



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN  
ATTORNEY GENERAL

July 15, 1992

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

ATTORNEY GENERAL OPINION NO. 92-93

Gary K. Jones  
Andale City Attorney  
830 Olive W. Garvey Building  
200 West Douglas  
Wichita, Kansas 67202-3094

Re: State Departments; Public Officers and  
Employees--Municipal Accounting Board--Annual  
Audits of School Districts and Certain  
Municipalities; a City's Ability to Exempt Itself  
From Annual Audits

Synopsis: A city may, by charter ordinance, exempt itself  
from certain accounting and audit requirements.  
Under the facts presented, city of Andale has  
failed to exempt itself from the audit requirements  
of K.S.A. 1991 Supp. 75-1122. Cited herein:  
K.S.A. 75-1117; 75-1120a; 75-1121; K.S.A. 1991  
Supp. 75-1122; Kan. Const., art. 12, § 5.

\* \* \*

Dear Mr. Jones:

You have inquired whether the city of Andale has exempted  
itself by charter ordinance from the audit requirements of  
K.S.A. 1991 Supp. 75-1122 and if not, whether it can  
retroactively exempt itself from the audit requirements for  
past years in which audits were due but not completed.

K.S.A. 75-1117 et seq. establishes accounting and  
reporting requirements for municipalities. K.S.A. 75-1117  
defines municipality to include substantially all municipal

and quasi-municipal corporations, political subdivisions, and taxing districts.

Two primary obligations are placed on municipalities. First, under K.S.A. 75-1120a, municipalities are required to adopt "generally accepted accounting principals," (GAAP). If the municipality has annual gross receipts of less than \$275,000 and does not operate a utility, the municipality need not maintain fixed asset records as part of the use of GAAP requirements. Any municipality may apply for a waiver of the GAAP requirements. K.S.A. 75-1120a(1).

The second major component of these statutes is the annual audit requirements found in K.S.A. 1991 Supp. 75-1122. Under subsection (a) any municipality with annual gross receipts over \$275,000, or which has general obligations or revenue bonds outstanding in excess of \$275,000, is required to have an annual audit, unless otherwise excused.

A city may exempt itself by charter ordinance from an "enactment" that applies nonuniformly to all cities. City of Junction City v. Griffin, 227 Kan. 332, Syl. ¶ 5 (1980), Blevins v. Heibert, 247 Kan. 1 (1990). The statutes ranging from K.S.A. 75-1117 to 75-1130 all appear to be part of a single "enactment" -- they were either originally part of the same original bill (L. 1953. ch. 375) or they were added in later bills which also amended the other previously enacted sections, (e.g., L. 1978, ch. 334). This "enactment" is replete with non-uniform provisions. As such, a city may, by charter ordinance, opt-out of any of the enactment's requirements given its nonuniform application. This result is in accord with Attorney General Opinion No. 82-206.

Article 12, section 5 of the Kansas constitution prescribes the following requirements for adoption of a charter ordinance:

"Such charter ordinance shall be so titled, shall designate specifically the enactment of the legislature or part thereof made inapplicable to such city by the adoption of such ordinance and contain the substitute and additional provisions, if any, and shall require a two-thirds vote of the members-elect of the governing body of such city. Every charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper or, if there is

none, in a newspaper of general circulation in the city." (Emphasis added.)

The charter ordinance in question here provides, in relevant part:

"Section 1. That the City of Andale, Kansas a city of the third class, who and by virtue of the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from the provisions of K.S.A. 75-1117, 75-1120, 75-1121, and 75-1122, as amended by the 1978 supplements thereto, and makes said statutes unapplicable to said city insofar as said statutes require the City of Andale, Kansas, to maintain fixed asset records and accountings."

The city of Andale believes that the ordinance exempts the city from all the requirements of K.S.A. 1991 Supp. 75-1122 and that no annual audit is required. The division of accounts and reports in the department of administration takes the position that the ordinance "charter[s] the city out of the fixed asset records and accounting requirements when an audit is done." (Emphasis added.)

The issue, then, is the meaning of the words in the ordinance "fixed asset records and accountings".

Rules of interpretation of statutes are equally applicable to municipal ordinances. Phillips v. Viexc, 210 Kan. 612 (1972). A rule of statutory construction is that no part of a statute should be treated as superfluous and that the statute should be construed to give effect to every word and clause. Guff v. Aetna Life and Casualty Co., 1 Kan.App.2d 171, 175 (1977).

Section 1 of charter ordinance 6 can be broken down into three parts. First is the general introductory language of no relevance here. Next is a general statement: "[Andale] elects to exempt itself from the provisions of K.S.A. 75-1117, 75-1120, 75-1121 and 75-1122, as amended by the 1978 supplements thereto. . . ." While this second statement alone might be enough to opt Andale out of all requirements in the statutes, the ordinance does not end here.

The last phrase in the ordinance is: "and makes said statutes inapplicable to said city insofar as said statutes require the City of Andale, Kansas, to main fixed asset records and accountings." To give this last limiting phrase meaning, Andale must be specifically opting-out of something less than all of these statutes' requirements.

As noted above, K.S.A. 1991 Supp. 75-1122 imposes two general requirements: (1) utilization of generally accepted accounting procedures and the accompanying maintenance of fixed asset records, and (2) an annual audit. By referring and "fixed asset records and accountings," charter ordinance 6 appears to have opted the city of Andale out of only part of the enactment's first requirement, that being maintaining fixed asset records and accountings which is a part of generally accepted accounting principals. Given the limiting language of the final phrase of the ordinance, if the city of Andale intended to opt out of the audit requirements, it has failed to specifically so state as required by article 12, section 5.

Your next question concerns whether, by charter ordinance, the city of Andale can opt-out of audits for past years which have yet to be done -- in essence a retroactive charter ordinance.

There are no reported Kansas cases concerning whether an ordinance may have retroactive application. McQuillin states that absent a constitutional prohibition, there is no rule against an ordinance having retroactive application, so long as it does not interfere with contract or vested rights. 6 McQuillin, Municipal Corporations § 20.70 (3rd ed. 1988).

Because a charter ordinance retroactively opting out of the audit requirements would not interfere with anyone's vested rights, we see no legal objection to such an ordinance if the city of Andale were to enact one.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steve Phillips  
Assistant Attorney General