



STATE OF KANSAS

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October 8, 1980

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ATTORNEY GENERAL OPINION NO. 80-224

Mr. Jerry J. Hess  
Attorney at Law  
100 Cloverleaf 3 Building  
6405 Metcalf  
Shawnee Mission, Kansas 66202

Re: Cities of the Third Class--Election of Officers--  
Division of City into Wards by Charter Ordinance

Synopsis: As K.S.A. 15-201, which provides for the election of at-large councilmen by cities of the third class, does not apply uniformly to all cities, a third class city may exempt itself by charter ordinance from all or part of the statute, and provide for the election of councilmen from wards. Cited herein: K.S.A. 13-205, 14-103, 15-201, Kan. Const., Art. 12, Sec. 5(b).

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Dear Mr. Hess:

As City Attorney for the City of Westwood, Kansas, you request our opinion regarding K.S.A. 15-201, which concerns among other things the election of municipal councilmen by cities of the third class. You wish our opinion as to whether Westwood may, pursuant to its home rule powers, exempt itself by charter ordinance from that portion of the above statute which requires councilmen to be elected at large, in order to have them selected from wards.

You inform us that Westwood is a third class city and at the present time elects its council members at large in accordance with K.S.A. 15-201. In pertinent part, that statute provides: "Every two (2) years an election shall be held for a mayor, and five (5) councilmen. The

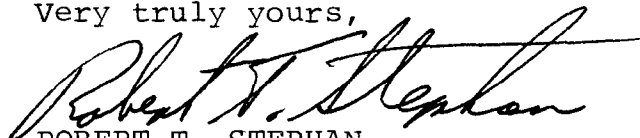
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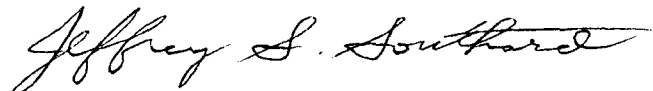
mayor and councilmen shall hold their offices for two (2) years and until their successors are elected and qualified." Unlike other statutes dealing with first class (K.S.A. 13-205) and second class (K.S.A. 14-103) cities, K.S.A. 15-201 does not provide for the division of a third class city into wards for city council election purposes. As you note, because of its application only to such cities, K.S.A. 15-201 is non-uniform in its application.

It is this non-uniformity which in our opinion renders K.S.A. 15-201 subject to the home rule powers granted to cities by Article 12, Section 5(b) of the Kansas Constitution. There, cities are "empowered to determine their local affairs and government," subject only to four specified exceptions. The limited effect of the statute, as noted above, precludes a finding that K.S.A. 15-201 is "an enactment" of the legislature applicable to all cities, while the subject matter is clearly one of local, rather than statewide, concern. Likewise, the statute does not prescribe limits of indebtedness or have anything to do with the levying of any tax or other charge, matters which are beyond the authority of the charter ordinance. Accordingly, the city may exempt itself from the statute and supply substitute provisions through the enactment of a charter ordinance. Indeed, as early as 1969 over 50 cities of the third class had done so, exempting themselves from part or all of K.S.A. 15-201. W. Crummett, City Home Rule in Kansas, 9 W.L.J. 1, 19 (1969).

In conclusion, as K.S.A. 15-201, which provides for the election of at-large councilmen by cities of the third class, does not apply uniformly to all cities, a third class city may exempt itself by charter ordinance from all or part of the statute, and provide for the election of councilmen from wards.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:phf