



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

March 5, 1976

ATTORNEY GENERAL OPINION NO. 76- 79

Mr. Philip E. Winter  
Assistant County Attorney  
Lyon County Courthouse  
Emporia, Kansas 66801

Re: Cities--Home Rule--Retirement

Synopsis: A city of the first class may by charter ordinance exempt itself from any portion of K.S.A. 13-14a08, including the prohibition therein prohibiting the payment of benefits to any person employed in or the holder of any public office for which such person receives compensation from public funds.

\* \* \*

Dear Mr. Winter:

You inquire whether a city of the first class may by charter ordinance pursuant to Article 12, § 5 of the Kansas Constitution, exempt itself from a portion of K.S.A. 13-14a08. That section provides for the payment of benefits to members of police and fire departments of certain cities upon retirement, disability or discharge under certain conditions. The portion in question provides thus:

*"Provided further, That no person who retires after the effective date of this act shall be paid any benefits under the provisions of this section while such person is employed in, or the holder of, any public office for which such person receives compensation from public funds."*

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This provision is part of an enactment commencing at K.S.A. 13-14a01, an enactment which is applicable only to cities of the first class. K.S.A. 13-14a02 specifies the applicability of the act thus:

"The governing body of all cities of the first class, maintaining an organized police department and a fire department, shall establish and maintain a separate pension fund for each department . . . ."

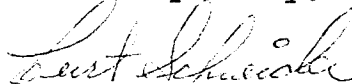
K.S.A. 13-14a08 is applicable only to those cities of the first class which are required by the quoted language to establish pension funds thereunder. It is, thus, not applicable uniformly to all cities.

Article 12, § 5(b) of the Kansas Constitution empowers cities to determine their local affairs and government, subject to a four-fold restriction:

"Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of indebtedness."

K.S.A. 13-14a08 does not fall within any of these categories of restrictions upon the exercise of local self-government. Thus, the city is free by charter ordinance to exempt itself from any portion thereof, including the proviso quoted *supra*.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj