



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 12, 1975

Opinion No. 75- 60

The Honorable Michael G. Glover
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Representative Glover:

You inquire whether Douglas County may in the exercise of its county home rule powers under K.S.A. 19-101a authorize the issuance of general obligation bonds to finance its share of the construction costs of the proposed Clinton Parkway.

You enclose a copy of a very helpful memorandum prepared by the Legislative Research Department, which canvasses the authority available under K.S.A. 68-580 et seq. The factual nature of the proposed project is described therein. Douglas County is considering building a connecting four-lane highway from the City of Lawrence to Clinton Reservoir, a distance of six or seven miles from the city. The project is proposed as a joint enterprise between the county and the city, the latter being responsible for certain portions of a parkway within the city limits. It is proposed that a grant from the United States Department of Transportation will pay 70% of the cost of the project, the remaining 30% to be borne jointly by the city and county.

K.S.A. 68-581(a) commences thus:

"By resolution the board of any county which has a population of less than two hundred twenty thousand (220,000), except any county having a population of more than thirty-eight thousand (38,000) and not more than forty-five thousand (45,000), may designate as a primary arterial highway all or any portion of an existing street or a proposed new street within a city in such

The Honorable Michael G. Glover
Page Two
February 12, 1975

in such county which is or would be a
connecting link between county roads"

Upon such designation, the county "shall assume and be responsible for construction, reconstruction, maintenance and repair of such primary arterial highway" Your question relates to a proposed highway outside the city, and thus K.S.A. 68-581(a) provides little assistance.

K.S.A. 68-581(b) commences thus:

"By resolution the board of any county having a population of more than thirty-eight thousand (38,000) and not more than forty-five thousand (45,000) and any county having a population of not less than two hundred twenty thousand (220,000) may designate as a primary arterial highway all or any portion of an existing or proposed new county road or highway or existing street or a proposed new street within a city in such county"

Under this section, the board of county commissioners and the city may enter into an agreement for cooperative financing of the project, and each may issue bonds as provided in K.S.A. 68-584. K.S.A. 68-581(b) goes on to provide thus regarding the repayment of such bonds:

"Whenever any such bonds are issued, either with or without a referendum, the board or governing body issuing the same may use the moneys received from the distribution of motor-fuel tax revenues pursuant to K.S.A. 1971 Supp. 79-3425c, and any amendments thereto, to pay all or part of the principal and interest on such bonds. In the event that such moneys are insufficient to retire such bonds, an annual tax shall be levied upon the taxable tangible

The Honorable Michael G. Glover
Page Three
February 12, 1975

property in such county or city in an amount sufficient to pay the principal of and interest on said bonds."

According to the latest population figures which have been furnished this office, taken as of January 1, 1974, by the Kansas State Board of Agriculture and published August 23, 1974, the population of Douglas County is 55,643. Thus, it does not fall within the class of counties to which K.S.A. 68-581(b) applies.

The question is presented whether the county may, in the exercise of its county home rule powers, adopt a charter resolution exempting itself from K.S.A. 68-581 in its entirety, and provide substitute authority in lieu thereof.

K.S.A. 19-101a(a) provides in pertinent part thus:

"Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties"

K.S.A. 68-581 is a provision which applies to all counties, but it does not apply uniformly to all counties. Moreover, it is but one section of an enactment commencing at K.S.A. 68-580 which itself likewise does not apply uniformly to all counties.

Certainly, the construction of the freeway in question is a matter essentially of local legislation and administration, and is thus appropriate subject matter for the exercise of county home rule powers.

Accordingly, it is our opinion that in the lawful exercise of its county home rule powers, the board of county commissioners of Douglas County may by charter resolution exempt itself from the provisions of K.S.A. 68-580 et seq., and provide substitute

The Honorable Michael G. Glover
Page Four
February 12, 1975

provisions therefor which supply the necessary authority for the project in question.

K.S.A. 19-101a(b) provides that the exercise of county home rule powers shall be by resolution, either by ordinary resolution adopted by the board, or by a charter resolution:

"Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) of this section is contrary to an act of the legislature which is applicable to a particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in section 3[19-101b] of this act." [Emphasis supplied.]

The question remains whether, in undertaking to exercise its home rule powers to provide the authority for financing the proposed parkway which is lacking under K.S.A. 68-580 et seq., the board must do so by charter resolution or by ordinary resolution. K.S.A. 19-101b(b) commences thus:

"A charter resolution is a resolution which exempts a county from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject."

The Honorable Michael G. Glover
Page Five
February 12, 1975

If the board of county commissioners were to adopt a resolution providing unto itself the authority lacking under K.S.A. 68-580 et seq., to undertake the proposed project, the determination needs to be made whether such legislation is "contrary to" K.S.A. 68-580 et seq., or merely supplemental thereto. Speaking of the deference to be accorded city home rule under Article 12, § 5 of the Kansas Constitution, in Claflin v. Walsh, 212 Kan. 1, 509 P.2d 1130 (1973), the court stated thus:

"Where the legislature has acted in some area a city's power to act in the same area should be upheld unless the legislature has clearly preempted the field so as to preclude city action. Unless there is actual conflict between a municipal ordinance and a statute, the city ordinance should be permitted to stand." 212 Kan. at 7.

The grants of authority in K.S.A. 68-581 do not apply uniformly to all counties, because of the population categories to which its subsections apply. County action to supply unto itself authority which is lacking under the provision is not contrary to that section, but merely supplemental thereto, and may be supplied, in our view, by enactment of an ordinary resolution, rather than by a charter resolution. Indeed, if the board of commissioners so chose, it might adopt by resolution a separate and independent enactment providing the necessary authority for the parkway project, which enactment need not be restricted to an adaptation of the provisions of K.S.A. 68-580 et seq., so long, of course, as the resolution respects the limitations upon the exercise of county legislative power set forth in K.S.A. 19-101a(a), and is not contrary to any existing enactment.

Concerning the issuance of bonds, we should point out that K.S.A. 68-584 provides in pertinent part thus:

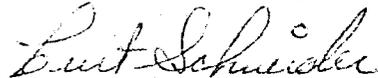
"If the board of county commissioners or the governing body of the city shall determine that any of the costs incurred or to be incurred by the county or city . . . in carrying out the provisions of K.S.A. 68-581 . . . in relation to one or more county roads or highways . . . should be

The Honorable Michael G. Glover
Page Six
February 12, 1975

paid by moneys derived from the issuance of general obligation bonds of the county or city, the board or governing body of the city . . . may issue such bonds for such purpose or purposes Provided further, That the total amount of such bonds outstanding issued without referendum approval shall not exceed an amount equal to more than one percent (1) of the assessed tangible valuation of such county or city. Bonds issued under the provisions of this act shall not be subject to or be included in computing limitations upon bonded indebtedness of counties or cities prescribed under the provisions of article 3 of chapter 10 of the Kansas Statutes Annotated and amendments thereto. [Emphasis supplied.]

The exercise of county home rule powers is subject to acts of the legislature prescribing limits of indebtedness, whether the act prescribing limits of indebtedness is applicable to all counties or to only a particular indebtedness.

Yours very truly,



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