



STATE OF KANSAS

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May 11, 1979

ATTORNEY GENERAL OPINION NO. 79-81

Mr. Bruce H. Wingerd
City Attorney
427 Court Street
Clay Center, Kansas 67432

Re: Cities, Second Class -- Home Rule Powers --
Police and Fire Commission

Synopsis: A city of the second class may, by charter ordinance, create a Police and Fire Commission to provide comprehensive and continuing supervision of the city police and fire departments.

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Dear Mr. Wingerd:

You inquire whether the City of Clay Center may create a Police and Fire Commission by charter ordinance to provide comprehensive and continuing supervision of the city police and fire departments. The general appointment power of the mayor and city council is set out in K.S.A. 14-201 which, in part, provides:

"The mayor shall appoint, by and with the consent of the council, a municipal judge of the municipal court, a city marshal-chief of police, city clerk, city attorney, and may appoint policemen and such other officers as they may deem necessary."

The foregoing statute establishes the powers of appointment granted by the legislature to the mayors and councils of cities of the second class

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in Kansas. Although this grant of authority applies to all cities of the second class, in our opinion it is not an enactment of statewide concern uniformly applicable to all cities. For that reason, we believe that the foregoing statute, or any portion thereof, is properly alterable by way of a charter ordinance.

The Constitution of the State of Kansas, Article 12, Sec. 5 provides, in part:

"(c) (1) Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city.

"(2) A charter ordinance is an ordinance which exempts a city from the whole or any part of an enactment of the legislature as referred to in this section and which may provide substitute and additional provisions on the same subject. Such charter ordinance shall be so titled, shall designate specifically the enactment of the legislature or part thereof made inapplicable to such city by the adoption of such ordinance and contain the substitute and additional provisions, if any, and shall require a two-thirds vote of the members-elect of the governing body of such city. Every charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper or, if there is none, in a newspaper of general circulation in the city." (Emphasis supplied.)

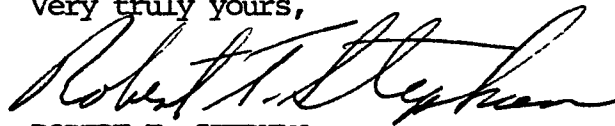
In light of the preceding constitutional provision, it is our opinion that the City of Clay Center may, by charter ordinance, alter K.S.A. 14-201 so as to provide for the appointment of a Police and Fire Commission. This may be accomplished either by adding the commission appointments or by substituting these appointments for selected officials set out in the statute.

As a final note, we would direct your attention to the Constitution of the State of Kansas, Article 12, Sec. 5(3) which discusses the mechanics for enacting a charter ordinance. This subsection sets out the provision

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for an election on the ordinance in the event that a petition is filed by a number of electors of the city which is not less than ten percent of the number of electors voting in the last preceding regular election.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General

RIS:TDH:JEF:may