Dear Mr. Martin:

You request our opinion as to whether a class A city may reduce its retailers' sales tax by either vote or ordinance, or whether such a city is required, under K.S.A. 1987 Supp. 12-187, to call an election on the question of reducing its retailers' sales tax.

Subsections (d) and (e) of K.S.A. 1987 Supp. 12-187 provide as follows:

"(d) Any city retailers' sales tax in the amount of .5% being levied by a class A city on June 30, 1978, shall continue in
effect until repealed in the manner provided herein for the adoption and approval of such tax or until repealed by the adoption of an ordinance so providing. In addition to any city retailers' sales tax being levied by a class A city on June 30, 1978, any such city may adopt an additional city retailers' sales tax in the amount of .5%, provided that such additional tax is adopted and approved in the manner provided for the adoption and approval of a city retailers' sales tax by a class B city. Any countywide retailers' sales tax in the amount of .5% or 1% in effect on June 30, 1978, shall continue to effect until repealed in the manner provided herein for the adoption and approval of such tax.

"(e) Any city retailers' sales tax in the amount of .5% being levied by a class B city on July 1, 1982, shall continue in effect until repealed in the manner provided for the adoption and approval of such tax or until repealed by the adoption of an ordinance so providing. In addition to any city retailers' sales tax being levied by a class B city on July 1, 1982, any such city may adopt an additional city retailers' sales tax in an amount of .5% provided that such additional tax is adopted and approved in the manner provided for the adoption and approval of such tax. Any class B city or county proposing to adopt a retailers' sales tax shall give notice of its intention to submit such proposition for approval by the electors in the manner required by K.S.A. 10-120, and amendments thereto. The notices shall state the time of the election and the rate and effective date of the proposed tax. If a majority of the electors voting thereon at such election fail to approve the proposition, such proposition may be resubmitted under the conditions and in the manner provided in this act for submission of the
proposition. If a majority of the
electors voting thereon at such election
shall approve the levying of such tax, the
governing body of any such city or county
shall provide by ordinance or resolution,
as the case may be, for the levy of the
tax. Any repeal of such tax or any
reduction or increase in the rate
thereof, within the limits prescribed by
K.S.A. 12-189, and amendments thereto,
shall be accomplished in the manner
provided herein for the adoption and
approval of such tax except that the
repeal of any such city retailers' sales
tax may be accomplished by the adoption
of an ordinance so providing." (Emphasis
added.)

As the underscored portion of the above-quoted statutory
excerpt indicates, any reduction in the sales tax rate by a
class B city must be accomplished in the manner provided for
by adoption or approval of the tax, i.e. an election to
called to submit such proposition to the qualified electors.
However, subsection (d) of the above-quoted statute is silent
as to the procedure whereby a class A city may reduce its
retailers' sales tax, and it is therefore necessary to
consider whether such a reduction may be accomplished by a
adoption of an ordinance under home rule powers granted by
Article 12, Section 5 of the Kansas Constitution.

The Kansas Supreme Court has held that the city home rule
amendment to the Kansas Constitution requires a liberal
construction of the powers and authority granted to cities
thereby, and that legislative silence on a subject no longer
means an absence of a city's authority to act in that area.
Furthermore, Professor Barkley Clark of the University of
Kansas School of Law has argued that legislative silence
should not establish a negative implication where the
legislature has partially occupied the field, and that the
burden should be on the legislature to impose a prohibition by
express statutory language. Clark, State Control of Local
Government in Kansas; Special Legislation and Home Rule, 20
Kan. Law Review, 631, 673 (1972). In accordance with these
authorities, and recognizing that K.S.A. 1987 Supp. 12-187
does not restrict or limit a class A city with regard to
reduction of its retailers' sales tax, it is our opinion that
a class A city may reduce the rate of such a tax by adopting a
non-charter ordinance under home rule powers granted by Article 12, Section 5 of the Kansas Constitution. In reaching this conclusion, we reiterate that neither a class A city nor a class B city may adopt a charter ordinance exempting itself from the limitations prescribed by K.S.A. 1987 Supp. 12-187. See Attorney General Opinion No. 87-120.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Terrence R. Hearshman
Assistant Attorney General