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May 14, 1981

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ATTORNEY GENERAL OPINION NO. 81-112

Mr. John R. Martin
Shawnee County Counselor
Room 205, Courthouse
Topeka, Kansas 66603

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

Synopsis: The Board of County Commissioners of Shawnee County lacks the authority to implement certain provisions of a proposed plan for the taking of an annual county census, as said provisions conflict with legislation that is uniformly applicable to all counties. In addition, said provisions concern a subject which is not a matter of local county business. Cited herein: K.S.A. 1980 Supp. 19-101a, 19-506, K.S.A. 19-515, 79-1801.

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Dear Mr. Martin:

On behalf of the Topeka-Shawnee County Metropolitan Planning Commission, you seek an opinion concerning the legality of a proposed plan for the taking of an annual county census.

You explain the proposed plan would be adopted by the Board of County Commissioners under the authority of K.S.A. 1980 Supp. 19-101a, which grants "home rule" powers to counties, and would involve the use of a form entitled "Local Census Report." The form would be forwarded to each real property owner, along with the owner's real property tax statement, in November of each year. Each property owner would be required to complete the form, indicating the number of persons who reside at the

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property as of December 1. The form would be returned to the county treasurer at the time the real property taxes were paid. As part of this proposed plan, the board of county commissioners would adopt a resolution which would make it mandatory that each property owner complete the form, and that the county treasurer refuse to accept payment of real property taxes, if the tender of tax payment was not accompanied by the completed census report.

You indicate the question raised by the proposed plan is whether the provision prohibiting the county treasurer from accepting payment of real property taxes, without submission of the completed census report, conflicts with laws applying uniformly to all counties respecting the collection of real property taxes. If such a conflict exists, the restrictions in K.S.A. 1980 Supp. 19-101a would prohibit the county from including such a provision in its proposed method of taking an annual census.

In our judgment, such a provision would conflict with three statutes that are uniformly applicable to all counties. Those statutes are K.S.A. 1980 Supp. 19-506, K.S.A. 19-515 and 79-1801.

In K.S.A. 1980 Supp. 19-506, the legislature has prescribed that it "shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid to him or her." (Emphasis added.) Under K.S.A. 79-1801, tax moneys of not only the county but of all taxing districts within the county are required to be collected by the county treasurer. Additionally, K.S.A. 19-515 provides that the county treasurer of each county shall be the "collector of taxes therein, and shall perform such duties in that regard as are prescribed by law." (Emphasis added.)

If the proposed plan for the taking of an annual county census were implemented, the provision prohibiting the county treasurer from accepting tax moneys, without submission of the census report, would require that the county treasurer not fulfill his or her statutory duty to collect tax moneys. The board of county commissioners cannot command that the county treasurer not perform a duty imposed by a statute which is uniformly applicable to all counties. Thus, it is our opinion that the proposed restraint on the county treasurer would conflict with the provisions of statutes that are uniformly applicable to all counties.

Additionally, we believe that since the county treasurer collects taxes on behalf of all the taxing districts, the subject of property tax collection is not a matter of "local legislation and

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administration," under K.S.A. 1980 Supp. 19-101a. Our belief is supported by an observation made in Attorney General Opinion No. 75-66. See Vol. IX, Opinions of the Attorney General, 17. In that opinion, Attorney General Schneider said:

"[I]t must be pointed out that the eight express statutory restrictions and limitations set out in K.S.A. 19-101a are not the only limitations upon the powers of self-government granted by that provision. It empowers counties to 'transact [only] all county business,' and to perform only such powers of 'local legislation and administration' as they deem appropriate. No matter of legislative or administrative concern is an appropriate subject for the exercise of the statutory powers of self-government granted by this section unless it is local in nature and pertains locally to the county." (Emphasis and bracketed material in original.) Attorney General Opinion No. 75-66 at page 5.

While the collection of real property taxes "pertains locally to the county," and "concerns county business," it also pertains to other taxing districts and the business of each such district. Thus, not only could the prohibition suggested by Shawnee County preclude the county from receiving taxes levied by it, said prohibition could preclude other taxing districts from receiving taxes levied by them. In our judgment, the power granted to counties pursuant to K.S.A. 1980 Supp. 19-101a is not broad enough to allow the county to adopt a policy such as that which is now proposed and which could affect every taxing district in the county. While the county can "transact county business," it cannot, in our judgment, transact the business of other taxing districts.

In an article concerning the home rule power of cities, Professor Barkley Clark, Associate Dean and Professor of Law at the University of Kansas, states:

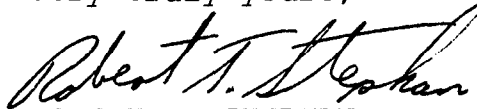
"[T]he court should also be wary of ordinances which may not 'conflict' with statutory law but which have a substantial impact on interests outside the [physical] boundaries of the municipality. After all, these interests may not be represented in city legislative deliberations, and municipal parochialism should not, in the name of home rule, be allowed to trample over adversaries unable to protect themselves." Id. at 677.

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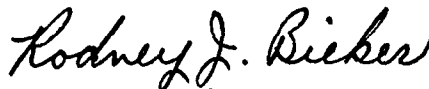
Here, if Shawnee County were to proceed under its proposed plan, it would "trample over" the other taxing districts, and its action might have "a substantial [adverse] impact" on the interests of those taxing districts.

Based upon the foregoing discussion, it is our opinion the Board of County Commissioners of Shawnee County lacks the authority to implement the proposed plan for the taking of an annual census, as said plan includes a matter which conflicts with legislation that is uniformly applicable to all counties. In addition, the provisions concern a subject which is not a matter of local county business.

Very truly yours,



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RTS:BJS:RJB:jm