



STATE OF KANSAS

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June 6, 1980

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ATTORNEY GENERAL OPINION NO. 80-125

The Honorable Steve Whetstine  
Mayor, City of Rose Hill  
112 North Rose Hill Road  
P.O. Box 175  
Rose Hill, Kansas 67133

Re: Cities of the Third Class--Qualifications of  
Officers--Appointment of Residents to City Offices

Synopsis: The requirements of K.S.A. 15-209 give a city of the third class no option but the appointment of city residents to the offices of city clerk and city treasurer. However, pursuant to Article 12, Section 5(c) of the Kansas Constitution, the city may adopt a charter ordinance by which the city may exempt itself from the provisions of K.S.A. 15-209 and thereby eliminate said residency requirement. Cited herein: K.S.A. 15-209, Kan. Const., Art. 12, Sec. 5(c).

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Dear Mayor Whetstine:

You have asked for our opinion whether the city of Rose Hill, a city of the third class, may appoint non-residents to the offices of city clerk and city treasurer. As you have correctly noted, K.S.A. 15-209 mandates these positions be filled by qualified electors of the city, persons who reside within the city limits. You ask whether a non-resident may be appointed if the city receives no applications from residents. You also inquire whether the city is obligated to hire a resident who is not qualified to do the city job over a non-resident who is so qualified.

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In our judgment, the requirements of K.S.A. 15-209 leave the city with no option but the appointment of city residents to the positions about which you have inquired. It is important to note that the statute does permit the appointment of non-residents to the posts of municipal judge, city attorney, and as law enforcement officers, including such persons who also serve in such capacities for another municipality or public agency. The statute makes no such exceptions for the offices of city clerk and city treasurer.

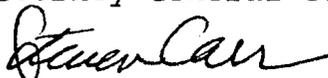
However, since the statute in question is part of an enactment of the legislature which is not uniformly applicable to all cities, limited in its application only to cities of the third class, the city may, by charter ordinance, exempt itself from the provisions of K.S.A. 15-209, or provide additional and substitute provisions therefor, and thereby eliminate the residency requirement imposed for the city offices in question. Article 12, Section 5 of the Kansas Constitution, known as the home rule amendment, empowers the city to elect, in the manner prescribed by subsection (c) of the amendment [Kan. Const., Art. 12, Sec. 5(c)], "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." K.S.A. 15-209 is neither an enactment prescribing limits of indebtedness nor is it an enactment, or part of an enactment, which applies uniformly to all cities. Accordingly, the city may exempt itself therefrom.

However, we think it important to note that adoption of a charter ordinance exempting the city from K.S.A. 15-209 will not address the city's concern immediately. Please note that subsection (c)(3) of the home rule amendment [Kan. Const., Art. 12, Sec. 5 (c)(3)] prescribes that "[n]o charter ordinance shall take effect until sixty days after its final publication." That subsection further provides that if within the said sixty days a petition signed by ten percent or more of the number of the city's electors who voted at the last regular city election is presented to the city clerk, the proposed charter ordinance shall not take effect until approved by a majority of the city electors voting in a referendum thereon.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven Carr  
Assistant Attorney General