



STATE OF KANSAS

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February 5, 1982

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ATTORNEY GENERAL OPINION NO. 82-23

The Honorable David F. Louis
State Representative, Eighteenth District
Rm. 174-W - Statehouse
Topeka, Kansas 66612

Re: Taxation -- Miscellaneous Provisions -- Delinquent
Taxes and Assessments

Synopsis: Where uniformly applicable statutes impose a duty upon a county officer to approve plats or to issue building permits, a county may not utilize home rule power to require a county officer to collect all delinquent taxes and special assessments owed on unrelated parcels of land before approving plats or issuing building permits to the landowner. Where the statutes are non-uniform, however, the county may act by charter resolution to impose such requirements. Cited herein: K.S.A. 12-401, K.S.A. 1980 Supp. 19-101a, K.S.A. 58-2001, 58-2005, K.S.A. 1980 Supp. 79-2401a.

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Dear Representative Louis:

You explain that Johnson County is experiencing difficulties in collecting delinquent taxes and special assessments from real estate developers and builders. You indicate this problem is aggravated by the fact that the provisions of K.S.A. 1980 Supp. 79-2401a permit a partial redemption of real property sold at a tax sale, through the payment of an amount determined under the statute. Thus, through the use of this right of partial redemption, the real property tax liens imposed upon the real estate of said developers and builders are not foreclosed, and the property is not sold at tax foreclosure sales.

Based upon these facts, you ask if it would be possible for counties, under home rule power, to require that all delinquent taxes and special assessments, owed by a person on any

property within the county, be paid in full before building permits are issued, or plat approval is given, for unrelated parcels of land in which the delinquent taxpayer has an interest. You have not indicated which statutes relating to approval of plats and the issuance of building permits would be involved in the county's actions.

K.S.A. 1980 Supp. 19-101a permits counties to transact county business and perform powers of local legislation and administration, subject to certain enumerated restrictions. The first restriction states that "counties shall be subject to all acts of the legislature which apply uniformly to all counties." *Id.* Thus, any act governing plat approval or the issuance of building permits which is uniformly applicable to all counties must be adhered to by the county.

We note that K.S.A. 58-2005 imposes a duty upon the county engineer to enforce the provisions of K.S.A. 58-2001 et seq. and to review subdivision plats before said plats may be recorded. We note further that K.S.A. 12-401 et seq. impose duties upon certain county officers to approve, record and preserve maps and plats of cities and townships.

In Attorney General Opinion No. 81-112, this office considered the issue of whether a county could prohibit the county treasurer from accepting tax moneys from individuals who failed to submit a proposed county census report. The Attorney General first cited statutes uniformly applicable as to counties which imposed the duty upon the county treasurer to collect tax moneys, then stated:

"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."

We believe the same rationale is applicable in this instance. Where statutes which are uniformly applicable as to counties impose a duty upon a county officer to approve, review, record or file plats or to issue building permits, the county

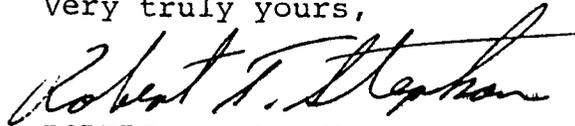
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may not restrain performance of that duty by imposing additional conditions precedent to its exercise.

However, if statutes in question are not uniformly applicable with regard to counties, in our opinion, the county may utilize home rule powers to establish requirements which must be met before permitting issuance of building permits or approving plats, since this would fall within the definition of "local legislation and administration."

In conclusion, where uniformly applicable statutes impose a duty upon a county officer to approve plats or to issue building permits, a county may not utilize home rule power to require a county officer to collect all delinquent taxes and special assessments owed on unrelated parcels of land before approving plats or issuing building permits to the landowner. Where the statutes are non-uniform, however, the county may act by charter resolution to impose such requirements.

Very truly yours,



ROBERT T. STEPHAN
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RTS:BJS:BLH:hle