



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 2, 1983

MAIN PHONE: (913) 296-22
CONSUMER PROTECTION: 296-
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 83- 129

Lyndus A. Henry
County Counselor
Johnson County Courthouse
Olathe, Kansas 66061

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

Cities and Municipalities -- Governmental Organi-
zation -- Consolidation of Operations, Procedures
and Functions; Applicability to Executive Reorgani-
zation

Counties and County Officers -- Parks, Museums,
Lakes and Recreation Grounds -- Johnson County
Park and Recreation District

Counties and County Officers -- Mental Health
Centers -- Effect of County Home Rule Statute

Cities and Municipalities -- Libraries -- Effect
of County Home Rule Statute

Synopsis: The Kansas Governmental Reorganization Act, K.S.A. 12-3901 et seq., authorizes political subdivisions of the state, including counties, to consolidate offices and agencies of the subdivision in the interest of efficiency and to avoid duplication. Consolidation means the replacement of two or more agencies or offices with a single new office. The proposed Johnson County executive reorganization apparently does not involve consolidation and thus is not authorized by K.S.A. 12-3901 et seq.

The county home rule statute, K.S.A. 1982 Supp. 19-101a, as amended, authorize counties to transact all county business and to enact local legislation except that counties are subject to acts

of the legislature which apply uniformly to all counties. If there are no statutes uniformly applicable, counties may enact local legislation not contrary to state statutes by ordinary resolution. If proposed local legislation conflicts with or is contrary to nonuniform state legislation the county must act through charter resolution.

The Johnson County Parks and Recreation District is a body corporate and politic, empowered by state statute to exercise the powers of a public corporation. The proposed Johnson County executive reorganization would dissolve the independent taxing district. The statutes governing the district do not provide for dissolution of the district by the county and the county home rule statutes do not grant the county the power to dissolve the district, duly created under K.S.A. 19-2859 - 19-2881b.

The state statutes concerning the Mental Health and Mental Retardation Boards and the Library Board are uniform in application to counties and cannot be modified by the county through the exercise of home rule powers. Cited herein: K.S.A. 12-1219, 12-1222, 12-1225, 12-3901 et seq., K.S.A. 1982 Supp. 19-101a, as amended by L. 1983, chs. 91 and 92, K.S.A. 19-101b, 19-101c, 19-2859, 19-2861, 19-2862, 19-2863, 19-2867, 19-2868, as amended by L. 1983, ch. 101, K.S.A. 19-4001, 19-4002(a), 19-4003, 19-4009.

*

*

*

Dear Mr. Henry:

As Johnson County Counselor and on behalf of the Johnson County Commissioners you have requested an opinion from this office on whether Johnson County may use county home rule powers, as provided in K.S.A. 1982 Supp. 19-101a, as amended by L. 1983, chs. 91 and 92, and the authority granted by K.S.A. 12-3901 et seq., the Governmental Reorganization Act, in its executive reorganization efforts. Your specific inquiry concerns the effect of the above cited statutes upon efforts to bring the Johnson County Parks and Recreation Commission, Library Board, and Mental Health Board and Mental Retardation Board into the county executive structure as departments. In your letter you expressed the opinion that the Governmental Reorganization Act, K.S.A. 12-3901 et seq., in conjunction with county home rule power provided

the authority to accomplish the proposed reorganization. It is our opinion that K.S.A. 12-3901 et seq., is not applicable to this particular situation.

K.S.A. 12-3901 provides the following statement of purpose:

"It is the purpose of this act to authorize and permit political and taxing subdivisions [includes counties, library districts, park districts, see K.S.A. 12-3902] of this state to more efficiently and effectively serve the needs of their constituents by consolidating or cooperating in the consolidation of operations, procedures and functions of offices and agencies of such subdivisions which may be more efficiently and effectively exercised or provided by a single office or agency."
(Emphasis added.)

Upon a determination that duplication exists in the operations, procedures or functions of any of the offices or agencies of any political or taxing subdivision, or upon determining that the procedures and functions of any offices or agencies may be more effectively and efficiently exercised by a consolidated agency, the act authorizes the governing body of such subdivisions to:

"consolidate any or all of the operations, procedures or functions performed or carried on by such offices or agencies by the passage of a resolution . . . setting out the time, form and manner of consolidation and designating the surviving office or agency." K.S.A. 12-3903.

The consolidated office or agency "shall be the successor in every way to the powers, duties and functions now or hereafter granted to or imposed by law upon the offices or agencies so consolidated." K.S.A. 12-3907. K.S.A. 12-3901 et seq., authorizes the creation of a new office or agency to replace the consolidated offices or agencies. The act apparently does not authorize the type of reorganization contemplated in Johnson County. In Attorney General Opinion No. 82-135 it is noted that K.S.A. 12-3903 imposes two conditions precedent to the consolidation of the operations or functions of governmental offices or agencies. The first condition, and the one most important here, is that there must be two or more offices or agencies with operations, procedures or functions susceptible to consolidation.

It is our understanding that the county wishes to bring the four services mentioned under the county umbrella where they will become separate county departments. We do not understand the purpose of the reorganization to be the replacement or consolidation of the Boards or Commissions which currently provide the services mentioned. Consolidation, which we define here as the unification of one or more offices or agencies through the dissolution of existing offices and the creation of a single new office, does not appear to be a part of the county plan. It is thus our opinion that K.S.A. 12-3901 et seq., does not authorize the reorganization proposed by the Johnson County Commissioners.

We now turn to the question of whether the reorganization may be accomplished under the authority granted by the county home rule statutes. K.S.A. 1982 Supp. 19-101a, as amended, provides in relevant part:

"(a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions, or prohibitions: (1) counties shall be subject to all acts of the legislature which apply uniformly to all counties; . . .

"(b) Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) of this section is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties; such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b."

K.S.A. 19-101b provides:

"(a) Any county may by charter resolution elect in the manner prescribed in this section that the whole or any part of any act of the legislature applying to such county other than those acts concerned with those limitations, restrictions or prohibitions set forth in subsection (a) of K.S.A. 19-101a shall not apply to such county."

We also note that the home rule powers granted counties by the act are to be liberally construed "for the purpose of giving to the counties the largest measure of self-government. K.S.A. 19-101c. Under these statutes, however, counties are prohibited from passing any legislation which is contrary to or in conflict with any act of the state legislature which is of uniform application to all counties throughout the state. In apparently the only Kansas appellate court case construing county home rule, the Kansas Supreme Court discussed factors to be considered in determining whether a state law has uniform application.

"The legislature may reserve exclusive jurisdiction to regulate in a particular area when an intent is clearly manifested by state law to pre-empt a particular field by uniform laws made applicable throughout the state. See discussion in Garten Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 623, 549 P.2d 864 (1976); City of Junction City v. Lee, 216 Kan. at 502-03; and City of Lyons v. Suttle, 209 Kan. 735, 738, 498 P.2d 9 (1972).

.....

"The rule denying power to a local body when the state has pre-empted the field is a rule of necessity based upon the need to prevent dual regulation which would result in uncertainty and confusion; and whether the state has pre-empted the field to the exclusion of local legislation depends not only on the language of the statutes, but upon the purpose and scope of the legislative scheme." (Citations omitted.) Missouri Pacific Railroad v. Board of Greeley County Comm'rs, 231 Kan. 225, 227-28 (1982).

On the question whether local law conflicts with a state law the court said:

"The primary method of determining whether an ordinance or resolution of a county is inconsistent with a statute of the state is to see whether the local law prohibits what the state law permits or the state law prohibits what the local law permits." 231 Kan. at 227.

In this context we will discuss the state statutes governing each of the local services which the county proposes to make departments.

Johnson County Parks and Recreation District

The Johnson County Park and Recreation District was created by the state legislature in 1953. K.S.A. 19-2859 - 19-2881b. This state legislation is nonuniform as it applies only to Johnson County and thus the subject matter of the legislation would appear to be amenable to the exercise of county home rule power. K.S.A. 1982 Supp. 19-101a(a)(1) as amended, and (b). This matter, however, is not only a question of county home rule, it also concerns the ability of the county to effectively dissolve an independent taxing body created pursuant to state statute.

The Johnson County Park and Recreation District is a body corporate possessing the power to levy taxes, to issue general obligation bonds and revenue bonds, to sue and be sued, to acquire property by eminent domain and generally to exercise the powers of a public corporation. See K.S.A. 19-2862; K.S.A. 19-2867; 19-2868. The District's governing board is composed of seven commissioners appointed by the Board of County Commissioners. K.S.A. 19-2863. The powers of the district governing board are set forth at length in K.S.A. 19-2868, as amended by L. 1983, ch. 101. That statute provides in part:

"The board shall have power:

"(a) To finance, operate, improve and maintain the parks and playgrounds of the district as provided in this act.

"(b) To accept by gift or devise, to purchase, lease and to condemn real estate for use as parks and playgrounds for the district

. . . .

"(d) To levy taxes for the acquisition of lands and improvements . . . of the parks and playgrounds

"(e) To issue bonds of the district for acquiring real estate and the improvement thereof . . .

"(f) To appoint park and recreation supervisory personnel and employ such other employees, . . . as may be necessary for the proper and adequate operation . . . of the park and recreation district

. . . .

"(k) To do and perform all other things provided by this act or amendments thereto and to have all the powers prescribed by this act, and to carry out and exercise the powers of the district as its governing body."

The "Table of Organization" attached to your opinion request indicates that in the reorganized structure of county government the county commissioners will have the power to hire and fire park and recreation personnel and require that the Park and Recreation district comply with county purchasing, personnel and budget policies. This authority is in conflict with the statutes granting such authority to the district governing board and, in effect, abolishes the park and recreation district creating instead a park and recreation department within the county executive structure.

Although the park and recreation district was established by action of the county (K.S.A. 19-2861), the county acted in accordance with procedures established by state statute. Until very recently that statute also provided procedures for the Board of County Commissioners to dissolve the district. The relevant section, K.S.A. 19-2879, was repealed by the 1983 legislature (L. 1983, ch. 102) thus removing the county's authority to dissolve the district.

In an opinion concerning a city's home rule power to dissolve a public airport authority established by the city, this office concluded that a public airport authority duly created under the Surplus Property and Public Airport Authority Act, K.S.A. 27-315 et seq., was a separate and distinct corporation and was not a "local affair" within the meaning of city home rule provisions and thus could not be dissolved except as provided for by statute. Attorney General Opinion No. 79-262. A similar conclusion is required here.

As in the case of a public airport authority, the Johnson County Park and Recreation District, once created, is empowered by the legislature to levy taxes, issue bonds, sue and be sued, and generally exercise the powers of a separate

political and corporate body. Although the county retains some measure of control in the ability to appoint the governing board of the district, the district's powers are derived from the state and not from the county. The county brings the district into existence, but once it is established, the district is an independent taxing subdivision which is not subject to county control except as specifically provided by statute. Because the District is a separately empowered legal entity and not merely an agency or department of the county, the fact that the act creating the district is nonuniform in application is irrelevant. Simply stated, the District is beyond the scope of "county business" and matters of "local legislation" as those terms are used in K.S.A. 1982 Supp. 19-101a, as amended. The county's power over the district is controlled entirely by the statutes governing and empowering the district. Those statutes do not grant to the county the power to dissolve the district. We conclude therefore, that the Johnson County Parks and Recreation District, duly created under K.S.A. 19-2859 - 19-2881b, and as an independent taxing subdivision, cannot be dissolved by county action under the home rule statutes.

The Library Board

Again, the first question to be answered is whether the state statutes concerning county libraries are uniform in application. The applicable statutes are K.S.A. 12-1218 through 12-1230. K.S.A. 12-1219 provides:

"A municipality [includes county, township or city, K.S.A. 12-1218(2)] may establish and maintain a library in the manner provided in this act. Any library heretofore established shall be maintained in accordance with the provisions of this act, . . ."

While this section seems to express the intent to occupy the field with regard to library regulation another section casts doubt on this view. K.S.A. 12-1222 provides in relevant part:

"Upon the establishment of a library under this act the official head of a municipality shall appoint, with the approval of the governing body, a library board In the case of a county or township library five (5) members shall be appointed, In the case of a city library seven (7) members shall be appointed Provided, That in any city having a population of more than two hundred fifty thousand (250,000) the governing body of such city may . . . appoint ten (10) members to said city library board"

Thus, while K.S.A. 12-1219 indicates an intent that all "municipalities" (counties, townships and cities) be guided by the terms of the act in establishing libraries, K.S.A. 12-1222 makes provisions which are non-uniform with regard to "municipalities." The act is, however, quite uniform in its application to counties, indicating an intent to reserve exclusive jurisdiction to regulate the establishment of libraries in all Kansas counties. As noted above, a local body may not regulate areas where the state has pre-empted the field. Missouri Pacific Railroad v. Board of Greenwood County Comm'rs, 231 Kan. 225 (1982). Considering the scope and purpose the state legislation, which is to provide for establishing local libraries, it is arguably reasonable to conclude that such libraries are amenable to local home rule. It is the opinion of this office, however, that the library act is clearly uniform in its application to all Kansas counties and thus excluded from the parameters of county home rule by K.S.A. 1982 Supp. 19-101a(a)(1), as amended. On this point we note that the proposed reorganization would be contrary to the state statutes governing libraries. Under state statutes the library board is a body corporate and politic composed of members appointed by the county commissioners. K.S.A. 12-1223. It is granted certain powers including the power to:

"(a) To make and adopt rules and regulations for the administration of the library;

. . . .

"(d) to employ a librarian and such other employees as the board shall deem necessary and to remove them and to fix their compensation;

. . . .

"(g) to receive, accept and administer any money appropriated or granted to it by the state or the federal government"
K.S.A. 12-1225.

We understand that in the reorganized structure of county government the county commissioners will have the power to hire and fire library personnel and require that the libraries comply with county purchasing, personnel and budget policies. We conclude that the county may not exempt itself from these statutes either by ordinary or charter resolution.

Mental Health Board and Mental Retardation Board

These separate boards are governed by the same statutes, K.S.A. 19-4001 to 4015. A number of sections in this act, considered along with its scope and purpose, indicate that the legislature intended this act to apply uniformly to all counties which establish community mental health centers. If the legislature has clearly manifested an intent to regulate a particular field, such acts pre-empt local legislation on the subject.

K.S.A. 19-4001 provides in part:

"The board of county commissioners of any county or the boards of county commissioners of two (2) or more counties jointly may establish a community mental health center, and/or community facility for the mentally retarded, which shall be organized, operated and financed according to the provisions of this act

. . . .

"No community mental health center, and/or facility for the mentally retarded, shall be established in said community after the effective date of this act unless and until the establishment of the same has been approved by the secretary of social and rehabilitation services." (Emphasis added.)

K.S.A. 19-4002(a) provides that "[e]very county which establishes a mental health center and/or facilities for the mentally retarded shall establish a community mental health and/or mental retardation governing board." (Emphasis added.)

K.S.A. 19-4003 provides for the duties of the governing boards and K.S.A. 19-4001 indicates that the legislature intended for any mental health or mental retardation center established after the effective date of the act to be governed by its terms. That section provides:

"Nothing contained in this act shall be construed as repealing any existing law nor as affecting any mental health center or facilities for the mentally retarded established by any county under any other law prior to the effective date of this act except as herein otherwise specifically provided; but no county which has heretofore established or shall hereafter establish under any other law a mental center or facilities for the mentally

retarded shall make a tax levy under such other law for a mental health center or facilities for the mentally retarded if it shall establish either singly or jointly a mental health center under the provisions of this act."

It is our opinion that this act "clearly manifests" legislative intent to occupy the field. Therefore, despite a liberal interpretation of county home rule, we conclude that the Johnson County mental health and mental retardation boards cannot be affected by home rule either through ordinary or charter resolution.

We conclude that the Kansas Governmental Reorganization Act, K.S.A. 12-3901 et seq., authorizes political subdivisions of the state, including counties, to consolidate offices and agencies of the subdivision in the interest of efficiency and to avoid duplication. Consolidation means the replacement of two or more agencies or offices with a single new office. The proposed Johnson County executive reorganization apparently does not involve consolidation and thus is not authorized by K.S.A. 12-3901 et seq.

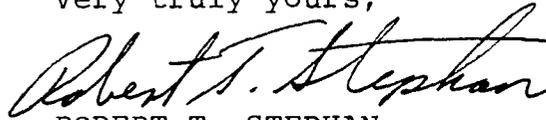
The county home rule statute, K.S.A. 1982 Supp. 19-101a, as amended, authorizes counties to transact all county business and to enact local legislation except that counties are subject to acts of the legislature which apply uniformly to all counties. If there are no statutes uniformly applicable, counties may enact local legislation not contrary to state statutes by ordinary resolution. If proposed local legislation conflicts with or is contrary to nonuniform state legislation the county must act through charter resolution.

The Johnson County Parks and Recreation District is a body corporate and politic, empowered by state statute to exercise the powers of a public corporation. The proposed Johnson County executive reorganization would dissolve the independent taxing district. The statutes governing the district do not provide for dissolution of the district by the county and the county home rule statutes do not grant the county the power to dissolve the district, duly created under K.S.A. 19-2859 - 19-2881b.

Lyndus A. Henry
Page Twelve

The state statutes concerning the Mental Health and Mental Retardation Boards and the Library Board are uniform in application to counties and cannot be modified by the county through the exercise of home rule powers.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

RTS:BJS:MFC:hle