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ATTORNEY GENERAL OPINION NO. 85- 39

Daniel A. Young
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Re: Counties and County Officers -- Planning and Zoning --
Regulations Inapplicable to Agricultural Purposes;
Home Rule Authority

Synopsis: The enactment of L. 1984, ch. 96, pertaining to zoning and planning in urban counties does not render non-uniform the statutes pertaining to zoning in all other Kansas counties. Counties may not exempt from or enact substitute provisions for state statutes which are uniformly applicable to all counties. In that K.S.A. 19-2921 is part of an enactment which is uniformly applicable to all counties, it is not subject to county home rule authority pursuant to K.S.A. 1984 Supp. 19-101a. Cited herein: K.S.A. 1984 Supp. 19-101a; K.S.A. 19-2654; 19-2908; 19-2916b; K.S.A. 1984 Supp. 19-2920; K.S.A. 19-2921; K.S.A. 1984 Supp. 19-2960; Kan. Const., Art. 2, §17; Art. 12, §5.

* * *

Dear Mr. Young:

As Douglas County Counselor, and on behalf of the Douglas County Commissioners, you have requested an opinion on the question of whether Douglas County may use county home rule authority to exempt itself from and enact substitute provisions for K.S.A. 19-2921.

K.S.A. 19-2921 is one of the statutes pertaining to county planning and zoning and provides in relevant part:

"Regulations adopted under authority of this act shall not apply to the existing use of any buildings or land . . . 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." (Emphasis added.)

The only recent Kansas case construing this statute has given it a rather strict interpretation. In Blauvelt v. Board of Leavenworth County Comm'rs, 227 Kan. 110 (1980), the court considered an argument that a house, situated on farm property, in which a farmer resided served only a residential and not an agricultural purpose. In rejecting this contention, the court said:

"The pertinent provisions of the statute have been in effect since 1939. (L. 1939, ch. 164, §8). The obvious purpose of the proviso in K.S.A. 19-2921 was to favor agricultural uses and farmers. Since this state's economy is based largely on the family farm it would appear the intent of the legislature was to spare the farmer from more governmental regulation and not to discourage the development of this state's farm industry. It would be ludicrous to say that the legislature intended to exempt a farmer conducting a hog feeding operation from county zoning regulations but at the same time require the same farmer to build his house upon a subdivided lot fronting on a public road." Id. at 113

The court concluded that in a situation where land in question was clearly used for agricultural purposes the home of the farmer was within the scope of "agricultural purposes" as set forth in K.S.A. 19-2921.

Thus, it is clear that the legislature intends K.S.A. 19-2921 to protect property used for agricultural purposes from any county planning or zoning regulations and restrictions. [See also

K.S.A. 19-2908, which places the same limitations on township zoning.]

In 1984 the Kansas legislature enacted K.S.A. 1984 Supp. 19-2956 through 19-2966. This act pertains to planning and zoning in counties designated as urban areas pursuant to K.S.A. 19-2654. The later statute provides that the only county in the state which is designated an urban area is Johnson County. Pursuant to the Kansas Constitution, Article 2, Section 17, the legislature may designate certain counties or areas in counties as urban in character and enact special laws regarding such areas or counties.

K.S.A. 1984 Supp. 19-2960 is an example of a special law regarding urban counties. In subsection (c), the statute provides that zoning regulations in urban counties shall not be held to apply to the use of land for agricultural purposes, nor to the erection or maintenance of buildings thereon for agricultural purposes. The subsection further provides:

"No zoning regulations shall apply to the use of land for agricultural purposes nor for the erection or maintenance of agricultural buildings as long as such agricultural buildings are used for agricultural purposes and no other. Dwellings, garages and other similar accessory buildings shall not be considered as agricultural buildings. All buildings, including agricultural buildings, may be regulated as to setback requirements from public roads so as to protect the future use and improvement of such roads."
(Emphasis added.)

This statute thus cancels the effect of the Blauvelt v. Board of Lyon County Comm'rs decision in Johnson County. Moreover, the statute permits regulation of all agricultural buildings as to setback requirements from public roads.

You ask whether this statute renders the zoning statutes non-uniform in application to Douglas County and thereby subject to county home rule authority. In our opinion, it does not have that effect. A county's home rule authority is purely statutory. K.S.A. 1984 Supp. 19-101a 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."

Although home rule powers granted to counties are to be liberally construed "for the purpose of giving to the counties the largest measure of self-government" (K.S.A. 19-101c), counties are clearly prohibited from passing any local legislation contrary to or in conflict with any act of the state legislature which is of uniform application throughout the state.

The statutes which authorize county-wide zoning, of which K.S.A. 19-2921 is a part, appear to be uniformly applicable to all counties in Kansas. Those statutes are not rendered non-uniform by the enactment of K.S.A. 1984 Supp. 19-2960. The later statute is part of a 1984 enactment (L. 1984, ch. 96) which is only applicable to Johnson county. That enactment is separate and distinct from the enactment which includes K.S.A. 19-2921. This conclusion finds support in the city home rule case of City of Junction City v. Griffin, 227 Kan. 332 (1980), where the court held that a "legislative enactment," within the meaning of constitutional provisions granting home rule powers to cities (Kan. Const., Art. 12, §5), meant a single bill enacted into law that is, a single legislative act. There is no Kansas case law to the contrary regarding county home rule. In fact, the Kansas Supreme Court has relied on city home rule cases in one of the few decisions interpreting county home rule. Missouri Pacific Railroad v. Board of Greeley County Comm'rs, 231 Kan. 225, 226 (1982).

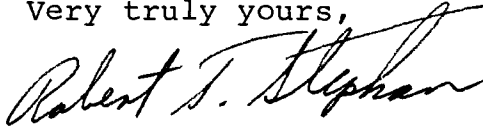
Counties are prohibited from exempting from acts of the legislature which are uniformly applicable to all counties. Applying the reasoning of the Junction City opinion, it is clear that K.S.A. 1984 Supp. 19-2960 is part of an act of the legislature which is separate from K.S.A. 19-2921. In our opinion, the 1984 enactment of planning and zoning statutes which are only applicable in urban counties does not render the other county-wide zoning statutes non-uniform in their application to all other counties. Thus, pursuant to K.S.A. 1984 Supp. 19-101a(a)(1), a county may not utilize home rule authority to exempt itself from and enact substitute provisions for K.S.A. 19-2921. The legislature's permission to regulate certain agricultural uses only extends to counties which are designated as urban in character.

We note parenthetically that an argument may be made that K.S.A. 19-2916b renders the county-wide zoning statutes non-uniform and thus subject to county home rule. That statute makes it possible

for counties between 150,000 and 200,000 population to carry out a zoning master plan by issuing general obligation bonds. Enacted in 1953 (ch. 168, §1), in our opinion the statute in question did not amend or affect the uniformity of the other county zoning statutes. Similarly, the 1981 amendment of K.S.A. 1984 Supp. 19-2920 to include a paragraph applicable only in Franklin County (L. 1981, ch. 123), did not amend the entire enactment of which K.S.A. 19-2921 is a part. Thus, L. 1981, ch. 123 is a separate enactment which is non-uniform in its application. K.S.A. 19-2921, however, remains part of a uniformly applicable act.

Accordingly, we conclude that K.S.A. 19-2921 is not subject to county home rule authority and therefore may not be exempted from nor replaced with substitute local regulations. As construed by the Kansas Supreme Court, the effect of K.S.A. 19-2921 is clear, i.e. no county zoning rules, regulations or determinations may be applied the use of land for agricultural purposes nor to the erection or maintenance of buildings on agricultural land if such buildings are used for agricultural purposes.

Very truly yours,



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RTS:JSS:MFC:crw