

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 145

Mr. Richard M. Pugh
Pugh & Pugh
625 Lincoln Avenue
Wamego, Kansas 66547

Re: Cities--Home Rule--Municipal Courts

Synopsis: A city may, in the exercise of its constitutional home rule powers under Article 12, § 5 of the Kansas Constitution, exempt itself from K.S.A. 12-4101 through -4701, including K.S.A. 12-4104, and empower the municipal judge to issue search warrants.

* * *

Dear Mr. Pugh:

You inquire concerning Charter Ordinance No. 4, adopted by the City of Wamego in July, 1974, and particularly, section 11-111 thereof, which states thus:

"A Municipal Judge may issue a search warrant to be executed in the City of Wamego, Kansas, by any law enforcement officer to search the things and places and seize the items described and by the procedure set out in Article 25 of Chapter 22 of the Kansas Statutes Annotated, as amended.

Nothing contained herein shall preclude a law enforcement officer of the City of Wamego from applying to a Magistrate for the issuance of a search warrant nor shall this section be construed to limit the right of

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a law enforcement officer to search as otherwise permitted by the laws."

In 1973, the Kansas Legislature adopted an act identified as the Kansas Code of Procedure for Municipal Courts. K.S.A. 12-4101 through -4701. The title of Charter Ordinance No. 4 recites that it is a

"charter ordinance exempting the City of Wamego, Kansas, from the provisions of K.S.A. 1973 Supp. 12-4101 through 12-4701 and providing substitute and additional provisions on the same subject, providing for a code for the municipal court of Wamego, Kansas."

The 1973 code is not in its entirety uniformly applicable to all cities. Every section of the enactment does apply to all cities uniformly, save one. K.S.A 12-4105 provides in pertinent part thus:

"The municipal court shall be presided over by a municipal judge. The judge shall be selected in the manner provided by statute. The person so selected shall be a citizen of the United States and at least eighteen (18) years of age. In cities of the first class, the person selected shall be an attorney admitted to the practice of law in the state of Kansas."

Thus, the act includes a qualification for the office of municipal judge which applies only to cities of the first class, and not to any other city or class of cities in the state.

Article 12, § 5 of the Kansas Constitution provides in pertinent part thus:

"(b) Cities are hereby empowered to determine their local affairs and government Cities shall exercise such determination by ordinance passed by the governing body . . . subject only to enactments of the

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legislature of statewide concern applicable uniformly to all cities, [and] to other enactments of the legislature applicable uniformly to all cities"

The enactment from which the City of Wamego has sought to exempt itself is the 1974 enactment of the legislature prescribing a code of procedure for municipal courts. That enactment does not apply uniformly to all cities in its entirety, and thus it does not apply uniformly to all cities at all. .

Section 11-111 quoted above from Charter Ordinance No. 4 specifically contravenes K.S.A. 12-4104 of the statutory code, which states as follows:

"The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. Search warrants shall not issue out of a municipal court."

This section, of course, applies uniformly to all cities. It is not an enactment in and of itself, however, but only one section of an enactment which does not apply uniformly to all cities. Under Article 12, § 5(c)(1), the city may by charter ordinance exempt itself from this restriction:

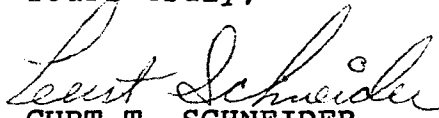
"Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city."

Thus, it is clearly within the constitutional power of the city under Article 12, § 5 of the Kansas Constitution to exempt itself from K.S.A. 12-4101 et seq., including K.S.A. 12-4104, and enact either substitute or additional provisions, or both.

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I would point out that in paragraph I of the ordinance, the city elects to exempt itself from K.S.A. 1973 Supp. 12-4101, rather than the entire enactment found at K.S.A. 1973 Supp. 12-4101 through -4701, as recited in the title of the ordinance. A court might regard this as a clerical error; however, I suggest that a corrective ordinance be adopted to correct this omission.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

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