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ATTORNEY GENERAL OPINION NO. 79-285

Mr. Bill Crow, Trustee
Dover Township
1928 S.W. Carlson Road
Topeka, Kansas 66604

Mr. William L. Smith, Mayor
Rossville
Kansas 66533

Re: Federal Jurisdiction--Surplus Property and Public Airport Act--Certain Counties and Cities

Synopsis: K.S.A. 1978 Supp. 27-327 et seq., pursuant to which the Topeka-Shawnee County Airport Authority was established, is not in violation of the Equal Protection clause of the 14th Amendment to the U. S. Constitution, and is not a special law or an unconstitutional delegation of power under Article 2 of the Kansas Constitution. Additionally, the City of Topeka and Shawnee County meet the population requirements of the act, and the statutory wording of the ballot used to enact the authority gives adequate notice to voters of the change to be made if the measure passes.

* * *

Dear Sirs:

You have requested the opinion of this office regarding the constitutionality and propriety of K.S.A. 1978 Supp. 27-327 et seq. We note that this enactment, which deals with the establishment of public airport facilities in certain counties through the use of surplus federal property, was amended in 1979 (L. 1979, ch. 114, §§3-7). Accordingly, our opinion must take into consideration the changes in the act which were made at that time.

In your opinion request you do not raise any specific concerns as to how the act or portions thereof may be constitutionally defective or, in the alternative, incompletely complied with by Shawnee County, which is the only county so far to utilize the act's provisions. However, from your enclosed material, we gather that your concerns are five in number, to-wit: the act has the effect of denying county residents the equal protection of the laws; that the act is a special law in an area where a general law could work equally as well; that the act is an unconstitutional delegation of legislative authority; that the population limits set by K.S.A. 1978 Supp. 27-328 have not been met by Shawnee County; and that the wording of the ballot used in the election which the act requires (K.S.A. 1978 Supp. 27-328) provides inadequate notice to voters of the changes to be made if the measure passes. The following discussion will center on the last four of these possible problems. In light of a previous opinion of this office dealing with the Equal Protection objection (No. 78-283), with which we concur, it need not be addressed again.

Turning to the "special" law objection, it should be noted that the Surplus Property and Public Airport Authority Act, K.S.A. 27-315 et seq., was first enacted in 1965, and was subsequently amended in 1970 and 1972. The amendments altered a number of the act's provisions, but kept the scope of the act applicable to all cities, regardless of the county in which they are located. In 1978, however, an entire new enactment was passed, and now appears at K.S.A. 1978 Supp. 27-327 et seq. While dealing with much the same subject matter, these new provisions were clearly applicable only to certain counties and cities, a fact made clear by K.S.A. 1978 Supp. 27-328 (as amended by L. 1979, ch. 114, §3):

> "The provisions of this act shall apply to: (1) Any county having a population of more than one hundred twenty-five thousand (125,000) and less than two hundred thousand (200,000) which has an assessed taxable tangible valuation of more than four hundred million dollars ($400,000,000), in which the question of the adoption of the provisions of this act shall have been submitted to and shall have been approved by the qualified electors of the county in which the manner provided herein, and in which the United States air force has or shall hereafter acquire, maintain, operate or control an air base, which air base has been or shall hereafter be declared surplus or is otherwise available

> for disposition by the United States or any of its agencies; and (2) to any city of the first class located in any such county . . ."

Due to the above limitations, at the present time the provisions of the act apply only to one county (Shawnee) out of the 105 counties in Kansas and to the only first class city located therein (Topeka). Nor does it appear likely that the act will apply to any other counties or first class cities in the foreseeable future. According to data contained in the 1979 Kansas Directory at pages 229 and 234, only Shawnee and Wyandotte counties fall within the required population range. Sedgwick and Johnson counties exceed the upper limit by a considerable degree, while the two counties closest to the lower limit, Reno and Douglas, still fall almost 50,000 short of the 125,000 level. Additionally, neither county has any airport facilities which were or now are owned by the federal government. While Wyandotte County does fall within the population and valuation limits and contains a first class city (Kansas City), it too lacks any airport facility upon which the provisions of 27-327 et seq. could act. Considering the highly urbanized nature of Wyandotte County, together with its small size, it would appear unlikely that any such facility could be built there in the future.

Given the above facts, it remains to examine Kansas statutory and case law authority dealing with "special," as opposed to "general," laws. The basis for this distinction is Art. 2, Sec. 17 of the Kansas Constitution, which prior to 1974 stated that: "All laws of a general nature shall have a uniform operation throughout the state; and in all cases where a general law can be made applicable, no special law shall be enacted . . . ." (Emphasis added.) This provision gave rise to numerous court cases where statutes much like the one here were attacked as special, in that they affected only one city or county. The court often invalidated these acts which made use of population and assessed valuation figures to restrict the scope of the enactment, where a general law would have worked just as well. See Berentz v. Bd. of Com'rs of City of Coffeyville, 159 Kan. 58 (1944); Carson v. Kansas City, 162 Kan. 455 (1947); Kansas City v. Robb, 164 Kan. 577 (1948); and State ex rel. v. Bd. of Education, 173 Kan. 532 (1952).

However, Art. 2, Sec. 17 was amended in 1974, with the underscored language above being deleted. As a result, only general laws now have to be of uniform operation. Since by its terms this law is applicable only to one, perhaps two, counties, it is not a general law, and is therefore outside the scope of Art. 2, Sec. 17 as it now reads. Accordingly, the act cannot be voided merely because it is not of uniform application.

Your next objection has to do with the population of Shawnee County, which according to some sources, is less than the 175,000 figure required by the act as it originally read. K.S.A. 1978 Supp. 27-328. For example, the federal government, for purposes of revenue sharing, recognized the population of Shawnee County as 153,114 in the period 1977/1978. Conversely, figures reported by the county appraiser and compiled by the State Board of Agriculture show the level to be 180,034 as of January 1, 1978. Kansas Directory, 1979, page 229. As a result, whether the figure is met by Shawnee County is unclear.

However, given the changes made in the act by the 1979 Legislature (L. 1979, ch. 114, §3), this is no longer a problem. That section alters the minimum population requirement from 175,000 to 125,000, a figure which Shawnee County would clearly meet. Additionally, Section 3 makes it clear that for any county to which the act applied before July 1, 1979 (i.e., Shawnee), the State Board of Agriculture figure is to be utilized in determining whether the population requirements are met. As noted above, this figure meets the requirements of both the original act and the act as amended.

Thirdly, it could also be argued that the form of the ballot required by the act (K.S.A. 1978 Supp. 27-328) does not provide adequate notice of what is being voted on, as is required by K.S.A. 1978 Supp. 10-120. Specifically, it might be alleged that the purpose for which the levy is to be made is not made clear by the statutorily mandated language, which states as follows:

> "Shall the county of _____ (name of county) adopt the provisions of 1978 Senate Bill No. 564, providing for a city-county airport authority with ability to levy up to 1.85 mills county-wide to replace the current city airport authority with ability to levy up to 3.00 mills city-wide?" (Emphasis added.)

In view of this language, it would be our opinion that such an argument is without merit. "Replace" is commonly understood and defined to mean the substitution of one thing for another, or the putting of something new in the place of something now there. The language used herein indicates that the "current city airport authority," along with up to a levy of 3.00 mills, is to be removed and substituted by a "city-county airport authority" with a lower levy of up to 1.85 mills. Furthermore, we note that K.S.A. 1978 Supp. 10-120 deals with bond elections, which is not the subject matter at issue here. As such, the applicability of that section is open to question.

It could also be alleged that the act is an unconstitutional delegation of the power of the legislature, in that a tax may be imposed upon property within the county of up to 1.85 mills, pursuant to K.S.A. 1978 Supp. 27-333, without the approval of any legislative official. We would find such a challenge unpersuasive for the following reason. At the same time Art. 2, Sec. 17 was amended in 1974, Art. 2, Sec. 21 was changed to read: "[t]he legislature may confer powers of local legislation and administration upon political subdivisions." Under the terms of the act [at K.S.A. 1978 Supp. 27-330(a)], the public airport authority is declared to be a political and taxing subdivision, and so may legally use the powers conferred on it by the legislature, including the powers to tax and to acquire air easements through eminent domain. Additionally, we note that, while the airport authority directors themselves are not elected, they are appointed by elected officials (three by the Shawnee County Commissioners and two by the Mayor of Topeka). Also, the upper limit of the tax they may impose is set by the legislature, the members of which also are elected.

In conclusion, it is our opinion that K.S.A. 1978 Supp. 27-327 et seq. are not in violation of the Equal Protection clause of the 14th Amendment to the U. S. Constitution, and is not a special law or an unconstitutional delegation of power under Art. 2 of the Kansas Constitution. Additionally, Shawnee County meets the population figures of the act, and the wording of the ballot used to enact the authority gives adequate notice to voters of the change to be made if the measure passes.

Very truly yours,

Robert T. Stephan

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Jeff Southard

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Assistant Attorney General

RTS:BJS:JSS:gk

Enclosure: Attorney General Opinion No. 78-283