



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

March 18, 1975

Opinion No. 75-119

Mr. David J. Harding
Trego County Attorney
Trego County Courthouse
Wakeeney, Kansas 67672

Dear Mr. Harding:

We have your letter of March 13, 1975, enclosing copies of charter resolutions numbered 1 and 2 of Ellis County. You indicate that the government of Trego County would like to adopt similar resolutions, but you question whether the resolutions need be adopted as charter resolutions.

Under charter resolution number 1, "all open dumping areas within Ellis County . . . are hereby ordered closed" It further provides that violation of the resolution shall be enjoined by a court of competent jurisdiction, and that any person found guilty of violation thereof shall be guilty of a "public offense" and punished by a fine of not less than \$50.00 nor more than \$500.00. Charter resolution no. 2 provides that it

"shall be unlawful for any person to transport or move . . . garbage, papers, . . . debris or trash of any nature or description . . . on any street, alley, avenue, road or highway unless in so doing the aforesaid materials are continuously covered and controlled, excepting only the unloading thereof at publicly owned sanitary landfills."

Once again, violation of this resolution is made subject to injunction, and a public offense as set forth above from charter resolution no. 1.

Mr. David J. Harding
Page Two
March 18, 1975

K.S.A. 19-101b(b) commences thus:

"A charter resolution is a resolution which exempts a county from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject." [Emphasis supplied.]

As you point out, neither of the resolutions purport to except the county from all or any part of any statutory enactment. The statutory power of self-government granted by K.S.A. 19-101a may be exercised either by charter resolution or by ordinary resolution. K.S.A. 19-101a(b) describes the instances in which only the latter is necessary:

"Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper."


Thus, in view of the subject matter and effect of the two resolutions, copies of which you enclose, it appears unnecessary that either of them have been enacted as charter resolutions.

It may be helpful to point out that under K.S.A. 19-101a(a), there are certain limitations on the exercise of county home rule, including the direction that in the exercise of such power, "counties shall have no power under this section to affect the courts located therein. . . ." I enclose a copy of Opinion No. 75-40, which discusses this particular qualification on county home rule powers. In particular, we point out that in view of this restriction, it is

Mr. David J. Harding
Page Three
March 18, 1975

our view that a county may not, in the exercise of its statutory powers of self-government under K.S.A. 19-101a, either enlarge or restrict the jurisdiction of any court. I question whether any court in your county has jurisdiction to conduct the hearing and trial of any public offense, and impose a fine therefor, which is created not by state law, but by county resolution. I suggest this for your consideration, in drawing up analogous resolutions for your own county. It is my understanding that legislation is being considered during the present session to grant jurisdiction to some court to hear offenses created by county resolution. We have no information on its status at this writing.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure