



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 20, 1977

ATTORNEY GENERAL OPINION NO. 77- 342

Mr. Richard J. Rathbun II
Comanche County Attorney
215 East Main
Coldwater, Kansas 67029

Re: Counties--Home Rule--Medical Clinics

Synopsis: A county may in the exercise of its statutory home rule powers under K.S.A. 1976 Supp. 19-101a exempt itself from provisions found in K.S.A. 1976 Supp. 19-1815 and -1869 which require an election prior to the issuance of bonds for the construction of a medical clinic.

* * *

Dear Mr. Rathbun:

You advise that it has been proposed to the board of county commissioners of Comanche County, Kansas, that a medical clinic be constructed, at a cost not to exceed \$100,000. The funds available for this purpose include approximately \$60,000 in revenue-sharing monies, and the balance to be appropriated from the county general building fund. The question has arisen whether the board of county commissioners may by charter or ordinary resolution, in the exercise of county home rule powers under K.S.A. 1976 Supp. 19-101a et seq., authorize the construction of the proposed clinic without submitting the question to a vote of the electorate.

In Seltmann v. Board of County Commissioners, 212 Kan. 805, 512 P.2d 334 (1973), the question was raised whether the county could proceed to erect a medical clinic, at a cost not to exceed \$50,000, under K.S.A. 19-15,114 et seq., an act which authorizes the county to construct any "public building," and to issue general obligation

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bonds of the county without submitting the question to the voters, where the cost of the proposed improvement does not exceed \$100,000. Opponents of the project urged that the county was required to proceed under K.S.A. 19-1869, which required a vote of the people to authorize construction of a medical clinic to be operated in conjunction with an existing county hospital.

After reviewing the separate enactments involved, the court held that the county was required to submit the question to the voters under K.S.A. 19-1869, on the ground that the latter was a special statute, relating specially to buildings used as medical clinics in conjunction with county hospitals, and K.S.A. 19-15,114 et seq., relating to public buildings generally, was a general law, and the special law must control:

"[I]t is obvious to us that K.S.A. 1971 Supp. 19-15,114 et seq. is a general law which covers a general class, public buildings generally. It is also clear to us that K.S.A. 1971 Supp. 19-1869 is a special statute since it relates to a particular member of the class of public buildings, medical clinics used in connection with county hospitals. Is there repugnancy between the general statute and the special statute? We believe there is. The statutes are in conflict with and repugnant to each other in that the general statute, K.S.A. 19-15,114, et seq., does not require a vote of approval from the people where the construction cost of a public building is less than \$100,000, whereas the specific statute, K.S.A. 19-1869, requires the submission of a proposal to construct a medical clinic to the vote of the electors for their approval in all cases

Under the rule stated above a special statute prevails over a general statute unless it appears that the legislature intended to make the general act controlling. This requires us to consider the statutory circumstances involved in this particular case to determine the legislative intent. We have concluded on the record presented to us that it has not been shown that the legislature intended to make the general act controlling and therefore the specific statute pertaining

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to the construction of medical clinics should be applied and followed. We wish to make it clear that in other cases the intention of the legislature to make the general statute controlling may be shown by an expressed legislative intention to that effect or by other circumstances not present here." 212 Kan. at 811.

This case was decided in 1973. In 1974, the legislature granted counties broad statutory home rule powers. K.S.A. 1976 Supp. 19-101a(a) provides in pertinent part 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"

Previously, counties had only those powers which were conferred upon them specifically by statute, and those additional powers which were reasonably and necessarily implied therefrom. See, e.g., Board of County Commissioners v. Lewis, 203 Kan. 188, 453 P.2d 46 (1969). K.S.A. 1976 Supp. 19-101a represents a direct statutory grant of both legislative and administrative authority to the board of county commissioners to "transact all county business," and to "perform such powers of local legislation and administration as they deem appropriate" Thus, for particular projects or undertakings which the board of county commissioners believes to be appropriate for the county, they need not seek either express or implied statutory authority elsewhere, so long as the matter involved is a local one, involving the county alone, and is not prohibited by any of the express statutory qualifications upon this general power found at K.S.A. 1976 Supp. 19-101a(a).

County home rule power may be exercised in either of two ways. First, it may be exercised by a charter resolution for the following purpose:

"If the legislation proposed by the board under authority of subsection (a) of this

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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 by . . . [K.S.A. 19-101b]."

A simple resolution is the proper procedure in all other instances:

"If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section, and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper."

Two statutes authorize the board of county commissioners to authorize the issuance of bonds for the construction of a medical clinic. K.S.A. 1976 Supp. 19-1869 provides in pertinent part thus:

"The board of county commissioners of any county establishing and maintaining a hospital under . . . K.S.A. 19-1801 to 19-1815 . . . are hereby empowered by resolution and order of the board to submit to the qualified electors of the county at a general or special election the question of the issuance of the bonds of said county . . . for the purpose of purchasing or constructing and equipping medical clinics used in connection with the operation of said county hospital"

K.S.A. 1976 Supp. 19-1815 provides similar authority thus:

"The board of county commissioners of any county having a population of not more than five thousand (5,000) and, establishing and maintaining a hospital under . . . K.S.A.

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19-1801 to 19-1815 . . . are hereby empowered by resolution and order of the board to submit to the qualified electors of the county at a general or special election, the question of the issuance of the bonds of said county . . . for the purpose of . . . the construction of . . . medical clinics . . . and for the furnishing and equipping of such . . . clinics."

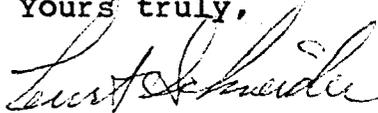
Neither of these statutes applies uniformly to all counties. By their express terms, they apply only to those counties operating county hospitals under K.S.A. 19-1801 et seq., which in turn includes only the limited class of counties described in K.S.A. 19-1801, i.e.,

"[a]ny county having less than forty thousand (40,000) inhabitants except a county having a population of not less than five thousand (5,000) nor more than twelve thousand (12,000) which has within its boundaries a city of the third class in which is located a hospital the cost of the operation and maintenance of which is paid wholly or in part from funds raised by taxation and except a county having within its boundaries any territory of a hospital district operating . . . under . . . [K.S.A.] 80-21,101 to 80-21,122"

Thus, by a charter resolution, the board of county commissioners may exempt the county from any portion of either of the cited statutes, including the provision requiring an election prior to the issuance of bonds for any clinic or, e.g., for any clinic the cost of which does not exceed a specified amount.

If further questions arise concerning this matter, please do not hesitate to call upon us.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj