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February 6, 1981

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ATTORNEY GENERAL OPINION NO. 81-34

The Honorable Jan Meyers
State Senator, Eighth District
State Capitol Bldg., Rm. 128-S
Topeka, Kansas 66612

Re: Taxation--Limitations on Tax Levies--Charter Resolution
Exempting County from Limitation on Tax Levy for Library

Synopsis: The Johnson County Board of County Commissioners may adopt a charter resolution exempting Johnson County from the limitation imposed by K.S.A. 1980 Supp. 79-1947 on the tax levy for establishment and maintenance of a library. Cited herein: K.S.A. 1980 Supp. 19-101a, K.S.A. 19-101b, 19-2654, K.S.A. 1980 Supp. 19-2680, 79-1947, Kan. Const., Art. 2, §17.

* * *

Dear Senator Meyers:

You inquire whether the Johnson County Board of County Commissioners may adopt a charter resolution exempting the county from the limitation imposed by K.S.A. 1980 Supp. 79-1947 on the tax levy for establishment and maintenance of a library in order to permit an increase in the mill levy rate for such purpose.

K.S.A. 1980 Supp. 79-1947 imposes tax levy limitations on the several counties for a number of county functions. That section imposes levy limitations, in pertinent part, as follows:

"The authority of the board of county commissioners of each of the several counties to fix a rate of levy annually for the following county purposes, is hereby limited as follows:

. . . .

"Library: Establish and maintain, as authorized by K.S.A. 12-1220, or contract for library service as authorized by K.S.A. 12-1230 1.50 mills

"Library: Establish and maintain within counties designated as an urban area as permitted by section 17 of article 2 of the constitution of the state of Kansas, as authorized by K.S.A. 12-1220 or contract for library service as authorized by K.S.A. 12-1230 2.00 mills"

K.S.A. 19-101b empowers the board of county commissioners of any county to exempt the county from the whole or any part of an act applying to the county, subject to certain limitations, restrictions or prohibitions set forth in subsection (a) of K.S.A. 1980 Supp. 19-101a. One such limitation or restriction is that "counties shall be subject to all acts of the legislature which apply uniformly to all counties." Subsection (a) First of K.S.A. 1980 Supp. 19-101a. Clearly, the statute in question is not an act which applies uniformly to all counties. As noted above, the statute sets a mill levy rate limit for the establishment and maintenance of libraries in counties generally at a rate of 1.50 mills annually while the rate limit in urban area counties is 2.00 mills annually. The statute is nonuniform in other significant respects, setting a lower mill levy rate limit for road and bridge and fund levies in counties not under the county unit system than for counties which provide for construction and maintenance of roads and bridges under the county unit system. The statute further provides that the rates or amounts prescribed "are not intended to and shall not be construed to apply to counties not specifically authorized by law to make such levies." (Emphasis added.)

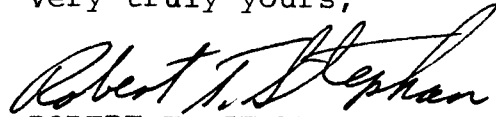
Another limitation or restriction on the county home rule power is set forth in subsection (a) ninth of K.S.A. 1980 Supp. 19-101a: "counties shall have no power to exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions

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for counties having adopted a charter for county government." (Emphasis added.) Under K.S.A. 19-2654, Johnson County is designated as an urban area within the meaning of Article 2, Section 17 of the Kansas Constitution. The provisions of K.S.A. 1980 Supp. 19-2680 et seq. authorize urban area counties to adopt a charter for county government. While it is clear that the statute about which you inquire, K.S.A. 1980 Supp. 79-1947, is nonuniform by reason of an exception made for urban area counties, such exception is not the sole reason for the statute's nonuniformity, as we have noted above. Thus, it is our judgment that the ninth limitation or restriction on the county home rule power does not preclude the adoption of a charter resolution exempting Johnson County from applicable provisions of K.S.A. 1980 Supp. 79-1947.

In summary, we conclude that the Johnson County Board of County Commissioners may adopt a charter resolution exempting Johnson County from the limitation imposed by K.S.A. 1980 Supp. 79-1947 on the tax levy for establishment and maintenance of a library in order to permit an increase in the mill levy rate for such purpose.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:pf