



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

ATTORNEY GENERAL OPINION NO. 89- 25

Leonard J. Dix
Rooks County Attorney
Courthouse
Stockton, Kansas 67669

Re: Counties and County Officers -- Election
Commissioners -- Duty to Establish Precinct
Boundaries

Counties and County Officers -- County
Commissioners -- Rearrangement of Commissioner
Districts

Synopsis: The doctrine of "one person-one vote" applies to local units of government through the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Kansas law provides that it is the duty of boards of county commissioners to redistrict their members districts according to population.

The boundaries of county commission districts must follow the boundaries of election precincts. It is the duty of the county election officer to establish precinct boundaries. The great inequities of population in the election precincts in Rooks county prevent the county commissioners from redrawing their districts to meet the constitutional requirements of equal representation.

K.S.A. 1988 Supp. 25-26a03 prohibits county election officers from changing or creating new election precinct boundaries until December 1,

1990. To the extent that K.S.A. 1988 Supp. 25-26a03 prevents the Rooks county commissioners from establishing commission districts that meet federal constitutional requirements, this statute is unconstitutional. Cited herein: K.S.A. 19-204; 19-3424; 19-3426; K.S.A. 1988 Supp. 25-26a03; K.S.A. 25-2702; 25-2702a; U.S. Const., Amendment XIV.

* * *

Dear Mr. Dix:

As Rooks County Attorney, you have asked our opinion regarding rearranging the districts of the Rooks County Board of County Commissioners. Specifically, you inquire whether commission districts can be drawn to comply with the constitutional requirements of equal representation.

The United States Supreme Court has held that the doctrine of "one person, one vote" applies to local units of government through the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Avery v. Midland County, Texas, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45 (1968); Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). K.S.A. 19-204(a) provides as follows:

"The board of county commissioners shall, on the day of the organization of the board or as soon thereafter as may be possible, meet and divide the county into three commissioner districts or such number of districts as is prescribed by resolution of the board, as compact and equal in population as possible, and number them, subject to alternation at least once every three years."

Relying on K.S.A. 19-204(a), the Kansas Supreme Court has made it clear that it is the duty of the board of county commissioners to redistrict its members' districts. The State, ex rel., v. Labette County, 114 Kan. 726, Syl. ¶ 1 (1923). The court has said that the commission must meet the statutory requirement that the districts be "as compact and equal in population as possible," and that the last official census is to be used to determine population figures. State,

ex rel., v. Reno County Comm'rs, 158 Kan. 573, 578-79 (1944).

The court has defined the requirement of "compactness" as follows:

"K.S.A. 19-204 contains no specific requirement as to contiguity and a district is as compact as possible if it has a close union of the parts, lies in narrow compass and is the nearest practical approximation to compactness as is possible when the integrity of all voting precincts is preserved." Andrews v. Board of County Commissioners, 207 Kan. 548, Syl. ¶ 4 (1971).

The boundaries of county commission districts must follow the boundaries of voting precincts:

"The people in one voting precinct cannot be divided or placed in two or more commissioner districts. This prohibition stems from the ballot and voting procedures of this state." Andrews v. Board of County Commissioners, 207 Kan. at 550.

The court also stated:

"In addition to compactness, equality of population, and preserving the integrity of voting precincts it is proper to consider natural barriers, topography and transportation factors in rearranging commissioner districts." Id. at Syl. ¶ 3.

A city may be "divided so that one part lies in one district and another part in another district so long as the boundary lines of the district follow the boundaries of the city wards and do not interfere with voting precincts." The State, ex rel., v. Osage County, 112 Kan. 256, Syl. ¶ 5 (1922). See State, ex rel., v. Montgomery County Comm'rs, 125 Kan. 379, 382 (1928). (Apportioning a county on the basis of population may not be possible without placing parts of a city in more than one district.)

It is the duty of the county election officer to "establish and fix the boundaries of wards and precincts within the county and in all cities" in the county. K.S.A. 19-3424(a). See K.S.A. 19-3426. The election statutes delineate the relationship of townships and election precincts.

K.S.A. 25-2702 provides in pertinent part:

"The county election officer may establish more than one precinct in any township or divide any township into precincts. Such division shall be made by a declaration made at least ninety (90) days before any county or state primary or general election, and notice of such division, showing the boundaries of each precinct, shall be published once each week for three (3) consecutive weeks in a newspaper of general circulation in the county in which such township is located."

Additionally, K.S.A. 25-2702a provides:

"Whenever a ward or township is not divided into more than one voting precinct, the entire undivided ward or township shall constitute a 'precinct' as that term is used in all laws relating to elections." K.S.A. 25-2702a.

Rooks county is comprised of twelve townships. Each township constitutes an election precinct. Therein the problem lies. The townships/precincts range in population from 50 in township 4 to 2,627 in township 11, which includes the city of Plainville. (Population figures are from the 1988 census.) The commission districts are currently comprised of the following townships/precincts:

Commission District #1:

Township 1 - population	347
Township 2 -	439
Township 3 -	1,480
Township 4 -	50
Total:	<u>2,316</u> persons

Commission District #2:

Township 11 - population	2,627
Township 12 -	183
Total:	<u>2,810</u> persons

Commission District #3:

Township 5 - population	111
Township 6 -	79
Township 7 -	251
Township 8 -	387
Township 9 -	65
Township 10 -	246
Total:	<u>1,139</u> persons

The total population of the county is 6,265. Ideally, each commission district would contain approximately 2,089 persons. However, given the great disparity in population of township 11 as compared to the other townships, it appears that commission districts cannot be drawn to reflect an accepted population deviation that is within the "one person, one vote" principle. The closest we could come to equalizing the populations among the three districts while maintaining contiguity and the integrity of the election precincts is as follows:

Commission District 1 - townships 3, 5 - 1591 population
Commission District 2 - township 11 - 2627 population
Commission District 3 - townships 1, 2, 4, 6, 7, 9, 10, 12
- 2047 population

While this configuration is somewhat better than the population distribution of the present commissioner districts, we do not believe it would meet the constitutional requirement of equal representation.

The remedy in this situation is to draw new election precinct boundaries. However, K.S.A. 1988 Supp. 25-26a03 provides:

"No election precinct shall be created, divided, abolished or consolidated or the boundaries thereof changed during the period four months prior to each primary election and the succeeding general election or between January 1 of any year whose last digit is 8 and December 1 of

any year whose last digit is 0 unless required by the creation of a political subdivision or alteration of a political subdivision by annexation, or unless required to conform to a federal census block boundary established by the federal bureau of the census." (Emphasis added).

According to the above statute, election precincts cannot be changed until December 1, 1990. We understand this provision was added to aid the legislature in redistricting its members' districts. It is a fundamental principle of law that a state statute cannot contravene the federal constitution. See Federal Land Bank of Wichita v. Bott, 240 Kan. 624, 635 (1987) (K.S.A. 2-3401 violated the contract clause of the United States Constitution, Article I, Section 10). Therefore, if the present county commission districts are in violation of the "one person, one vote" requirement of the federal constitution, and we believe they are, K.S.A. 1988 Supp. 25-26a03 cannot prohibit the county election officer from amending and setting new precinct boundaries to permit the board of county commissioners to establish commission districts that meet the requirements of the United States Constitution. To the extent that K.S.A. 1988 Supp. 25-26a03 prohibits the county election officer from acting in this instance, we believe the statute is unconstitutional and the county election officer and county commissioners must act to redraw the boundaries of the commission districts.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General

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