



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 84- 1

Robert J. Watson  
City Attorney  
Legal Department  
Ninth Floor - Municipal Office Bldg.  
One Civic Center Plaza  
Kansas City, Kansas 66101

Re: Cities and Municipalities -- Code for Municipal  
Courts; Powers and Duties -- Contempt Powers

Synopsis: A municipality, through the exercise of constitu-  
tional home rule powers, may grant to the municipi-  
pal court the power to impose contempt sanctions  
against persons who fail to obey the subpoenas of  
a municipal administrative agency. Cited herein:  
K.S.A. 12-4101, 12-4104, 12-4105, 12-4106, 12-4204,  
12-4602, Kan. Const. Art. 12, §5.

\* \* \*

Dear Mr. Watson:

You request our opinion concerning the contempt powers of  
the Kansas City, Kansas, municipal court. Specifically, you  
inquire whether the municipal court may impose contempt sanc-  
tions against persons who fail to honor city administrative  
subpoenas.

We are advised that in 1976, the city commissioners of Kansas  
City, Kansas created the Human Relations Department. Its  
function was to investigate discrimination complaints. In  
1982 the city adopted Ordinance No. 63888 which reads in per-  
tinent part as follows:

"The human relations department of Kansas  
City, Kansas, shall be ordained to receive  
and investigate complaints and to initiate  
its own investigations of racial, religious

and ethnic group tensions . . . ; to apply to the district court through the city attorney after a complaint has been filed, to enjoin violation of the chapter . . . . The human relations department is empowered to hold hearings, subpoena witnesses, take the testimony of any person under oath . . . . In the case of the refusal of any person to comply with any subpoena, issued hereunder, or to testify to any matter regarding which he may be lawfully questioned, the municipal court of the city may, upon application of the human relations department, order such person to comply with such subpoena and to testify; and failure to obey the court's order may be punished by the court as contempt."

It is clear that it is within the city's police powers to establish an anti-discrimination ordinance [see Hutchinson Human Relations Comm. v. Midland Credit Management, Inc., 213 Kan. 308 (1973)], and that the municipal court does have contempt powers (K.S.A. 12-4106). Additionally, we note that administrative agencies usually have the authority to issue subpoenas, 1 Am.Jur.2d Administrative Law, §§86, 89, pp. 883, 886 (1962), but must use the courts to enforce them, supra, §§86, 90, pp. 883, 886, 887.

We are advised that except for K.S.A. 12-4202, the city of Kansas City abides by the Code of Procedure For Municipal Courts, K.S.A. 12-4101 - 12-4602. The powers and duties of the municipal judge are set out at K.S.A. 12-4106 and do not specifically authorize the exercise of the powers provided for in the ordinance. A review of the Code, however, does not lead us to the determination that the statutes are the exclusive source of such authority.

Municipal courts traditionally have been referred to as "police courts" [A New Procedure For Municipal Courts, Wallace M. Buck, Jr., 42 JKBA pp. 7, 8 (1973)], and have had powers limited to determination of alleged criminal violations (K.S.A. 12-4104). However, we must consider the ramifications of Article 12, §5, of the Kansas Constitution. This article, referred to as the Cities Home Rule Amendment has conferred upon municipalities the authority to exercise a broad degree of home rule power. "By virtue of this constitutional amendment cities are no longer dependent upon the state legislature for authority to determine their local affairs and government . . . . They no longer need specific legislative authorization to pass a particular ordinance." City of Junction City v. Griffin, 227 Kan. 332, 334 (1980). See also, City of Junction City v. Lee, 216 Kan. 495 (1975).

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Although our research has disclosed no case concerning your particular question, we believe the Griffin case, supra, is determinative of the issue. Griffin examined the Code of Procedure for Municipal Courts and determined that because K.S.A. 12-4105 was non-uniform, the Code was non-uniform, and therefore, pursuant to Article 12, §5, a municipality could opt out from under the Code provisions by charter ordinance.

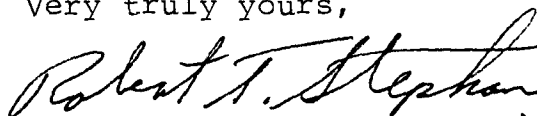
The Court also determined that the Code was not an area of law which the state legislature had impliedly preempted the exercise of municipal home rule powers.

"A strong argument is made that a code of procedure in municipal courts is a matter of statewide concern and should not be left to determination by local government. We are inclined to agree, but the language of the constitutional amendment, which empowers cities to determine their 'local affairs and government,' was never intended as a limitation on the power, so as to restrict it to matters of strictly local concern."  
Griffin, supra, pp. 336, 337.

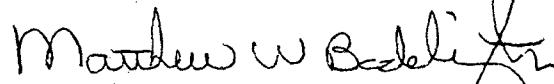
Subsequently, in Andersen Construction Co. v. City of Topeka, 228 Kan. 73 (1980), the Court considered the City's action in going beyond the minimum wage requirement of state law and concluded that where the state had not preempted the field and there was no conflict with state law, the City's action was permissible. Id. at 79. See also, City of Junction City v. Lee, supra.

Therefore, as it has been determined that anti-discrimination ordinances are matters of local concern and that the legislature has not attempted the preemption of municipal court procedures by the Code of Procedure for Municipal Courts, we have little hesitancy in concluding that a municipality, through the exercise of constitutional home rule powers, may grant to the municipal court the power to impose contempt sanctions against persons who fail to obey the subpoenas of a municipal administrative agency.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Matthew W. Boddington  
Assistant Attorney General