



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 13, 1982

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ATTORNEY GENERAL OPINION NO. 82- 200

Michael E. Cleary
Assistant County Attorney
Harvey County Courthouse
Newton, Kansas 67114-0687

Re: Counties and County Officers -- Planning and
Zoning -- Home Rule Powers; Limitations

Synopsis: K.S.A. 19-2921 is uniformly applicable to all
counties and, therefore, is not subject to char-
ter resolution pursuant to home rule powers granted
in K.S.A. 19-101a et seq. Cited herein: K.S.A.
19-101a, 19-2916b, 19-2920, 19-2921.

* * *

Dear Mr. Cleary:

You have requested an opinion from this office regarding
whether "home rule" powers authorize Harvey County to enact
local legislation to provide a different rule of law than
is contained in K.S.A. 19-2921. County "home rule" power
is granted in K.S.A. 19-101a, which provides in pertinent
part:

"(a) Counties are hereby empowered to transact
all county business and perform such powers of
local legislation and administration as they
deem appropriate, subject only to the follow-
ing limitations, restrictions, or prohibitions:
First, counties shall be subject to all acts
of the legislature which apply uniformly to
all counties" (Emphasis added.)

Michael E. Cleary
Page Two

We believe that the resolution of your inquiry turns on whether K.S.A. 19-2921 is uniformly applicable to all counties, as none of the other specified statutory limitations are applicable. K.S.A. 19-2921 states:

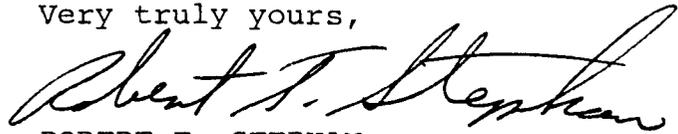
"Regulations adopted under authority of this act shall not apply to the existing use of any buildings or land and shall not prevent the restoration of a building damaged not more than fifty percent (50%) of its assessed valuation by fire, explosion, act of God, or the public enemy, or prevent the continuance of the use of such building or part thereof as such use existed at the time of such damage, but shall apply to any alteration of a building to provide for a change in such use of any building or land after the effective date of any such zoning resolution: Provided, That no determination nor rule nor regulation shall be held to apply to the use of land for agricultural purposes, nor for the erection or maintenance of buildings thereon for such purposes so long as such land and buildings erected thereon are used for agricultural purposes and not otherwise."

K.S.A. 19-2921 was originally enacted in L. 1939, ch. 164, §8. Our review of this act indicates that it was uniformly applicable when passed in 1939. We further note that K.S.A. 19-2921 was amended in 1965 (L. 1965, ch. 178, §11). However, the amended version of K.S.A. 19-2921 was also passed as part of an enactment of the legislature which is uniformly applicable to all counties.

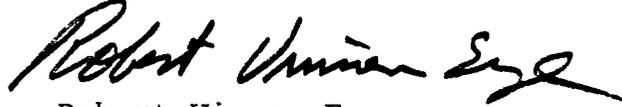
We are also cognizant that the planning and zoning statutes include K.S.A. 19-2916b and 19-2920(b) which are nonuniform in their application. The former statute, enacted in 1953, is limited in its application to counties between 150,000 and 200,000 population (L. 1953, ch. 168 §1), while the latter statute was amended in 1981 to include paragraph (b) which applies only to Franklin County, Kansas. See L. 1981, ch. 123 §1(b). However, in our opinion, the presence of these two nonuniform statutory provisions does not affect the uniform application of K.S.A. 19-2921. Our reasoning here centers on the fact that neither K.S.A. 19-2916b nor 19-2920b was a part of any legislative enactment which included K.S.A. 19-2921. Hence, K.S.A. 19-2921 remains uniformly applicable and is not subject to charter resolution because of the limitation imposed by K.S.A. 19-101a, First. Cf. City of Junction City v. Griffin, 227 Kan. 333 (1980).

In conclusion, K.S.A. 19-2921 is uniformly applicable to all counties and, therefore, not subject to charter resolution because of the limitation imposed by K.S.A. 19-101a, First.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye
Assistant Attorney General

RTS:RVE:hle