



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 7, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 79- 26

Mr. Jerry G. Larson
Pawnee County Attorney
Pawnee County Courthouse
Larned, Kansas 67550

Re: Counties and County Officers--Home Rule
Powers--Budget Law Limitations on Use of
Proceeds from Sale of County Farm

Synopsis: The Board of County Commissioners of Pawnee County may exercise its home rule powers under K.S.A. 1978 Supp. 19-101a and K.S.A. 19-101b to adopt a charter resolution exempting Pawnee County from the provisions of K.S.A. 19-2115, relating to the expenditure of proceeds from the sale of a county farm, since K.S.A. 19-2115 does not apply uniformly to all counties.

Said charter resolution also may exempt Pawnee County from the mandates of the Budget Law (K.S.A. 79-2925 et seq.) that otherwise would limit the use of moneys derived from the sale of the county farm, since said limitations have non-uniform application to all counties by virtue of the exception thereto for certain counties in K.S.A. 19-2115.

Once exempted from these statutory constraints, the Board also may include in said charter resolution substitute and additional provisions regarding the use of moneys derived from the sale of the county farm, including provisions authorizing expenditure thereof without regard to Budget Law limitations.

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Dear Mr. Larson:

By your letter of December 18, 1978, you requested the opinion of this office regarding the sufficiency of a proposed charter resolution of the Board of County Commissioners of Pawnee County. A copy of the proposed resolution was included with your letter, and we have discussed previously in a telephone conversation certain necessary changes in the form of the resolution. Thus, the remaining issue presented for determination is whether the objectives sought to be accomplished by the proposed charter resolution can be achieved by Pawnee County through its home rule powers.

The ultimate objective of the proposed charter resolution is to authorize the moneys received by the Board of County Commissioners from the sale of the county farm to be placed in a special building fund and used without regard to limitations of the Budget Law (K.S.A. 79-2925 et seq.), for public buildings or structures and sites therefor, as the Board shall deem necessary for public county purposes. Presently, the disposition of moneys derived from the sale of a county farm is governed by K.S.A. 19-2115, which reads as follows:

"Whenever the board of county commissioners shall sell the county farm, county infirmary, county home or any part thereof, and any buildings thereon, as provided for herein, said board may use the funds derived from such sale, or any part thereof, to purchase land and to erect a suitable building or buildings thereon, and to make other necessary improvements, and provide necessary equipment for the establishment of a home for the aged: Provided, That in counties having a population of more than twenty-four thousand (24,000) and less than thirty thousand (30,000) and in counties having a population of more than sixty thousand (60,000) and not more than one hundred thousand (100,000) any moneys received from the sale of a county farm and site may be placed in a special building fund and used without regard to limitations prescribed by the budget law for public buildings or structures and sites therefor as the board of county commissioners shall deem to be necessary for the county for public county purposes; and may be used in combination with other funds for such county buildings.

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"Any funds not used as provided by this section shall be placed in the county general fund."

As can be seen from the foregoing statute, the desired objectives of Pawnee County's Board of County Commissioners are encompassed by the statute's proviso, but the proviso is applicable only to certain counties having populations within designated population brackets. Pawnee County does not have the necessary population to avail itself of the powers conferred by the proviso. Thus, under K.S.A. 19-2115, the proceeds derived by Pawnee County from the sale of its county farm must be disposed of in the manner prescribed by the balance of this statute, i.e., expended in connection with the establishment of a home for the aged or deposited in the county general fund; and the use of such proceeds is further restricted by Budget Law limitations. (E.g., to paraphrase certain restrictions of K.S.A. 79-2934, such moneys may not be expended in the county's budget year in which it is received, unless the same is authorized in the adopted budget of expenditures for such year, nor may such moneys be expended for any purpose not authorized in said budget of expenditures.)

Pursuant to subsection (a) of K.S.A. 1978 Supp. 19-101a, counties are "empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate," subject to certain specified limitations, restrictions and prohibitions. The only one of these limitations or restrictions having any apparent relevance here, though, is that "counties shall be subject to all acts of the legislature which apply uniformly to all counties." However, by virtue of the specialized proviso contained therein, K.S.A. 19-2115 does not have uniform application to all counties. Thus, we find no impediment to Pawnee County's Board of County Commissioners adopting a charter resolution, as authorized by K.S.A. 19-101b, exempting the county from the provisions of K.S.A. 19-2115 applicable to Pawnee County.

The further question remains, however, whether in the exercise of its home rule powers the Board also can include in said charter resolution "substitute and additional provisions" which have the effect of making the substance of the proviso of K.S.A. 19-2115 applicable to Pawnee County. Even though the absence of a uniformly applicable state law regarding the sale of a county farm and disposition of the proceeds therefrom leaves the county free to legislate on these matters, this proviso affords an

exemption from certain limitations of the Budget Law for the counties covered thereby. Therefore, a determination must be made as to Pawnee County's ability to adopt local legislative measures making these same exemptions from the Budget Law applicable to Pawnee County.

Here, we find the reasoning expressed in Attorney General Opinion No. 78-363 to be most helpful to our consideration. That opinion addressed the question of whether a county could adopt a charter resolution in contradiction of the provisions of the Uniform Procedure for the Payment of Claims and Other Indebtedness (K.S.A. 10-801 et seq.). The uniformity of that act was considered in light of K.S.A. 19-264 et seq., which authorize any county having a prescribed population to establish and pay certain claims through disbursement from a petty cash fund, rather than through the warrant procedure prescribed by K.S.A. 10-801 et seq. Even though this prior opinion recognized that these latter statutes have the appearance of being uniformly applicable to all counties, "as a result of the exceptions provided in K.S.A. 19-264 et seq., the Uniform Procedure provisions are not uniformly applicable to the payment of all claims by all counties." Attorney General Opinion No. 78-363.

Therefore, the prior opinion concluded that a county to which K.S.A. 19-264 et seq. are applicable could validly exercise its home rule powers by adopting a charter ordinance which (1) exempted such county from the provisions of K.S.A. 19-264 et seq., due to the non-uniformity thereof, and (2) established a petty cash fund (in excess of the limits prescribed in K.S.A. 19-264) by exempting such county from the pertinent provisions of the Uniform Procedure for the Payment of Claims and Other Indebtedness, since K.S.A. 19-264 et seq. made said provisions of the Uniform Procedure non-uniformly applicable to all counties.

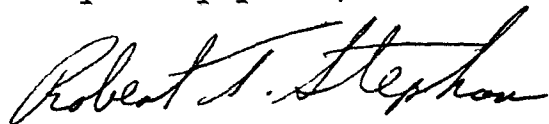
We believe this prior opinion to be based on sound legal reasoning. In applying such reasoning to the questions addressed by this opinion, we think it unnecessary to determine whether the statutes comprising the so-called Budget Law are uniformly applicable, in their entirety, to all counties. The provisions thereof which otherwise would limit the use of moneys derived from the sale of all or any part of a county farm have been made non-uniform in their application to all counties by virtue of the proviso in K.S.A. 19-2115. When this proviso and the

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provisions of the Budget Law are construed together, as is appropriate when considering statutes in pari materia [see, e.g., Clark v. Murray, 141 Kan. 533, 537 (1935); Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973)], we find an obvious legislative intent to create an exemption for certain counties from the particular restraints of the Budget Law applicable to the use of moneys derived from the sale of a county farm. In so doing, however, the legislature has made said Budget Law restraints non-uniform in their application to all counties, thus enabling a county to exempt itself from the Budget Law to that extent and to adopt local legislative measures providing substitute and additional provisions in lieu thereof.

In summary, it is our opinion that the Board of County Commissioners of Pawnee County may exercise its home rule powers by adopting a charter resolution exempting Pawnee County from the provisions of K.S.A. 19-2115, since said statute does not apply uniformly to all counties. Said charter resolution also may exempt the county from the mandates of the Budget Law that otherwise would limit the use of moneys derived from the sale of the county farm, since said limitations have non-uniform application to all counties by virtue of the exception thereto for certain counties in K.S.A. 19-2115. Having thus freed itself of these statutory constraints, the Board also may include in said charter resolution substitute and additional provisions regarding the use of moneys derived from the sale of the county farm, including provisions authorizing expenditure thereof without regard to Budget Law limitations.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General