



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 26, 1975

ATTORNEY GENERAL OPINION NO. 75- 380

Mr. George H. Herrelson, Jr.
Cherokee County Attorney
Cherokee County Courthouse
Columbus, Kansas 66725

Re: Counties--Taxation--Aggregate Levy Limitations

Synopsis: Counties may not by charter resolution in the exercise of county home rule powers exempt itself from statutory aggregate levy limitations comprising the "tax lid," K.S.A. 1974 Supp. 79-5001 *et seq.*

Re: Cities--Councilmanic Apportionment

Synopsis: A city of the second class with a council form of government may not exempt itself by charter ordinance from K.S.A. 1974 Supp. 14-103 so as to permit apportionment of voters in councilman districts of substantially unequal population, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

* * *

Dear Mr. Herrelson:

You inquire concerning the authority under K.S.A. 19-101a for the levy of a tax outside the restrictions of the aggregate levy limitations of K.S.A. 1974 Supp. 79-5001 *et seq.* to finance the implementation and operation of the new land fill program which becomes effective in Cherokee County July 1, 1976. I enclose a copy of Opinion No. 74-303, which discusses the general authority of the board of county commissioners, in the exercise of county home rule powers, to levy a tax despite the absence of express statutory authority therefor. There is no authority, however, for a county to circumvent the aggregate

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levy limitations of K.S.A. 1974 Supp. 79-5001 *et seq.*, known commonly as the "tax lid," by adoption of a county resolution in the exercise of county home rule legislative power.

Concerning authority for permitting the costs of collection of refuse to be assessed against persons within the county solid waste service area in the same manner as county *ad valorem* taxes, I invite your attention to K.S.A. 1974 Supp. 65-3410, amended by the 1975 legislature, to set forth specifically the procedure for such assessment of unpaid fees upon the real property within any county solid waste service area.

Secondly, you inquire concerning the constitutionality of a charter ordinance adopted by a city of the second class exempting the city from the requirements of K.S.A. 1974 Supp. 14-103, which states in pertinent part as follows:

"Whenever in any city of the second class except cities operating under the commission manager or commission form of city government the number of registered voters in any ward exceeds by more than twenty percent (20%) the number of registered voters in any other ward, the city council shall change and redefine the boundaries of the wards of such city so that the number of registered voters in each of the wards shall be as nearly equal as possible"

This statute applies on its face only to cities of the second class, and thus is subject to charter ordinance by any city to which it applies. In *Avery v. Midland County*, 390 U.S. 474, 20 L. Ed. 2d 45, 88 S. Ct. 1114 (1968), the Supreme Court stated thus:

"In *Reynolds v. Sims*, *supra*, the Equal Protection Clause was applied to the apportionment of state legislatures. Every qualified resident, Reynolds determined, has the right to a ballot for election of state legislators of equal weight to the vote of every other resident, and that right is infringed when legislators are elected from districts of substantially unequal population.

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The question now before us is whether the Fourteenth Amendment likewise forbids the election of local government officials from districts of disparate population. As has almost every court which has addressed itself to this question, we hold that it does." 390 U.S. at 478-479.

Thus, the Court concluded, "units with general governmental powers over an entire geographic area [may] not be apportioned among single-member districts of substantially unequal population.

In *Abate v. Mundt*, 403 U.S. 182, 29 L. Ed. 2d 399, 91 S. Ct. 1904 (1971), the Court stated thus:

"It is well established that electoral apportionment must be based on the general principle of population equality and that this principle applies to state and local elections. . . . [D]eviations from population equality must be justified by legitimate state considerations" [Citations omitted.]

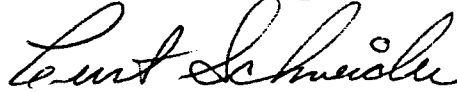
There, the Court upheld population variations resulting in a total voting inequality of 11.9 per cent, in light of the absence of built-in bias tending to favor any particular area or interest, and in view of a long-standing structure of local government resulting in particularly close cooperation between the county and each of its five constituent towns. In *Calderon v. Los Angeles*, 4 Cal.3d 251, 93 Cal. Rptr. 361, 481 P.2d 489 (1971), the court held that city councilmanic districts must be of substantially equal population, and that this requirement was not satisfied by a formula based on registered voters permitting a ten percent deviation from equality.

Clearly, a variation in the number of registered voters among single-member councilmanic districts resulting in inequality of greater than twenty percent would result in apportionment of voters among districts of substantially unequal population. Indeed, it is by no means clear that the maximum deviation permitted by the statute itself is constitutionally permissible. Certainly, however, a charter ordinance which exempted the city from the statutory maximum deviation and permitted greater

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population inequality among the councilmanic districts would result in districts of substantially unequal population, a deviation which would be constitutionally indefensible.

Yours very truly,

A handwritten signature in cursive script, reading "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj