



STATE OF KANSAS

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January 25, 1988

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ATTORNEY GENERAL OPINION NO. 88- 7

Douglas F. Martin
Shawnee County Counselor
Shawnee County Courthouse
Room 203, 200 E. 7th
Topeka, Kansas 66603-3922

Re: Cities and Municipalities--General
Provisions--Countywide and City Retailers' Sales
Taxes; Procedure for Imposition; Election Required;
Continuation in Effect of Certain Taxes

Synopsis: A class A city may reduce the rate of its city
retailers' sales tax by adopting an ordinance under
home rule powers granted by Article 12, Section 5
of the Kansas Constitution. Cited herein: K.S.A.
1987 Supp. 12-187; Kan. Const., Art. 12, §5.

* * *

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effect until repealed in the manner provided herein for the adoption and approval of such tax or until repealed by the adoption of an ordinance so providing.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countywide retailers' sales tax in the amount of .5% or 1% in effect on June 30, 1978, shall continue to effect until repealed in the manner provided herein for the adoption and approval of such tax.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sales tax in the amount of .5% being levied by a class B city on July 1, 1982, shall continue in effect until repealed in the manner provided for the adoption and approval of such tax or until repealed by the adoption of an ordinance so providing.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. City of Junction City v. Lee, 216 Kan. 495, 498 (1975). 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
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RTS:JLM:TRH:jm