



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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CURT T. SCHNEIDER
ATTORNEY GENERAL

October 26, 1978

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CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78- 348

Mr. Lee Hornbaker
City Attorney of Grandview Plaza
Post Office Box 168
Junction City, Kansas 66441

Re: Cities--Home Rule Powers--Consolidated County Law
Enforcement

Synopsis: If the provisions of K.S.A. 19-4424 *et seq.* are adopted by the voters of Geary County, Kansas, at the November 7, 1978, general election, the City of Grandview Plaza may not thereafter exempt itself from the application of the act by charter ordinance.

* * *

Dear Mr. Hornbaker:

As City Attorney for the City of Grandview Plaza, located in Geary County, Kansas, you inquire concerning the county law enforcement consolidation act found at K.S.A. 19-4424 through -4445, applicable to Geary and Riley counties.

You inquire, first, whether this office has issued an opinion on the constitutionality of the Act. I enclose to you a photocopy of Opinion No. 73-287, dealing with that question.

Secondly, you inquire whether the City of Grandview Plaza may, by the exercise of its constitutional home rule powers under Article 12, § 5 of the Kansas Constitution, exempt itself from the application of the law enforcement consolidation act referenced above.

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The act becomes applicable when "the question of the adoption of the provisions . . . [thereof] shall have been submitted to and shall have been approved by the qualified electors of the county in the manner provided herein." The question of adopting the act must be submitted when the board of county commissioners adopts a resolution therefor, whenever the governing body of any city in the county having a population of not less than 25% of the county adopts such a resolution, and, third, whenever a petition therefor is filed with the county election officer signed by qualified electors of the county equal in number to not less than ten percent of those who voted for the office of the secretary of state at the last preceding election.

Upon adoption, there is created in the county a county law enforcement agency, consisting of five members, and a county law enforcement department, consisting of the director, assistant director, and such other officers and personnel as the agency shall determine. K.S.A. 19-4434 provides that on the first day of January next following the appointment of members of the agency, the department shall assume nearly all responsibility for municipal law enforcement in the county:

"On the first day of January next following the appointment in any county of the first members of the agency under the provisions of this act and thereafter, the department shall assume and exercise all powers, duties and responsibilities of the city marshal or chief of police and police officers of cities located within such county and cities a majority of the population of which is located within such county, including that portion of any such city which is located in an adjacent county, relating to the enforcement of ordinances prohibiting and prescribing penalties for the commission of acts which have been declared to be crimes under the laws of the state of Kansas."

K.S.A. 19-4440 relieves municipal law enforcement officers of their authority:

"The city marshal or chief of police
and police offices of all cities located within,

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or a majority of the population of which resides within, any county adopting the provisions of this act shall be and are hereby relieved of all power, authority and responsibility now or hereafter prescribed by law for the enforcement of laws of this state, ordinances of such city, responsibility for the enforcement of which has been transferred to the county department"

You point out that the act applies only to Geary and Riley counties, and that it does not apply uniformly to all cities of the state. Thus, the question is raised whether the city might by charter ordinance exempt itself from the application of the act. Article 12, § 5(b) of the Kansas Constitution provides that "cities are hereby empowered to determine their local affairs and government" It further provides that cities "shall exercise such determination by ordinance passed by the governing body, subject only, insofar as here pertinent, to "enactments of the legislature applicable uniformly to all cities."

Cities' constitutional home rule powers extend to "local affairs and government." Before considering the possibility of local legislation of Article 12, § 5, it is necessary to determine that the subject matter proposed to be addressed is in fact local in nature.

Ordinarily, of course, municipal law enforcement is preeminently a matter of local concern. However, a major purpose of the law enforcement consolidation act, K.S.A. 1977 Supp. 19-4424 through -4445, is to consolidate all law enforcement agencies in the county, including all municipal chiefs of police, officers and marshals, into a single unified county department. When the provisions of the act are adopted by all the qualified electors of the county voting hereon, all municipal law enforcement in the county ceases by operation of law to be a local matter. On the first day of January following adoption of the act and appointment of members of the county law enforcement agency, the county department assumes all law enforcement responsibility for ordinances of the cities located in the county which prohibit and prescribe penalties for the commission of acts which have been declared to be crimes under the laws of the State of Kansas. K.S.A. 19-4434. On that date, city marshals, chiefs of police and all police officers of all cities located in the county are relieved of their authority respecting such ordinances, by operation of law. Law enforcement


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within the City of Grandview Plaza, for example, would cease as of that date to be a matter of municipal or "local" concern, and becomes the concern solely of the county law enforcement department.

Certainly, the act itself applies to but two counties, and thus does not apply uniformly to all cities in the state. If its provisions are adopted by the voters of the county on November 7, 1978, and upon the appointment of the members of the county law enforcement agency, the City of Grandview Plaza has no further legislative authority respecting the law enforcement within its borders, save, of course, for the very important authority to enact ordinances prohibiting conduct within the city and prescribing penalties therefor. Law enforcement in the city is no longer a matter of "local affairs and government" of the city, but is a matter entrusted solely to the county law enforcement department, concerning which, of course, the city may not exercise its home rule powers, because it is not a municipal, or local, agency.

Accordingly, in my judgment, the City of Grandview Plaza has no authority to except itself by charter ordinance from the application of the county law enforcement consolidation act found at K.S.A. 19-4424 et seq., if the provisions thereof are adopted by the voters of Geary County on November 7, 1978.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj