



STATE OF KANSAS

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July 28, 1982

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CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 82- 161

Mr. David H. Heilman
Council Grove City Attorney
200 West Main Street
Council Grove, Kansas 66846

Re: Cities and Municipalities--Code of Procedure for
Municipal Courts--Costs; Home Rule Powers

Synopsis: A city may, through the adoption of a valid charter ordinance, exempt itself from the provisions of K.S.A. 12-4112, and provide for the assessment of court costs in municipal court cases. Cited herein: K.S.A. 12-4101, 12-4102, 12-4105, 12-4112, 12-4411, 12-4701, Kan. Const., Art. 12, §5.

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Dear Mr. Heilman:

As city attorney for the city of Council Grove, Kansas, you request our opinion as to whether the city may exempt itself from the provisions of K.S.A. 12-4112, which statute is a section of the Kansas Code of Procedure for Municipal Courts, and provides that "no person shall be assessed costs for the administration of justice in any municipal court case, except for witness fees and mileage as set forth in K.S.A. 12-4411."

The above-quoted provision relating to assessment of court costs applies to the municipal court of the city of Council Grove, as well as all other municipal courts in the state. K.S.A. 12-4102. However, under Article 12, Section 5 of the Kansas Constitution, which is popularly known as the "city home rule amendment," the city of Council Grove may, by charter ordinance, elect to exempt

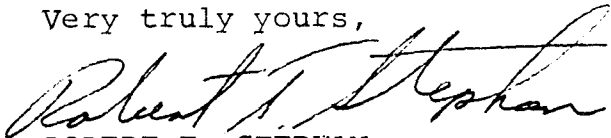
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itself from the provisions of said statute, unless the Code of Procedure for Municipal Courts is an "enactment applicable uniformly to all cities." In this regard, the Kansas Supreme Court held, in City of Junction City v. Griffin, 227 Kan. 332, 337 (1980), that the Kansas Code of Procedure for Municipal Courts, K.S.A. 12-4101 through 12-4701, was not applicable uniformly to all cities, and, therefore, that the City of Junction City could validly exempt itself from the provisions of said code. The Court explained the non-uniformity of the Code as follows:

"The Kansas Code of Procedure for Municipal Courts, K.S.A. 12-4101 through 12-4701, although an enactment of statewide concern, is not applicable uniformly to all cities by reason of K.S.A. 12-4105 requiring municipal judges in first class cities to be attorneys while permitting second and third class cities to have lay judges."
227 Kan. at 337.

In accordance with the decision in the Griffin case, it is our opinion that the city of Council Grove may, through the adoption of a valid charter ordinance, exempt itself from the provisions of K.S.A. 12-4112, and provide for the assessment of court costs in municipal court cases.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm