



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 5, 1975

Opinion No. 75- 40

The Honorable William J. Reardon
State Representative
House of Representatives
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Mr. Thomas C. Lysaught
County Counselor
511 Huron Building
Kansas City, Kansas 66101

Gentlemen:

We have your letters, inquiring whether, in the exercise of county home rule powers under K.S.A. 19-101a, the board of county commissioners may, by charter resolution, exempt the county from the operation of a portion of K.S.A. 20-2512b, which provides in pertinent part thus:

"The following officers holding office in counties having a population of more than one hundred eighty thousand (180,000) and not more than two hundred twenty thousand (220,000) shall receive a salary per annum as hereinafter set out:

- (1) Judges of the magistrate court. \$23,374
- (2) Clerk of the magistrate court. \$11,273
- (3) Marshal of the magistrate court. \$11,273

* * *

"Except as otherwise fixed, determined or limited by law, the board of county

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commissioners of the county shall allow such reasonable sums for the compensation of judges pro tem, deputies, assistants, clerical hire and other employees as said board may deem to be necessary to properly expedite the business of such offices."

You advise that the recent amendment of K.S.A. 20-2512b, increased the salaries of the clerk and marshal of the Magistrate Court from \$10,685 per annum to \$11,273 per annum, an increase of \$588 per annum only, whereas the board of county commissioners by appropriate resolution has increased the compensation of all other remaining officials by the sum of \$2,000 per annum. The board desires to give the clerk and marshal a similar increase. You point out that the board does not desire to change the salaries of the judges of the Magistrate Court.

K.S.A. 20-2521b is a statute which by its terms is not uniformly applicable to all counties. The question arises whether the proposed exercise of home rule authority is prohibited by K.S.A. 19-101a (a) third, which provides 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: . . .
Third, counties shall have no power under this section to affect the courts located therein." [Emphasis supplied.]

The generality of the underscored prohibition makes it often difficult to define precisely the demarcation between action which affects the courts directly, and that which is appropriate and necessary in the conduct of county government and which has only a remote, collateral or incidental effect on the courts. Clearly, the county may not in the exercise of its county home rule powers enlarge or curtail the jurisdiction of any court. It may neither create nor abolish a court, or a division or

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judgeship thereof. Similarly, in the exercise of its home rule powers, the county may not abolish any statutory office of the court. To abolish the office of clerk of the court, for example, would materially affect the court.

It is our view that K.S.A. 19-101a, third, prohibits the exercise of county home rule power in any fashion so as to "affect the courts located therein." The breadth and generality of this prohibition prohibits county action which affects not only the legal existence of the courts, but the operations thereof. Home rule action which "affects" the courts is prohibited whether it affects the court in a beneficial manner or in a burdensome, onerous or otherwise adverse fashion. It has long been a maxim of judicial reform that adequate compensation for judges, court administrators and clerks is an important factor in the quality of judicial performance and administration. The fixing of levels of compensation of judges or of other statutory officers of the court is action which, in our opinion, directly affects the court. Certainly, in this case, the proposed increases in compensation affect the court beneficially. K.S.A. 19-101a, however, prohibits the exercise of county home rule action which affects the court in any fashion, whether beneficially or adversely.

Accordingly, we conclude that in the exercise of county home rule powers under K.S.A. 19-101a, the board of county commissioners may not exempt Wyandotte County from any portion of K.S.A. 20-2521b, including that portion which fixes the salaries of the marshal and clerk of the Magistrate Court of Wyandotte County.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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