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ATTORNEY GENERAL OPINION NO. 91- 3

The Honorable William R. Carpenter
Administrative Judge of the District Court
Division No. One
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Counties and County Officers--General
Provisions--Home Rule--Renovation of Shawnee
County Courthouse

Synopsis: K.S.A. 19-15,114 et seq. is a uniform act establishing the procedures by which Shawnee County may undertake the remodeling and equipping of the Shawnee County courthouse. Shawnee county may, however, validly issue general obligation bonds pursuant to Home Rule Resolution H.R. 89-11 as authorized in the Supreme Court decision Blevins v. Hiebert, 247 Kan. 1 (1990). Cited herein: K.S.A. 19-101; 19-101a; 19-15,114; 19-15,115.

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Dear Judge Carpenter:

As administrative judge of the district court for Shawnee county you request our opinion concerning Shawnee County Home Rule Resolution H.R. 89-11 which authorizes the remodeling and equipping of the north wing of the Shawnee county courthouse. H.R. 89-11 further authorizes the issuance of general obligation bonds to pay the costs of this project. You inquire whether the validity of H.R. 89-11 and any temporary notes and general obligation bonds authorized

pursuant to such resolution is affected by a recent decision of the Kansas Supreme Court, Blevins v. Hiebert, 247 Kan. 1 (1990).

In Blevins the court reviewed county and city home rule powers and provided new guidelines for analyzing the ability of municipalities to draft local legislation pursuant to their home rule authority. County home rule authority, found in K.S.A. 19-101, et seq. empowers counties to determine their local affairs subject to the restrictions and limitations set forth in K.S.A. 19-101a.

One restriction provides that "counties shall be subject to all acts of the legislature which apply uniformly to all counties." Prior to Blevins, this restriction had been interpreted to mean that in determining the question of uniform applicability it was necessary to examine the enactment in question. The court stated that "the division into chapter, article and sections in the Kansas statutes annotated does not have the effect of making separate enactments of a single bill passed by the legislature of the state of Kansas." See City of Junction City v. Griffin, 227 Kan. 332, 335-36 (1980).

Under this analysis, a county was not subject to a statute that applied uniformly to all counties if the statute was a part of an enactment containing provisions that do not apply uniformly to all counties.

In Blevins, the court reformulated this statutory analysis requiring that counties and cities utilize a new method to determine whether home rule legislation is available to them in certain situations. The court finds in Blevins, that home rule legislation is prohibited in a field of law in which there is a state statute uniformly applicable to all cities or counties. The court defines an enabling act as "uniformly applicable to all cities or counties if it authorizes all cities or counties to perform certain acts." It states further that "such statutes are state law and preempt the field of their application without the use of preemptive language unless there are express exceptions in the statutes or unless the statutes apply to police power regulations." See Blevins, 247 Kan. 1, 11.

The court goes on to state that if a statute is part of an act not uniformly applicable statewide then the proper procedure for an entity is to opt out by charter ordinance or resolution. 247 Kan. at 13. Under this analysis of home

rule authority, Shawnee County is compelled to undertake a perusal of the statutes to determine if in fact an applicable statute exists. A review of the county buildings statutes reveals that K.S.A. 19-15,114 et seq. is an uniform act establishing procedures which would, in fact, apply to Shawnee county's proposed courthouse renovation plans.

K.S.A. 19-15,115 provides in relevant part: "The board of county commissioners of any county may when it deems necessary erect or construct . . . and may improve any existing public building."

K.S.A. 19-15,116 provides in part:

"The board of county commissioners of any county may for the purposes hereinbefore authorized and provided:

"(c) Issue general obligation bonds of the county. If it is determined that it is necessary to issue more than \$300,000 in general obligation bonds . . . such bonds shall not be issued until the question of their issuance has been submitted to a vote of the qualified electors of the county and has been approved by a majority of those voting thereon at a general election or at a special election called for that purpose. . . ." (Emphasis added).

Under the Blevins analysis, because this statute applies uniformly to all counties, the county would be bound to proceed under this statute. Such procedure would include an election since the county anticipates issuing up to \$4,000,000.00 in general obligation bonds. The court acknowledged in Blevins, however, that "indiscriminate references in prior opinions" have caused confusion and misunderstanding concerning the use of constitutional and statutory home rule. In recognition of the confusion caused by language in their previous decisions interpreting home rule authority and reliance thereon the court stated:

"The misunderstanding has caused cities and counties to issue many millions of dollars of general obligation bonds in reliance thereon. Because of the confusion caused by dicta in our prior

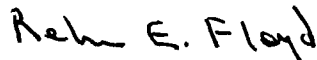
decisions on home rule, we hold all general obligation bonds and temporary notes authorized or issued under home rule powers prior to the date of this opinion are hereby declared lawful and validated as to the home rule issue."

Blevins, 247 Kan. 14 (1990). The publication and effective date of Shawnee County Resolution H.R. 89-11 was July 12, 1989. It is, therefore, our opinion that any temporary notes or general obligation bonds issued in accordance with its terms are authorized as provided in the Blevins decision, dated July 13, 1990.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rebecca E. Floyd
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RTS:JLM:REF:jm