



STATE OF KANSAS

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June 4, 1979

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ATTORNEY GENERAL OPINION NO. 79-103

Mr. Neil R. Shortlidge
Assistant City Attorney
Overland Park City Hall
8500 Antioch
Overland Park, Kansas 66212

Re: Counties and County Officers--Home Rule Powers--
Establishment and Operation of Fire Districts

Synopsis: The Board of County Commissioners of Johnson County may adopt a charter resolution, in the manner prescribed by K.S.A. 19-101b, exempting said county from the whole or any part of K.S.A. 19-3613 et seq., which provide a statutory framework for the establishment and operation of fire districts that is applicable to Johnson County. Said charter resolution also may include substitute and additional provisions in lieu of the statutory provisions from which exemption is sought.

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Dear Mr. Shortlidge:

You have solicited our opinion as to whether the Board of County Commissioners of Johnson County may adopt a charter resolution exempting said county from the provisions of K.S.A. 19-3613 et seq. and providing substitute and additional provisions in lieu thereof. In phrasing your request, you have indicated that these statutory provisions govern the operation of Overland Park Fire District No. 1.

As you are well aware, counties have been statutorily vested with a measure of self-government pursuant to K.S.A. 1978 Supp. 19-101a, subsection (a) of which reads in pertinent part, as follows:

Mr. Neil R. Shortlidge
Page Two
June 4, 1979

"Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions:"

Following the foregoing provisions is a list of nine areas of local legislation that are not available to counties in the exercise of their home rule powers. As you have noted, the only one of these that appears to have any relevance to your inquiry is the initial restriction that "counties shall be subject to all acts of the legislature which apply uniformly to all counties." However we do not believe this provision operates to forestall the local legislation contemplated by your inquiry, since in our judgment K.S.A. 19-3613 et seq. do not constitute an act of the legislature applicable uniformly to all counties. To the contrary, by its own terms, the first section (K.S.A. 19-3613) of this statutory series prescribes their applicability, which is limited to "any county having a population of more than ninety thousand (90,000) and containing a city of the first class having a population of less than fifty thousand (50,000)."

We think it self-evident that such restrictive statement of applicability certainly does not evince a legislative intent that these statutes be uniformly applicable to all counties. Such conclusion is enhanced by an examination of statutes in pari materia, i.e., the other enactments in Article 36 of Chapter 19 of Kansas Statutes Annotated. Collectively, these enactments clearly demonstrate that the legislature has no uniform policy regarding the establishment and operation of fire districts by counties.

Therefore, since it is apparent that K.S.A. 19-3613 et seq. are applicable to Johnson County, legislation regarding these statutes by that county's board of county commissioners would be governed by the following provisions of subsection (b) of K.S.A. 1978 Supp. 19-101a:

"If the legislation proposed by the board under authority of subsection (a) of this section is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all

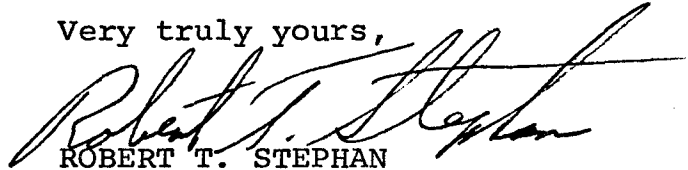
Mr. Neil R. Shortlidge
Page Three
June 4, 1979

counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b."


As defined in subsection (b) of K.S.A. 19-101b, "[a] charter resolution is a resolution which exempts a county from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject."

Based on the foregoing examination of the statutes pertinent to your inquiry, it is our opinion that the Board of County Commissioners of Johnson County may adopt a charter resolution, in the manner provided in K.S.A. 19-101b, exempting said county from the whole or any part of K.S.A. 19-3613 et seq. and providing substitute and additional provisions in lieu thereof.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:jm