



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

January 31, 1984

ATTORNEY GENERAL OPINION NO. 84- 5

The Honorable Elwaine F. Pomeroy
State Senator, Eighteenth District
1415 Topeka Avenue
Topeka, Kansas 66612

Re: Counties and County Officers--General Provisions--
Home Rule Powers; Limitations, Restrictions and
Prohibitions

County and County Officers--County Buildings--
Civic Centers in Certain Counties; Exercise of
Home Rule Power

Synopsis: Utilizing the authority granted by K.S.A. 1983 Supp. 19-15,139 et seq., Shawnee County may issue bonds for the construction or acquisition of "civic and other multi-use public facilities." The authority granted by the act is not limited to the construction or acquisition of a single facility and may be utilized for distinct and separate facilities if such facilities may be defined as civic or other multi-use public facilities.

A county may exempt itself by charter resolution from the particular issue limitations found in non-uniformly applicable statutes like K.S.A. 1983 Supp. 19-15,140 and may authorize the issuance of bonds in amounts greater than that authorized by the statute.

When relying upon home rule the county is subject to the aggregate debt limitations found in K.S.A. 10-306 and the county may not use a charter resolution to exempt from the aggregate debt limitations. The

The Honorable Elwaine F. Pomeroy
Page Two

exemption from aggregate debt limitations established in K.S.A. 1983 Supp. 19-15,141 is available to the county only when the county issues bonds under the authority of K.S.A. 1983 Supp. 19-15,140. Such an exemption is not available if the county chooses to issue bonds pursuant to a charter resolution enacted in the exercise of county home rule.

K.S.A. 1983 Supp. 19-15,139 et seq., is not legislation "concerning elections" within the meaning of K.S.A. 1983 Supp. 19-101a(a)(7), and is subject to the exercise of the powers of county home rule. Cited herein: K.S.A. 10-306 et seq., K.S.A. 1983 Supp. 19-101a; K.S.A. 19-101b, 19-101c, K.S.A. 1983 Supp. 19-15,139, 19-15,140, 19-15,141.

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Dear Senator Pomeroy:

As State Senator for the Eighteenth District, and on behalf of several other members of the Shawnee County legislative delegation, you have requested an Attorney General Opinion on the legality of a charter resolution recently adopted by the Shawnee County Board of County Commissioners.

Shawnee County Charter Resolution No. CH-83-7 relies upon the authority granted to Shawnee County in K.S.A. 1983 Supp. 19-15,139 which provides in relevant part:

"The board of county commissioners of . . . Shawnee . . . count[y] may acquire by condemnation, gift, bequest, purchase or lease from public or private sources and may plan, construct, reconstruct, repair, remodel, furnish, equip, operate and maintain, and may lease to others for operation and maintenance, civic and other multi-use public facilities for the benefit of the people of the county. . . . The board may do all things incidental or necessary to establish public or private facilities, located upon, above or below the ground, for the types of functions and activities deemed suitable by the board." (Emphasis added.)

The charter resolution also utilizes county home rule powers as found in K.S.A. 1983 Supp. 19-101a and K.S.A. 19-101b to exempt the county from the requirements of K.S.A. 1983 Supp. 19-15,140 and 19-15,141, both of which relate to the exercise of the authority granted by 19-15,139.

K.S.A. 1983 Supp. 19-15,140 provides in portions relevant here:

"In order to carry out the authority granted in K.S.A. 19-15,139, and for no other purpose, the board of county commissioners of Shawnee . . . count[y] may issue general obligation bonds of the county in an amount not to exceed \$20,000,000. . . . No bonds shall be issued until the question of their issuance has been submitted to vote of the qualified electors of the county at any county general election, school board election or special election called and held for that purpose, and a majority of the qualified electors voting thereon votes in favor thereof. The election shall be called and held and the bonds shall be issued, sold, delivered, registered and retired in the manner provided by the general bond law."
(Emphasis added.)

Charter Resolution No. CH-83-7 also exempts Shawnee county from the application of K.S.A. 1983 Supp. 19-15,141 which provides:

"Bonds issued pursuant to K.S.A. 19-15,140 and amendments thereto shall not be subject to or within any bonded debt limitation fixed by any other law of this state."

In lieu of the requirements of K.S.A. 1983 Supp. 19-15,140 and 19-15,141, the charter resolution at issue here provides:

"Section 2. In order to carry out the authority granted in K.S.A. 19-15,139, as amended, and for no other purpose the Board is hereby authorized to issue general obligation bonds not to exceed \$6,000,000. The Board of County Commissioners shall publish a notice of intention to issue general obligation bonds. If, within fifteen (15) days after the publication of such notice in the official paper, there shall be filed

with the County Clerk written protest against the issuance of such bonds signed by not less than twenty percent (20%) of the qualified electors of such County, the Board of County Commissioners shall thereupon submit the proposed project and proposed bond issue to the electors of the County at a special election to be called for that purpose upon at least ten day's notice, to be held not later than sixty (60) days after the filing of such protest or at a general election which will occur not sooner than thirty (30) days nor not later than sixty (60) days after the filing of such protest. In the event that a majority of such voters voting on such proposition at such election shall vote in favor thereof, such proposed improvements shall be made and such bonds may be issued in payment of the cost thereof.

"Section 3. Bonds issued pursuant to K.S.A. 19-15,140, as amended, or charter resolutions in substitute therefor by Shawnee County shall not be subject to or within any bonded debt limitation fixed by any other law of this state."

We are informed that the bonds authorized by this resolution are to be used to build a race track and headquarters building for the Sports Car Club of America.

You raise three different questions concerning this resolution. First, you inquire whether the county may use the authority of K.S.A. 1983 Supp. 19-15,139 et seq., "more than one time either by adopting a charter resolution . . . or by following the statutory procedures a second time and placing the proposition of the issuance of more general obligation bonds before the voters?" You note that on April 5, 1983, Shawnee County voters approved a \$19.7 million bond issue in an election held under K.S.A. 19-15,140 for the construction of a civic center in Shawnee County. Second, you inquire whether the charter resolution exempts the county from statutorily prescribed bonded debt limitations in violation of K.S.A. 1983 Supp. 19-101a(a)(4). Similarly, you ask whether the charter resolution exempts the county from the election requirements of K.S.A. 1983 Supp. 19-15,140 in violation of K.S.A. 1983 Supp. 19-101a(a)(7).

Addressing your first inquiry, we note that K.S.A. 1983 Supp. 19-15,139 authorizes the county to build or acquire "civic and

other multi-use public facilities." Under the authority of K.S.A. 1983 Supp. 19-15,140, Shawnee County voters have approved the issuance of \$19.7 million in Shawnee County general obligation bonds for the construction of a civic center. We find no indication in the language of 19-15,139 that the authority of the section may be utilized only once for the construction of a single facility. The language "other multi-use public facilities", although perhaps not enacted in contemplation of an automobile race track facility, is certainly broad enough to encompass such a facility, if the track and attendant structures will be available and suitable for other uses. We note at this juncture that we have not been provided with an complete description of the proposed facility and its possible uses. Thus, our conclusion that the facility could be included within the description "multi-use public facility" is subject to the caveat that the facility must indeed be available to the public as a "multi-use" facility.

Your remaining questions concern the proper exercise of the home rule power of the county. A discussion of certain general matters relevant to the exercise of county home rule will provide a background for response to your inquiries. K.S.A. 1983 Supp. 19-101a sets forth the extent of and limitations upon the exercise of county home rule powers and provides in pertinent 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. . . . (4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness. . . . (7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers. . . ."

K.S.A. 19-101b provides in relevant part:

"(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.

"(b) A charter resolution is a resolution which exempts a county from the whole or any part of any act of the legislature and which may provide substitute and additional provisions on the same subject. . . ." (Emphasis added.)

The first limitation upon the exercise of county home rule is that counties are subject to all acts of the legislature which apply uniformly to all counties. K.S.A. 1983 Supp. 19-15,139 et seq., does not apply uniformly. The act is applicable only to Shawnee, Wyandotte and Seward counties and thus is not subject to the first limitation stated in K.S.A. 1983 Supp. 19-101a.

The second limitation on county home rule power relevant here is found in K.S.A. 19-101a(a)(4) which states that counties are subject to all acts of the legislature prescribing limits of indebtedness. You ask whether Shawnee County's charter resolution violates this provision because it substitutes \$6,000,000 for the \$20,000,000 limitation found in K.S.A. 1983 Supp. 19-15,140. This particular limitation of county home rule apparently has not been the subject of any previous Attorney General opinions nor have we discovered any court decisions construing the provision in this context. However, the constitutional provisions for city home rule contain a similar limitation which has been discussed in two previous Attorney General opinions. Article 12, Section 5 of the Kansas Constitution provides that cities may exercise their home rule powers subject "to enactments of the legislature prescribing limits of indebtedness," whether such enactments apply uniformly to all cities or are nonuniform in application. Attorney General Opinion No. 80-229 interpreted the quoted language and concluded that the phrase "enactments prescribing limits of indebtedness" in the home rule amendment referred only to limitations on total or aggregate indebtedness, and not to individual statutory limitations on the amounts of issues authorized for particular purposes. See also Attorney General Opinion No. 77-368. Attorney General Opinion No. 80-229 addressed the question of whether a city could, by charter resolution, exempt from the issue limitations found in K.S.A. 13-1024a. That provision authorizes the issuance of bonds, within prescribed limits, for public improvements. In concluding that the city could exempt from the particular issue limitations of K.S.A. 13-1024a the Attorney General noted that such authority must be exercised within the parameters of the aggregate debt limitations.

"The obvious purpose of this particular restriction on cities' home rule powers [enactments prescribing limits of indebtedness] is to permit the legislature to

prescribe statutory limits on indebtedness which may not be exceeded by cities, in order to provide some measure of protection against the insolvency of the cities. That protection, of course, is afforded by the aggregate limits on indebtedness, rather than those statutes which limit the amount of a particular bond issue, since the assumption of indebtedness under the latter statutes is still subject to the statutory limits on total indebtedness." (Emphasis added.)

It is our opinion that these conclusions apply with equal force to the fourth limitation on county home rule power stated in K.S.A. 1983 Supp. 19-101a. Thus a county may, by charter resolution, exempt the county from nonuniform statutory limitations upon the amounts of bond issues authorized for particular purposes.

Counties may not, however, use a charter resolution to exempt from the aggregate debt limitations established by K.S.A. 10-306 et seq. and which are applicable to counties. In Attorney General Opinion No. 82-186 the attorney general said:

"Even though the limits of bonded indebtedness prescribed by K.S.A. 1981 Supp. 10-306 do not apply uniformly to all counties, a county is precluded by K.S.A. 19-101a, Fourth, from exempting itself from these limits."

This point raises two additional concerns about the validity of Shawnee County Charter Resolution No. CH-83-7. First, we are informed that Shawnee County utilized this charter resolution to finance this project because there was "insufficient authority between the county's existing outstanding bonded indebtedness and the limitation imposed by K.S.A. 10-306 for the proposed project" thus necessitating an "alternate means of financing the project." (See Letter of January 11, 1984 to the Shawnee County Commissioners from W. Edward Nichols) Second, we note that the charter resolution at issue here provides that bonds issued pursuant to the charter resolution, which substitutes for K.S.A. 19-15,140, "shall not be subject to or within any bonded debt limitation fixed by any other law of this state." Both points raise the question of whether the county may properly utilize the charter resolution in a manner which removes the proposed county bonds from the aggregate debt limitations provided in K.S.A. 10-306 et seq.

The statutes at issue here are distinguishable from the statutes discussed in previous Attorney General Opinions in that the

legislature, in enacting K.S.A. 1983 Supp. 19-15,141 exempted Shawnee County from any bonded debt limitation fixed by any other law of the state when issuing bonds pursuant to K.S.A. 1983 Supp. 19-15,140 for the purposes stated in the act. K.S.A. 1983 Supp. 19-15,140 limits the issuance of bonds under its provisions to \$20,000,000 and requires that the issuance be submitted to and approved by the voters. Shawnee County does not propose here to issue bonds under the authority of §19-15,140. Instead the County would issue bonds under its home rule authority as represented by a charter resolution which specifically exempts the County from §19-15,140 and enacts substitute provisions which increase the particular issue limitation found in that section and alter the election requirements. To preserve the exemption from aggregate debt limitations provided by the legislature for bonds issued under §19-15,140, the charter resolution removes the county from the effect of §19-15,141 (which creates the exemption) and then attempts to "re-enact" that section to include within the exemption bonds issued pursuant to the charter resolution enacted in lieu of §19-15,140. The effect of this resolution in this particular situation is to permit Shawnee County to issue bonds which exceed the aggregate debt limitation found in K.S.A. 10-306. It is our opinion that this is precisely the type of act which is precluded by the fourth limitation on county home rule power found in K.S.A. 1983 Supp. 19-101a(a).

We note here that earlier Attorney General Opinions which approved the exercise of home rule charter resolutions to exempt a municipality from a particular debt limitation accept as a basic premise that such exemptions will be made within the parameters of the applicable aggregate debt limits. See Attorney General Opinion Nos. 80-229; 76-44. Shawnee County Charter Resolution No. CH-83-7 goes beyond these parameters because it exempts bonds issued pursuant to and authorized entirely by a home rule charter resolution from the aggregate debt limitations created by state statute. This is beyond the scope of county home rule.

The exemption from aggregate debt limitations provided to Shawnee County by §19-15,141 is available only when the county complies with the requirements stated in §19-15,140. When the county elects to enact a charter resolution which removes the county from the effect of §19-15,140, the county loses the benefit of §19-15,141 and remains subject to aggregate debt limitations. K.S.A. 19-101a(a)(4) prevents a county from using home rule authority to exempt from the aggregate debt limitations found in K.S.A. 10-306. Shawnee County Charter Resolution No. CH-83-7 attempts to do exactly what is prohibited and thus, in our opinion, does not constitute a lawful exercise of county home rule.

K.S.A. 19-101b provides that any county may, by charter resolution elect 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." When a county chooses to use the power of home rule it must act within the limitations of that power. In our opinion, K.S.A. 19-101b does not permit Shawnee County to pick and choose among various favorable and unfavorable legislative enactments, combine them with home rule authority and craft a charter resolution which accomplishes that which the county may not otherwise in the pure exercise of county home rule, i.e., exempt the county from the aggregate debt limitations applicable to the county.

Finally, you inquire whether the Shawnee County Charter Resolution violates K.S.A. 1983 Supp. 19-101a(a)(7) which provides that counties shall be "subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers." The charter resolution provides for a protest style election. The seventh limitation on county home rule power significantly restricts county home rule power in providing that counties shall be subject to all acts of the legislature, whether uniform or not, concerning elections. Several recent Attorney General Opinions have concluded that this seventh limitation is intended to prevent action concerning the manner of how an election is to be held. See Attorney General Opinion Nos. 81-243; 79-47; 76-44. Thus, the issuance of bonds for "civic and other multi-use public facilities," which under statute requires an election, is not a matter pertaining to elections within the meaning of K.S.A. 1983 Supp. 19-101a(a)(7) as that section has been interpreted by the Attorney General. We do not construe K.S.A. 1983 Supp. 19-15,140 as legislation "concerning elections"; rather, the statute concerns the issuance of bonds for certain purposes which incidently requires a prior election. As such, the statute is subject to the legitimate exercise of county home rule. We note, however, that if the county chooses to operate under home rule the county remains subject to the aggregate debt limitations as discussed in this opinion.

We conclude that, utilizing the authority granted by K.S.A. 1983 Supp. 19-15,139 et seq., Shawnee County may issue bonds for the construction or acquisition of "civic and other multi-use public facilities." The authority granted by the act is not limited to the construction or acquisition of a single facility and may be utilized for distinct and separate facilities if such facilities may be defined as civic or other multi-use public facilities.

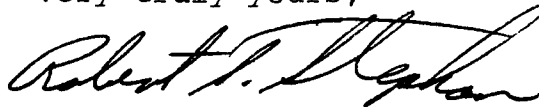
The Honorable Elwaine F. Pomeroy
Page Ten

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When relying upon home rule, a county is subject to the aggregate debt limitations found in K.S.A. 10-306 and the county may not use a charter resolution to exempt from the aggregate debt limitations. The exemption from aggregate debt limitations established in K.S.A. 1983 Supp. 19-15,141 is available to the county only when the county issues bonds under the authority of K.S.A. 1983 Supp. 19-15,140. Such an exemption is not available if the county chooses to issue bonds pursuant to a charter resolution enacted in the exercise of county home rule.

K.S.A. 1983 Supp. 19-15,139 et seq., is not legislation "concerning elections" within the meaning of K.S.A. 1983 Supp. 19-101a(a)(7). Thus the statute is subject to the exercise of the powers of county home rule.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Mary F. Carson
Assistant Attorney General

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