



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 10, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 97

Thomas A. Glinstra
Municipal Counsel
City of Olathe
100 West Santa Fe
P.O. Box 768
Olathe, Kansas 66061

Re: Taxation--Aggregate Tax Levy Limitations--Procedure
for Exemption; Effect of 1990 House Bill No. 2700
on Prior Exemption

Synopsis: The Olathe library board's charter resolution
exempting the board from K.S.A. 79-5021 to 79-5023
is not superseded or repealed by 1990 House Bill
No. 2700 as that bill does not alter the authority
exercised by the library board. Cited herein:
K.S.A. 19-101b; 77-201; 79-5036; L. 1985, ch.
314; 1990 H.B. No. 2700; Kan. Const., Art. 12,
§ 5.

*

*

*

Dear Mr. Glinstra:

As counsel for the city of Olathe, you request our opinion
regarding the continued effectiveness of the Olathe library
board's charter resolution for exemption from the tax lid law,
K.S.A. 79-5021 et seq. The Olathe library board
utilized the provisions of K.S.A. 79-5036(c) to exempt itself
from the tax lid during the period of time in which that
statute was effective, but before 1990 House Bill No. 2700
took effect. In support of the city's contention that 1990
House Bill No. 2700 supersedes the charter resolution and in

effect repeals it, you offer the following information and arguments:

"1. The Olathe Library Board's Charter Resolution No. 1 exempts the Board from K.S.A. 1988 Supp. 79-5021 to 79-5033.

"2. Most of the provisions of 1988 Supp. 79-5021 to 79-5033 were amended and repealed by H.B. 2700.

"3. Paraphrasing the recent Blevins v. Hiebert decision, the Kansas Supreme Court held that whenever the Legislature enacted a law regulating local government, local governments cannot opt out of the law unless the law is not uniformly applicable to all local governments or the law has an escape clause. K.S.A. 1988 Supp. 79-5036 and Section 7 of H.B. 2700 provide such escape clauses by using Charter Ordinance or Charter Resolution procedures. K.S.A. 1988 Supp. 79-5036 was specifically amended and repealed by H.B. 2700. This shows a clear intent by the Legislature to force local governments to reexempt themselves from the new provision of the 1990 tax lid law. The Legislature wanted to give the voters of local governments the opportunity to protest, and possibly vote, on lifting the new tax lid law.

"4. K.S.A. 19-101b(d) states that subsequent enactments by the Legislature supersede the authority of Charter Resolutions."

Both K.S.A. 1988 Supp. 79-5036(c) and 1990 House Bill No. 2700, sec. 8(c) authorize governing bodies of taxing subdivisions other than cities and counties to exempt themselves "from the provisions of K.S.A. 79-5021 to 79-5033, inclusive," "in the manner prescribed by and subject to the limitations of K.S.A. 19-101b." K.S.A. 19-101b provides that a charter resolution adopted thereunder "shall designate specifically the act of the legislature or part thereof made inapplicable . . . by the passage of the resolution. . . ." Attorney General Opinion No. 85-145 concluded that under a

similar requirement in article 12, section 5 of the Kansas Constitution, a charter ordinance of the city of Sublette which failed to designate a tax lid law by citation was ineffective to exempt the city from the tax lid. In that case, however, the provisions of the tax lid law were not cited at all. Here, the question is whether failure to include the words "and amendments thereto" causes the resolution to become ineffective upon amendment of the statutes cited. We have been unable to locate any authority directly on point.

In general, "where a statute repealed is reenacted in the same words by an act which takes effect at the same time as the repealing act, the statute, or at least the law constituted by it, is continued in uninterrupted operation." McQuillin, Municipal Corporations § 21.46 (3d Ed. 1988). Kansas has adopted this rule. K.S.A. 77-201 First. In City of McPherson v. Hanson, 87 Kan. 769, 772 (1912) the court stated:

"The provisions of an ordinance adopted in pursuance of a statute afterwards repealed, so far as they are in harmony with the new act, may be enforced. (Franklin v. Westfall, 27 Kan. 614.)

"'Where a statute which does not in express terms annul a right or power given to a corporation by a former act, but only confers the same rights and powers upon it under a new name, and with additional powers the latter act does not repeal the former.' (McQuillin, Municipal Ordinances, § 211.)"

Section 8(c) of 1990 House Bill No. 2700 reenacts, in essentially the same form, the provision found in K.S.A. 1988 Supp. 79-5036 (L. 1985, ch. 314, § 26). Section 8(c) took effect at the same time K.S.A. 79-5036 was repealed. 1990 House Bill No. 2700 did not expressly repeal or supersede resolutions enacted pursuant to K.S.A. 1988 Supp. 79-5036. In essence, 1990 House Bill No. 2700 confers the same rights and powers upon taxing subdivisions such as the library board as they enjoyed under K.S.A. 79-5021 et seq. prior to amendment. We therefore conclude that 1990 House Bill No. 2700 does not necessarily repeal or supersede the library board's resolution. If the resolution was adopted in accordance with the provisions of K.S.A. 79-5036, as amended,

it would appear to be in harmony with the current provisions. (In this regard, we note that most, if not all, of the amendments to K.S.A. 79-5021 et seq. in 1990 House Bill No. 2700 affect only cities, counties, townships, municipal universities and community colleges, and not other taxing subdivisions).


Finally, you note that K.S.A. 19-101b(d) provides that subsequent legislative enactments may supersede charter ordinances. Specifically, that provision states:

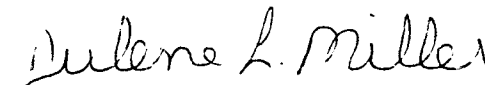
"Each charter resolution passed . . . may be repealed or amended only by . . . an act of the legislature uniformly applicable to all counties." Emphasis added.

1990 House Bill No. 2700 does not appear to be uniform due to provisions sprinkled throughout sections 10 through 59 of the bill. Thus, the above-cited provision would not apply.

In conclusion, the Olathe library board's charter resolution exempting the board from K.S.A. 79-5021 to 79-5023 is not superseded or repealed by 1990 House Bill No. 2700 as that bill does not alter the authority exercised by the library board.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm