

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 25, 1977

ATTORNEY GENERAL OPINION NO. 77- 243

Mr. Charles D. Stough
Stough and Kroeker
901 Kentucky Street, Suite 306
Lawrence, Kansas 66044

Re: Counties--Home Rule--Sewer Districts

Synopsis: The creation of a sewer district by a resolution adopted in the exercise of county home rule powers under K.S.A. 19-101a *et seq.*, which either modifies existing statutes and provides supplemental provisions thereto or substitutes provisions therefor applicable to the county or exempts the county therefrom is an appropriate subject of county home rule powers. However, bonds issued by such district may not be exempted from the general bond law, K.S.A. 10-103 *et seq.*

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Dear Mr. Stough:

On behalf of the board of county commissioners of Douglas County, you inquire concerning the use of county home rule authority under K.S.A. 19-101a *et seq.* to modify an appropriate statute concerning the creation of sewer districts by the county. The proposed resolution would include most of the usual provisions, such as for the employment of engineers, preparation of plants and cost estimates. The proposed sewer district would ultimately serve a watershed or drainage area of approximately 1800 to 2000 acres southwest of Lawrence. The area directly adjacent to the city is expected to develop in the immediate future, while much of the area in the outlying portion of the proposed district is in agricultural use and is not expected to be benefited by the district, except in a speculative fashion, until some years later.

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The commission is considering the use of its home rule powers to create a district empowered to levy a lump sum assessment against the property which would be ultimately benefited, but defer collection of principal and interest on the bonds issued for the construction of the sewer until actual development of the land for other than agricultural use. As a result, the commission hopes to permit the total design of a sewer to serve a complete drainage area, and construct the facilities at one time to serve future development and to provide the greatest possible savings possible to all the land which is benefited by the improvement.

K.S.A. 19-101a commences thus:

"(a) 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"

Several acts authorize the creation of sewer districts by counties. See. e.g., K.S.A. 19-2704 *et seq.*, 19-2731 *et seq.*, and 19-2787 *et seq.* In each instance, the creation and operation of a sewer district is essentially, indeed entirely, a local matter. The creation of a sewer district is certainly a matter of "county business" and is an appropriate subject of local legislation enacted under K.S.A. 19-101a *et seq.*

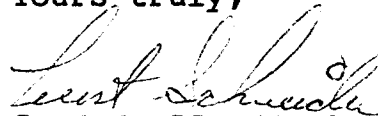
However, bonds issued by the district must comply with the general bond law, K.S.A. 10-101 *et seq.* Under K.S.A. 10-103, bonds payable from assessments against property benefited shall be issued to mature in not more than twenty installments of approximately equal amounts each year, the first such installment to mature not more than two years after date of issuance, and the last such installment not more than 21 years after date of issuance. Under K.S.A. 10-113, a levy must be made each year sufficient to pay the interest on such bonds. County home rule powers could not be exercised to exempt the county from the general bond law, a mandatory act which applies uniformly to all counties, and a deferred repayment schedule such as is proposed for bonds of the proposed district may very well be prohibited by the cited provisions.

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At this point, it is impossible to foresee the potential problems which may result from the statutory implementation of the constitutional amendment concerning the valuation and assessment of agricultural land. It is not clear at this point how any changed methods of valuation of agricultural land for ad valorem tax purposes would affect the levy of special assessments according to the benefits derived by the property from the improvement for which the assessments are made.

In summary, in my opinion, with the exception noted above, the proposition outlined in your letter, and as described above, is an appropriate subject of local legislation by the board of county commissioners under K.S.A. 19-101a et seq.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj