

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 1, 1977

ATTORNEY GENERAL OPINION NO. 77-109

Mr. Stephen D. Hill
Linn County Attorney
Post Office Box 159
Mound City, Kansas 66056

Re: Counties--Home Rule--Nepotism

Synopsis: It is within the statutory home rule powers of a board of county commissioners to adopt and enforce a resolution prohibiting county officers from employing persons in their respective offices who are related to such office holders by specified degrees of relationship.

* * *

Dear Mr. Hill:

You enclose a copy of a resolution which has been adopted by the Linn County Board of County Commissioners in the exercise of its statutory home rule powers under K.S.A. 19-101a et seq.

Section 1 states thus:

"On or after May 1, 1977, office holders in Linn County, Kansas, are hereby prohibited from hiring their father, mother, spouse, brother(s), sister(s), son(s), daughter(s), son(s)-in-law, daughter(s)-in-law from permanent employment in that office."

Section 2 defines the term "office holder" to include the county clerk, county treasurer, county attorney, county appraiser, sheriff,

Mr. Stephen D. Hill

Page Two

April 1, 1977

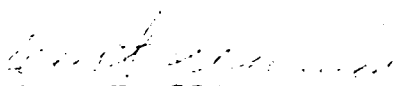
register of deeds, county engineer and noxious weed supervisor. Section 3 defines "permanent employment" as "any employment relationship created between any office holder and employee for a period of time greater than one (1) week annually."

You question whether this resolution is within the statutory home rule powers of the board, and whether it in any way encroaches upon the powers of any other duly elected officers. K.S.A. 1976 Supp. 19-101a(a) commences thus:

"Counties are hereby empowered to trans-act all county business and perform such powers of local legislation and administration as they deem appropriate"

Nine separate restrictions are enumerated upon this power, but none of those restrictions are applicable to this resolution. In effect, this provision constitutes a grant of legislative power to the county, which is exercised by the board of county commissioners. Clearly, the resolution deals with a matter of county, i.e., business, the employment of persons within specified degrees of relationship by county officers, payable from county funds. In a number of instances, these elected officials are authorized by statute to employ deputies. Under K.S.A. 19-302, for example, the county clerk is directed to appoint a deputy, and may appoint such other deputies. The board of county commissioners may supplement this statutory authority in the exercise of its legislative home rule powers by enacting additional legislation regarding the appointment of deputies, assistants, and others by county officials. This resolution prohibiting the employment of specified relatives constitutes just such legislation, and in my judgment, it falls clearly within the statutory home rule powers of the board under K.S.A. 1976 Supp. 19-101a et seq. The authority of elected county officers to appoint assistants, deputies and others to positions of employment in their respective offices is largely statutory. Where that is the case, as in the instance of the county clerk, this resolution operates as an additional legislative qualification or restriction upon the exercise of that power of appointment. Where the office is granted no express statutory authority to employ assistants, the board of county commissioners may likewise legislate as to that office, even though the legislature has not done so.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj