



STATE OF KANSAS

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February 18, 1976

ATTORNEY GENERAL OPINION NO. 76- 61

The Honorable Pascal A. Roniger
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Cities--Incorporation

Synopsis: The Legislature may not provide for the incorporation of cities by any law other than one which is a general law and applicable to all cities. H.B. 2895 is not, and thus, plainly does not meet the requirements of Article 12, § 5(a) of the Kansas Constitution.

* * *

Dear Representative Roniger:

On behalf of the House Committee on Local Government, you inquire concerning House Bill 2895, section 1 of which provides thus:

"Any improvement district having a population of more than two thousand five hundred (2,500) and an assessed tangible valuation of more than three million dollars (\$3,000,000), which is located in a county having a population of more than three hundred thousand (300,000) may become incorporated as a city under the provisions of this act upon a favorable vote of a majority of the qualified electors of the district voting on the proposition as hereinafter set out."

The Honorable Pascal A. Roniger
Page Two
February 18, 1976

You inquire whether this provision for incorporation of cities, applicable specially and exclusively only to certain improvement districts located in the most populous county of the state, conforms to Article 12, § 5(a) of the Kansas Constitution, which provides thus:

"The legislature shall provide by general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated and cities may be dissolved: *Provided*, That existing laws on such subjects not applicable to all cities on the effective date of this amendment shall remain in effect until superseded by general law and such existing laws shall not be subject to charter ordinance."

It takes no elaborate discussion to demonstrate that this bill, providing for the incorporation of cities and applicable only to a narrow class of improvement districts in one county of the state eligible for incorporation thereunder, falls far short of the "general law, applicable to all cities, for the incorporation of cities" which is mandated by the constitution. Plainly, such a selective municipal incorporation law is now prohibited by Article 12, § 5(a) of the Kansas Constitution. The direction that the legislature "shall provide by general law, applicable to all cities, for the incorporation of cities," means, necessarily, that the legislature shall provide for the incorporation of cities *only* by general law applicable to all cities.

It should, perhaps, be pointed out that formerly article 2, § 17 of the state constitution forbade the enactment of a special law where a general law could be made applicable. In *State ex rel. Griffith v. Russell*, 119 Kan. 266, 237 Pac. 877 (1925), the court upheld a statute applicable only to counties having a population of not less than three thousand and not more than 3,450 persons as a "general law," stating thus:

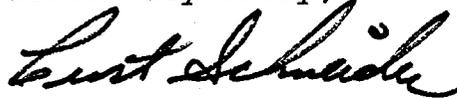
"The classification of the statute under consideration is based on population. The statute may not apply to only one county; next year it may apply to two; in the future it will apply to any county which comes within its provisions. For that reason the statute

The Honorable Pascal A. Roniger
Page Three
February 18, 1976

is general and operates uniformly in all counties to which it applies. It does not violate section 17 of article 2 of the constitution of this state."

Article 12, § 5(a) requires not merely a "general law," but one applicable to all cities. H.B. 2895 is not applicable to all cities, and is thus beyond the power of the Legislature, for it has no power to provide for the incorporation of cities by any law which is not a general law and which is not applicable to all cities. *See also State ex rel. Jordan v. City of Overland Park*, 215 Kan. 700, 527 P.2d 1340 (1974).

Yours very truly,



CURT T. SCHNEIDER
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CTS:JRM:kj