STATE OF KANSAS

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January 3, 1978

ATTORNEY GENERAL OPINION NO. 78- 3

The Honorable James Holderman
State Representative
Post Office Box 1059
Wichita, Kansas 67201

Re: Cities--Home Rule--Special Assessments

Synopsis: Under Article 12, § 5 of the Kansas Constitution, a city may implement a program for the deferral of special assessments for municipal improvements undertaken within an improvement district within the municipal legislative power granted by that section, and state legislative authorization is not required therefor.

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Dear Representative Holderman:

On behalf of the Special Committee on Sedgwick County Area Legislative Matters, you inquire whether the City of Wichita may implement through its constitutional home rule powers two proposals which have been submitted to the committee for its consideration, or whether state legislative action is necessary to implement the proposals.

Proposal No. 1 provides that whenever the governing body of any city of the first class may create an improvement district in an area containing owner-occupied residential property, it may authorize and provide for indefinite deferral of payment of special assessments by persons eligible for such deferral, based on criteria adopted by the governing body. For the cost of the improvement, the city may issue internal improvement bonds, and for the costs of assessments the payment of which is deferred under the proposal, the city may issue "general improvement bonds," to be repaid by

levy of a general tax on all the property in the city. Deferred assessments become due and payable upon transfer of the property to a non-eligible owner or change in use of said property, and the ordinance provides that a deferred assessment shall abate after a period of twenty-five years. Under section 3, ordinances levying special assessments for the costs of improvements in an improvement district upon property for which the city has granted an indefinite deferral of payment shall state that the assessment is deferred in accordance with the proposal described above, and that the city clerk shall note the fact of such deferment when certifying such special assessments to the county clerk. Under section 5 of the proposal, the costs of any improvement which are attributable to assessments which are deferred shall be borne by the city at large, by the levy of a tax upon all property in the city in the manner provided for the payment of bonds provided by the city at large.

Proposal No. 2 proposes virtually identical provisions which are to be applicable to improvement of a major traffic street and benefit districts created therefor in areas containing property which is zoned and used for single or two-family residential purposes.

Article 12, § 5(b) of the Kansas Constitution commences thus:

> "Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class. . . ."

The city thus enjoys a direct constitutional grant of legislative power to provide for the levying of taxes and "other exactions," for any lawful municipal purpose, including the cost of public improvements therein for which benefit or improvement districts are created. The levy and collection of special assessments for the cost of improvements authorized by the governing body and constructed or erected in the city is obviously a local matter, which has no extraterritorial consequence or effect.

You advise, however, that representatives of the city have expressed some question as to the authority of the city to implement

these proposals by municipal legislation. First, apparently, it is urged that section 3 of the proposed bill for Proposal No. 1 and section 4 of the proposed bill for Proposal No. 2 prescribe procedures for the collection of taxes which differ from the procedures now prescribed by state law. It is suggested that statutes now in force pertaining to the assessment and collection of special assessments are uniform, and that any municipal legislation departing therefrom would be unenforceable. It is further suggested that because the special assessments which would be authorized under the proposal must be collected by the county clerk, that implementation requires state legislation because the city cannot through its municipal legislative powers direct or control the conduct or duties of the officer of another political subdivision, in this instance, the county clerk.

There appears to be a recurring misunderstanding and belief that Kansas cities may exercise their constitutional home rule powers under Article 12, § 5 when and only when the legislature has enacted some legislation which is not uniformly applicable to all cities. This belief simply ignores the plain language of the section quoted above, that cities are empowered to determine their local affairs and government, and further language in the section which states that this power may be exercised by ordinance. The city need enact a charter ordinance to exercise its home rule powers only when it wishes to exempt itself from a provision of state legislation which stands in the way of the city's proposed course of conduct.

The general improvement law, K.S.A. 16-6a01 through -6a17, appears to be uniformly applicable to all cities. There is nothing in that act which authorizes the city to implement such a program, obviously. However, the entire purpose of the voters' approval of Article 12, § 5 was to relieve cities of the necessity of seeking state legislative approval for the conduct of purely local affairs, including the levy of taxes, and any other exaction, including special assessments. Where such authority is lacking in state legislation, as here, and where it is not contrary to any state legislation, again as here, the city may exercise its own constitutionally-granted legislative powers to supply the needed legal authority. There is no contraiety here. K.S.A. 12-6a01 et seq. is silent regarding deferred payment of assessments; nothing therein either expresssly states or by any necessary or reasonable implication suggests that a program for the deferred payment of assessments is prohibited.

Municipal legislation on a given subject is not necessarily foreclosed merely because the state legislature has enacted legislation

respecting that subject which applies uniformly to all cities. The state legislature must, in order to foreclose municipal legislative action, have also acted to preempt the field, either expressly or by necessary implication. Nothing in ch. 12, art. 6a suggests any preemption whatever, or that the city may not, in the reasonable exercise of municipal legislative powers, supplement the powers granted it under the act, as in this case, by adding additional features to the municipal general improvement financing procedure which are deemed appropriate and useful to the local governing body and which may thus be implemented by local legislation within the framework of the state legislative act which the city intends to follow. Thus, in this instance, the city may provide by local legislation additional steps and procedures in the assessment process which are not now provided in, but not in conflict with, the existing act under which it proposes to continue to make general public improvements.

Section 3 of the bill proposed to implement Proposal No. 1 states thus:

> "Ordinances levying special assessments for the costs of improvements in an improvement district upon property for which the city has granted an indefinite deferral of payment shall state that such assessment is deferred indefinitely providing that property ownership or property use does not change. The city clerk shall when certifying such special assessments to the county clerk, note thereon the words 'payment deferred indefinitely.' Such special assessments, when levied and certified, and if they become due upon change in property ownership to a non-eligible owner or change in use of said property according to the schedule in SECTION 2, shall be collected as other taxes."

Section 4 of the proposed bill for Proposal No. 2 is virtually identical. Neither these nor any other provisions of the two proposed bills represent municipal legislation to control or interfere with any collection procedures specified by law. Whenever a city authorizes by ordinance a levy, to that extent it affects the duties of the county clerk, who is required to levy and collect that tax. That responsibility derives not from the

municipal ordinance authorizing the levy, but from state statutes which require the county clerk to place upon the tax roll all levies duly certified by the city. See, e.g., K.S.A. 79-1801. An ordinance for the deferral of certain assessments, likewise, does not extend beyond the reach of "local affairs," for the duties of the county clerk respecting levies and assessments certified to that officer by the city are fixed by state law, and those responsibilities are in no way altered by the bills reviewed above.

To recapitulate, it is my judgment, that it is within the constitutional legislative powers of the city, under Article 12, § 5, to implement these proposals by municipal legislative action, and that state legislative authorization is not required for that purpose.

Yours truly,

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