



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 29, 1976

ATTORNEY GENERAL OPINION NO. 76- 380

Mr. Fred Warders
Assistant Director
Forestry, Fish and Game Commission
Post Office Box 1028
Pratt, Kansas 67124

Re: Counties--Home Rule--Forestry, Fish and Game Regulations

Synopsis: A county may not in the exercise of its county home rule powers under K.S.A. 19-101a exempt itself from regulations of the State Forestry, Fish and Game Commission establishing open seasons for the hunting, taking and killing of fur-bearing animals.

* * *

Dear Mr. Warders:

You inquire concerning Charter Resolution No. 6-76, adopted by the Board of County Commissioners of Finney County, Kansas. In particular, you inquire whether the resolution is within the home rule authority vested in the county under K.S.A. 19-101a *et seq.*

Section 1 of the resolution states thus:

"That Finney County, Kansas, under the authority of Kansas Statutes Annotated 19-101a and 19-101b, hereby elects to exempt itself from and make inapplicable to it, Section 32-164(a) of Kansas Statutes Annotated, as amended, and the corresponding administrative regulations of the Kansas

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Forestry, Fish and Game Commission, only as they apply to the trapping, killing or taking in any manner whatsoever of beaver within the boundaries of Finney County, Kansas, and that Finney County, Kansas provide substitute and additional provisions as hereinafter set forth in this resolution. Kansas Statutes Annotated 32-164(a) and the corresponding administrative regulations of the Kansas Forestry, Fish and Game Commission are applicable to said county but are not applicable uniformly to all counties."

Section 2 prohibits the killing of any beaver:

"It shall be unlawful for any person in the State of Kansas, County of Finney, at any time, to pursue, injure, trap, take, attempt to take, capture, kill, destroy or chase with dogs, or have in his or her possession any beaver, a fur-bearing animal under the laws of the State of Kansas, alive or dead, or the pelts, skins or carcasses of the same."

K.S.A. 32-164 describes the general powers of the State Forestry, Fish and Game Commission thus:

"The forestry, fish and game commission of the state of Kansas is hereby empowered and authorized to take such action as may preserve, introduce, distribute, restock and restore wild birds, game birds, fish, bullfrogs, game animals and fur-bearing animals to the state of Kansas. The . . . commission shall give consideration to the many conditions affecting the wild birds, game birds . . . and fur-bearing animals of the state of Kansas, and when the said commission has determined that . . . any species of the same, are materially destroying property, or otherwise becoming a nuisance, or that the natural food supply is insufficient, or that hunting, catching,

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taking, killing, shipping or trapping may be permitted without jeopardizing the future supply of such birds . . . and fur-bearing animals . . . in all or in any part or section of the state of Kansas, the forestry, fish and game commission is hereby authorized and empowered"

to adopt appropriate regulations establishing open seasons in all or any part of the state for any of such birds, fish and animals, and establishing the legal bag limits and fishing limits for any calendar day and any open season. On the face of the statute, the Commission is granted statewide jurisdiction, to be exercised in all or any part thereof as it deems needful and appropriate.

The resolution recites that the statute does not apply uniformly to all counties. It is entirely unclear in what respect the statute is claimed to operate nonuniformly in all counties. The jurisdiction of the Commission is statewide, and its authority in any particular county, including Finney County, is exactly equal to its authority in every other county. Certainly, the Commission by regulation may establish in open seasons in which wild birds, game birds, game animals and fur-bearing animals may legally be hunted, taken and killed, and any open season so established may apply statewide or "in any part or area of the state designated by counties or by federal or state highways or by major streams or federal impoundments." K.S.A. 32-164(a). Thus, a regulation of the Commission may not apply uniformly in all counties, but K.S.A. 32-164, which vests the described powers of in the Commission, certainly does, and clearly, in my judgment, no county may exempt itself by charter resolution from the jurisdiction of the State Forestry, Fish and Game Commission, which is exercised by it pursuant to K.S.A. 32-164(a).

K.S.A. 19-101a(a) commences 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: *First*, counties shall be subject to *all acts of the legislature* which apply uniformly to all counties"
[Emphasis supplied.]

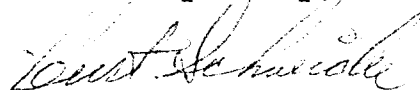
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K.S.A. 19-101a applies uniformly to all counties, and Finney County may not exempt itself from the statewide jurisdiction of the Commission. The resolution purports, further, to exempt the county from administrative regulations which are adopted by the Commission pursuant to that provision. K.A.R. 23-6-1 is the regulation adopted by the Commission establishing an open season for beavers. The regulation itself applies uniformly to all counties in the state, and not to only designated parts thereof. Thus, not only the statute under which it was adopted, but the regulation itself, is applicable uniformly to all counties. Moreover, under K.S.A. 19-101a, counties have no authority to exempt themselves from any administrative regulation of a state agency which has the force and effect of law, such as K.A.R. 23-6-1, whether or not the regulation applies uniformly to all counties or otherwise.

The home rule grant of authority to counties is statutory, unlike the constitutional grant of home rule powers to cities. While K.S.A. 19-101c directs that the statutory grant of home rule powers "shall be liberally construed for the purpose of giving to counties the largest measure of self-government," there is no statutory ambiguity or uncertainty in either K.S.A. 32-164 or K.S.A. 19-101a which would permit a restrictive interpretation of the former or an expansive construction of the former so as to justify the exercise of powers asserted by the charter resolution in question here. Accordingly, in my opinion, the resolution exceeds the power of the county in asserting to exempt itself from the jurisdiction of the State Forestry, Fish and Game Commission, and that the prohibitions set out in that resolution exceed the police power of the county, and are accordingly void and unenforceable. If, as I conclude, the county may not exempt itself from the jurisdiction of the Commission, it may not either extend or restrict any open season established by regulation of the Commission.

If the board of county commissioners of Finney County believe that local conditions warrant more restrictive regulations to preserve and protect the beaver population in that locale, they may wish to apply to the Commission for appropriate action. If, after investigation, the Commission determines that the local beaver population has indeed declined and may be jeopardized by further hunting and trapping, it may amend its regulations so as to restrict or suspend continued hunting and taking of beaver.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

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cc: Mr. Don Vsetecka
Finney County Attorney
Finney County Courthouse
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