



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

July 8, 1980

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ATTORNEY GENERAL OPINION NO. 80- 144

Mr. Don Vsetecka  
Finney County Attorney  
201 North Main  
Garden City, Kansas 67846

Re: Counties and County Officers--General Provisions--  
Home Rule Powers

Synopsis: The exercise of the county home rule power is restricted or limited by, inter alia, "all acts of the legislature concerning elections . . . and the election of county officers." Thus, a charter resolution by which a county would exempt itself from the provision of K.S.A. 1979 Supp. 19-701, which statute provides for the election of county attorneys, is an impermissible and invalid exercise of the county home rule power. Cited herein: K.S.A. 1979 Supp. 19-101a, as amended by L. 1980, chs. 84, 85, K.S.A. 1979 Supp. 19-701, K.S.A. 22a-101, K.S.A. 1979 Supp. 22a-108.

\* \* \*

Dear Mr. Vsetecka:

You have requested our opinion whether the Finney County Board of County Commissioners, by charter resolution, may exempt the county from the provisions of Kansas law pertaining to county attorneys, K.S.A. 1979 Supp. 19-701 et seq., and establish the office of District Attorney in Finney County. You have submitted a copy of Finney County Charter Resolution No. 11-80 for our review in conjunction with your request.

Although the county would establish the office of "district attorney," Section 1 of the resolution declares the district attorney to be "an executive officer of Finney County, with said office constituting a separate entity within said county for administrative purposes." Thus, it appears that the Finney County "district attorney" would not

serve as prosecutor for the entire twenty-fifth judicial district, of which Finney County is a part, as do the district attorneys in the several judicial districts noted in your letter, as prescribed by state law. In practical effect, then, the resolution in question creates a full-time county attorney position for Finney County and gives such position a new title.

K.S.A. 1979 Supp. 19-101a, as amended by L. 1980, chs. 84, 85 (amendments not relevant to your inquiry), provides, in pertinent part, as follows:

"(a) 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 [certain enumerated] limitations, restrictions, or prohibitions: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties; . . . seventh, counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers; . . ." (Emphasis added.)

You argue that the provisions of Kansas law relating to the office of county attorney do not apply uniformly to all counties because five counties, whose territories are coextensive with the territories of judicial districts, are served by district attorneys as provided by state law. See K.S.A. 22a-101, K.S.A. 1979 Supp. 22a-108. K.S.A. 1979 Supp. 19-701 provides, in pertinent part, that "[e]xcept as otherwise provided by law, beginning with the general election in 1976, a county attorney shall be elected in each county. . . ." (Emphasis added.) The legislature has, indeed, "otherwise provided" for district attorneys to serve in Sedgwick, Wyandotte, Shawnee, Douglas, and Johnson Counties, as executive officers of the respective judicial districts in those counties. Thus, as you have correctly noted, the provisions of K.S.A. 1979 Supp. 19-701 et seq. do not apply uniformly to all counties in Kansas.

However, we cannot agree with you that a county subject to those statutes may exempt itself therefrom by charter resolution because the resolution you have submitted is not, in our judgment, a valid exercise of the county home rule power. Clause seventh of subsection (a) of K.S.A. 1979 Supp. 19-101a (as amended), quoted above, significantly restricts the county home rule power, providing that the county shall be subject to all acts of the legislature, whether uniform or not, concerning elections and the election of county officers. A county attorney is clearly a county officer. Wall v. Harrison, 201 Kan. 600, 603-605 (1968). K.S.A. 1979 Supp. 19-701 provides for the election of the county attorney. Thus, a county is without authority to avoid such provisions altogether or to provide additional or substitute provisions in lieu thereof. Moreover, changing the title of the officer to be elected pursuant to 19-701 clearly falls

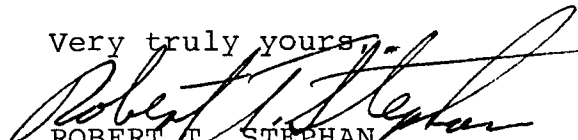
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within this proscription.

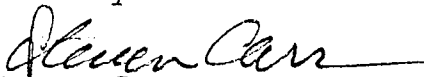
Accordingly, a charter resolution which would provide additional and substitute provisions for K.S.A. 1979 Supp. 19-701 is, in our opinion, an impermissible and invalid exercise of the home rule power in view of the limitation on that power set forth in clause seventh of subsection (a) of K.S.A. 1979 Supp. 19-101a, as amended by L. 1980, chs. 84, 85.

While we have noted other aspects of the charter resolution you have submitted which raise questions as to its validity, we find it unnecessary to consider these other issues, in light of the foregoing conclusion.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven Carr  
Assistant Attorney General

RTS:BJs:SC:pf