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ATTORNEY GENERAL OPINION NO. 89- 71

William E. Gusenius
Lindsborg City Attorney
P.O. Box 70
Lindsborg, Kansas 67456

Re: Cities and Municipalities--Code for Municipal
Courts; General Provisions--Municipal Judge;
Appointment; Qualifications

Synopsis: As 1989 Senate Bill No. 126 does not apply
uniformly to all cities, it is subject to a charter
ordinance adopted under article 12, section 5 of
the Kansas Constitution. However, a city may not,
under article 12, section 5, modify rules adopted
by the Kansas Supreme Court under 1989 Senate Bill
No. 126, or rules adopted pursuant to article 3,
section 1 of the Kansas Constitution.

The assessment prescribed by section 3 of 1989
Senate Bill No. 126 applies to all cases disposed
of on or after July 1, 1989, including cases filed
before July 1, 1989. The judge or clerk of the
municipal court must remit all assessments
received pursuant to section 3 to the state
treasurer for deposit in the state treasury to the
credit of the municipal judge training fund. Cited
herein: K.S.A. 12-4105; 1989 Senate Bill No. 126;
Kan. Const., art. 12, section 5; Kan. Const.,
art. 3, section 1.

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Dear Mr. Gusenius:

You pose several questions related to 1989 Senate Bill No. 126. That bill provides for training programs, examinations, and continuing judicial education of municipal judges. Your questions, and our responses thereto, are set forth below.

"1. Does Senate Bill 126 apply uniformly to all cities or may a city exercise its home rule power and charter out of the bill's requirements?"

1989 Senate Bill No. 126 is not applicable uniformly to all cities by reason of section 4 (which amends K.S.A. 12-4105) requiring municipal judges in first class cities to be attorneys while permitting second and third class cities to have "certified" lay judges. See City of Junction City v. Griffin, 227 Kan. 332, 337 (1980). Accordingly, Senate Bill No. 126 is subject to a charter ordinance adopted under article 12, section 5 of the Kansas Constitution. Id. However, a city may not, under article 12, section 5 of the Kansas Constitution, modify rules adopted by the Supreme Court under 1989 Senate Bill No. 126, or rules adopted pursuant to article 3, section 1 of the Kansas Constitution.

"2. Are cases filed before July 1, 1989, but disposed of after July 1, 1989, assessed the \$1 training fee?"

Section 3 of 1989 Senate Bill No. 126 does not indicate whether the assessment imposed thereby applies to cases filed before July 1, 1989. However, it is has been held that court costs and similar assessments are a procedural matter. Stith v. Pinkert, 234 S.W.2d 45, 47 (Ark., 1950). It has been held that procedural statutes may be applied retroactively:

"While generally statutes will not be construed to give them retrospective application unless it appears that such was the legislative intent, nevertheless when a change of law merely effects the remedy or law of procedure, all rights of action will be enforced under the new procedure without regard to whether they accrued before or after such change of law and without regard to whether or not the suit has been instituted, unless there is a savings clause as to existing

litigation." Jackson v. American Best Freight System, Inc., 238 Kan. 322, 324-325 (1985).

In accordance with the above authority, it is our opinion that the assessment prescribed by section 3 of Senate Bill No. 126 applies to all cases disposed on or after July 1, 1989, including cases filed before July 1, 1989.

"3. Must the court pay the \$1 assessment on cases in which the Defendant fails to pay those costs, or may the city delay payment of the assessment until such time as the Defendant pays?"

Section 3 of Senate Bill No. 126 provides that "the judge or clerk of the municipal court shall remit at least monthly all assessments received pursuant to this section to the state treasurer for deposit in the state treasury to the credit of the municipal judge training fund." Accordingly, where the defendant fails to pay the assessment, there is no obligation to remit any money to the state treasurer.

In summary, as 1989 Senate Bill No. 126 does not apply uniformly to all cities, it is subject to a charter ordinance adopted under article 12, section 5 of the Kansas Constitution. However, a city may not, under article 12, section 5, modify rules adopted by the Kansas Supreme Court under Senate Bill No. 126, or rules adopted pursuant to article 3, section 1 of the Kansas Constitution. Additionally, the assessment prescribed by section 3 of Senate Bill No. 126 applies to all cases disposed on or after July 1, 1989, including cases filed before July 1, 1989. The judge or clerk of the municipal court must remit all assessments received pursuant to section 3 to the state treasurer for deposit in the state treasury to the credit of the municipal judge training fund.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
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