



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

August 17, 1977

ATTORNEY GENERAL OPINION NO. 77- 272

Mr. Frank L. Johnson
County Counselor
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Counties--Home Rule--Tax Lid

Synopsis: A county may, in the exercise of its statutory home rule powers under K.S.A. 19-101a et seq., exempt itself by charter resolution from the aggregate levy limitations comprising the tax lid, found at K.S.A. 1976 Supp. 79-5001 et seq.

* * *

Dear Mr. Johnson:

In Opinion No. 77-253, I concluded that the aggregate levy limitations found at K.S.A. 1976 Supp. 79-5001 through -5017, commonly known as the "tax lid," were not adopted in an enactment which applies uniformly to all cities or to a class of cities created for the purpose of imposing such limitations, and that accordingly, a city is free to adopt a charter ordinance which exempts itself from those limitations. You inquire whether a county may exempt itself from the tax lid by the adoption of a charter resolution, in the exercise of county home rule powers vested in it under K.S.A. 1976 Supp. 19-101a, which provides in pertinent part 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

Mr. Frank L. Johnson
Page Two
August 17, 1977

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.]

Subsection (b) states in pertinent part thus:

"Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners If the legislation proposed by the board under authority of subsection (a) of this section is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b."

It is not necessary here to renew the discussion concerning cities' home rule found in Opinion No. 77-253. To an important extent, the statutory provisions of K.S.A. 19-101a et seq. were modelled after the constitutional home rule provisions found in Article 12, § 5. K.S.A. 19-101a constitutes a statutory grant of general legislative power to counties subject to nine restrictions. Eight of these deal largely with substantive areas of concern respecting which the counties are forbidden to legislate without regard to whether applicable statutory provisions apply uniformly or otherwise to all counties. The ninth restriction subjects counties, in the exercise of their statutory home rule powers, to all legislative acts which apply uniformly to all counties. Ch. 393, L. 1973, in which sections comprising the tax lid were enacted, is applicable to all counties, but not uniformly applicable in its entirety to all counties, and thus, counties may exercise their statutory powers of home rule to exempt themselves by charter resolution from the aggregate levy limitations found at K.S.A. 1976 Supp. 79-5001 et seq.

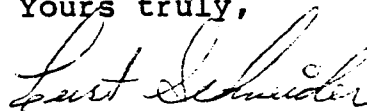
Indeed, it appears that the legislature specifically foresaw that ch. 393, L. 1973, was not uniformly applicable to all counties, and that a county might exempt itself from one or more of its

Mr. Frank L. Johnson
Page Three
August 17, 1977

provisions, for in enacting county home rule in 1974, the legislature specifically provided that counties could take no action thereunder to exempt themselves from the limitations and prohibitions imposed by sections 17 through 26 of that act, found at K.S.A. 1976 Supp. 12-172 et seq.

Accordingly, it is my opinion that a county may, in the exercise of its statutory home rule powers, exempt itself by charter resolution from the aggregate levy limitations comprising the tax lid, found at K.S.A. 1976 Supp. 79-5001 et seq.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj