6 of Senate Bill 59, set out above.

Yours very truly,

VERN MILLER
Attorney General

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