



STATE OF KANSAS

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November 2, 1978

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ATTORNEY GENERAL OPINION NO. 78- 355

Mr. Rex D. Johnson
Sheriff of Douglas County
Judicial-Law Enforcement Building
Lawrence, Kansas 66044

Re: Counties--Sheriffs--Civil Service

Synopsis: K.S.A. 19-4303 *et seq.* applies to three categories of counties: first, those designated urban area counties pursuant to Article 2, § 17 of the Kansas Constitution; secondly to those counties with a population in excess of 300,000; and third, to those counties with a population in excess of 65,000 and less than 180,000. It applies to only those counties which fell within the stated population categories on the effective date of the act, July 1, 1969, and hence does not apply to Douglas County, which reached the population of 65,000 only this year.

* * *

Dear Sheriff Johnson:

K.S.A. 19-4303 *et seq.*, provides for a system of civil service for the personnel of sheriffs' offices in certain counties. Under K.S.A. 19-4303, it applies to the following counties:

"Any county designated as an urban area county by the legislature pursuant to the provisions of section 17 of article 2 of the constitution of the state of Kansas *and* any county having a population of more than

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three hundred thousand (300,000) and any county having a population of more than sixty-five thousand (65,000) and less than one hundred eighty thousand (180,000) shall be subject to the provisions of this act."
[Emphasis supplied.]

Under K.S.A. 19-3524, Johnson County is designated an "urban area" within the provisions of Article 2, § 17 of the Kansas Constitution.

According to the most recent official census data published October 23, 1978, by the State Board of Agriculture, the population of Douglas County, as of January 1, 1978, is 65,583. You inquire concerning the "urban county" phrase in the quoted provision, whether a county must both be declared an "urban area county" under Article 2, § 17 of the Kansas Constitution and also fall within any of the enumerated population brackets, or whether the act applies to any county falling within any of the enumerated population brackets, regardless whether the county has been declared an urban area county.

In my opinion, the act applies to three separate categories of counties: first, it applies to any county which has been declared an urban area county under Article 2, § 17; secondly, it applies to any county which has a population in excess of 300,000, whether such county is or is not an urban area county; and thirdly, it applies to any county with a population of more than 65,000 and less than 180,000, again regardless whether any such county is or is not an urban area county under Article 2, § 17.

A further question remains, however, whether it applies to any county which was not within any of the referenced population brackets on July 1, 1979, the effective date of the act, but which falls within those brackets at a later time. K.S.A. 19-4303 provides that counties within the three categories set out above "shall be subject to the provisions of this act." It further provides that certain other counties, i.e., those with a population of more than 45,000 and less than 100,000 and having an active military establishment therein, "may be subject to the provisions of this act upon the adoption of a resolution by the board of county commissioners . . . electing to be subject to . . . this act."

Section 2 of the act, K.S.A. 19-4303, states thus:

"Within thirty (30) days after the effective date of this act, the board of county

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commissioners of such county shall, by resolution, create a civil service board which shall be composed of five (5) members appointed as hereinafter provided."

The effective date of the act was July 1, 1969. Thus, implementation of the act was mandated within thirty days after July 1, 1969, and necessarily only in those counties which fell within the population brackets upon its effective date, July 1, 1969.

Ironically, for many years, the Kansas Supreme Court has upheld legislation designed to apply to only certain cities or counties, framed in terms of population categories, against the charge that such legislation was general. In *State v. Downs*, 60 Kan. 788 (1899), for example, the court stated thus:

"An act general in its provisions, but which can presently apply to only one city on account of there being but one of requisite population or other qualification, but which was designed to, and can in all substantial particulars apply to other cities as they become possessed of the requisite population or other qualification, cannot be regarded as a special act."

In *State ex rel. Griffith v. Russell*, 119 Kan. 266 (1925), the court stated thus:

"The classification of the statute under consideration is based on population. The statute may not apply to only one county; next year it may apply to two; in the future it will apply to any county which comes within its provisions. For that reason the statute is general and operates uniformly in all counties to which it applies." 119 Kan. at 268.

At the same time, the Court has restricted application of such special laws to the jurisdictions falling within the population brackets existing at the time of enactment. See, e.g., *Clark v. Murray*, 141 Kan. 533, 41 P.2d 1045 (1935).

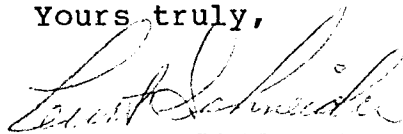
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The 1969 act involved here clearly contemplated that it would apply to only those counties which fell within the stated population categories at the time of enactment, rather than to any additional counties which might at some future time fall within those categories.

Amendments to this legislation would be desirable to clarify, if it is indeed the legislative intent, that it shall apply to all counties which now or hereafter fall within the stated population categories.

As the act now stands, however, it is my opinion that it does not apply to Douglas County which reached the population of 65,000 in the past year, because the county was not within any of the enumerated population categories at the time the act was passed in 1969.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj