



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

February 6, 1976

ATTORNEY GENERAL OPINION NO. 76-44

The Honorable Norman E. Gaar  
State Senator  
3rd Floor - State Capitol Building  
Topeka, Kansas 66612

Re: Counties--Home Rule--Bonds

Synopsis: A county may by charter resolution exempt itself from K.S.A. 19-1878, and provide substitute and additional provisions in lieu thereof, and obligations issued pursuant to such charter resolution will be approved by this office as issued under lawful authority.

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Dear Senator Gaar:

You advise that in 1919, pursuant to G.S. 1915 § 2831 *et seq.*, the predecessor of G.S. 1949 19-1801 *et seq.* and K.S.A. 19-1801 *et seq.*, a petition was filed in Lyon County asking that a tax of two mills be levied in 1919 and 1920, for the erection of a public hospital, the proceeds to be spent for that purpose not to exceed \$150,000. The question was approved by the voters of Lyon County, the tax was levied and the hospital was completed. The hospital, known as Newman Memorial County Hospital, commenced operation in 1922. Since that time Lyon County has levied additional taxes to aid in hospital maintenance and has issued general obligation hospital building bonds. The board of commissioners now wish to issue hospital revenue bonds to finance the expansion and improvement of Newman Memorial County Hospital, and toward that end, propose to adopt a charter resolution, a copy of which is attached to your letter, exempting Lyon County from K.S.A. 19-1878, and enacting substitute and additional provisions in lieu thereof. The revenue bonds would then be issued pursuant to the authority of the charter resolution.

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You request my opinion whether the Lyon County Board of County Commissioners may exempt the county from K.S.A. 19-1878 by a charter resolution, enact substitute and additional provisions in lieu thereof, and upon the authority thereof, issue revenue bonds which this office would approve as being supported by lawful authority.

Under K.S.A. 19-1878,

"[w]henever a county hospital has been established in any county under the provisions of article 18 of chapter 19 of the General Statutes of 1949, and acts amendatory thereof and supplemental thereto, and bonds have been issued or a tax levy made by the county as authorized by the election establishing such hospital,"

the board of county commissioners shall, upon receiving a sufficient written certification from the board of trustees of the hospital so established, issue additional bonds or make an additional tax levy so as to raise the amount of money certified by the board of trustees. The section goes on to prescribe the holding of elections under certain circumstances, and to authorize the issuance of bonds and the levy of taxes.

Section 2 of the proposed charter resolution sets forth the provision which would be enacted pursuant to the local legislative authority of the county, in lieu of the present K.S.A. 19-1878. The first paragraph of the proposed resolution states thus:

"The board of county commissioners of this county shall, upon receiving the written certification of the board of trustees of this county's hospital that proceeds from bonds previously issued or taxes levied, plus all other funds available are insufficient to acquire a site, or build and equip an addition to the present hospital, or remodel, improve or equip the present hospital, or build and equip a hospital of the size and capacity necessary to supply the needs of this county and stating the amount needed for such purpose, issue bonds of this county or make a tax levy, which tax, together with any other tax levied pursuant to this Charter Resolution, shall not exceed two (2) mills on the dollar for any one year, and which tax shall be in addition to all other levies authorized by law and shall

not be subject to the limitations prescribed by K.S.A. 1974 Supp. 79-1947 as amended by Chapter 162 of the 1975 Session Laws of Kansas and as further amended by Chapter 163 of the 1975 Session Laws of Kansas, or acts amendatory thereof or supplemental thereto, and which tax shall be levied each year until said amount certified shall be raised in the amount certified by the board of trustees, Provided, That before the issuance of any such bonds \*[if the aggregate principal amount of such bonds, together with the aggregate principal amount of all bonds previously issued pursuant to this Charter Resolution which remain outstanding, exceeds \_\_\_\_\_ dollars (\$\_\_\_\_\_)], shall cause to be published once a week for three (3) consecutive weeks in any paper of general circulation within this county, a notice which shall contain such written certification of said board of trustees of such hospital and shall state that unless protests are received, signed by twenty-five percent (25%) of the legal electors of this county and filed with the county clerk of this county within sixty (60) days after the first publication of said notice, that the said county commissioners will issue the amount of bonds or levy taxes sufficient to raise the amount of money requested in said written certification.

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\*Alternative to language in brackets: '(other than not more than \_\_\_\_\_ dollars (\$\_\_\_\_\_)) aggregate principal amount of bonds issued on or prior to \_\_\_\_\_, 19\_\_)'"

✓ In net effect, the proposed charter resolution would exempt the county from the present provision, and provide independent legal authority in lieu thereof for the issuance of revenue bonds.

K.S.A. 19-101a sets forth the extent of and limitations upon the exercise of county home rule powers thus, in pertinent part:

"(a) 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; . . . *fourth*, counties shall be subject to all acts of the legislature prescribing limits of indebtedness; . . . *seventh*, counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers. . . ."

The first limitation is that the counties are subject to all acts of the legislature which apply uniformly to all counties. K.S.A. 19-1878 does not apply uniformly to all counties. It applies only when a county has established a county hospital under article 18, ch. 19, K.S.A. Article 19, ch. 18, K.S.A. is a mass of special legislation. K.S.A. 19-1801 through -1815, *e.g.*, were initially enacted in 1913. The initial provision now commences thus:

"Any county having less than forty thousand (40,000) inhabitants except a county having a population of not less than five thousand (5,000) nor more than twelve thousand (12,000) which has within its boundaries a city of the third class in which is located a hospital the cost of the operation and maintenance of which is paid wholly or in part from funds raised by taxation and except a county having within its boundaries any territory of a hospital district operating and maintaining a hospital under the provisions of sections 80-21,101 to 80-21,122, inclusive, of the Kansas Statutes Annotated, or any amendments thereof, may establish a county hospital in the following manner . . . ."

K.S.A. 19-1878 refers to counties which have established a county hospital under other provisions of the article, which provisions in themselves are not uniformly applicable to all counties. I can but conclude that K.S.A. 19-1878 is not uniformly applicable to all counties. Moreover, K.S.A. 19-1878 does not prescribe any limitation upon indebtedness. Indeed, it specifically provides that "none of the debt limitations provided by law shall apply to bonds issued under this act, or shall proceed to levy taxes as provided herein." The proposed charter resolution contains a similar provision, that "none of the debt limitations provided by law shall apply to bonds issued under this Charter Resolution . . . ." Thus, the section does

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not prescribe any limit of indebtedness, and exemption therefrom does not alter the county in the application of any such lawful limit thereto.

Lastly, the restriction *seventh*, concerning elections, forbids counties to exempt themselves from laws governing the manner in which elections are conducted, in my judgment. K.S.A. 19-1878 does authorize the conduct of elections under certain circumstances. However, the statutory restriction upon the exercise of home rule powers concerning elections applies, in my judgment, to laws regarding the manner in which elections are to be conducted. K.S.A. 19-1878 is not such a law, but merely requires that an election be held under certain circumstances and for a specified purpose.

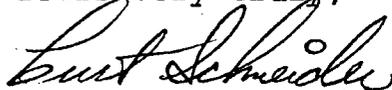
In short, the proposed charter resolution is not prohibited, in my opinion, by any statutory restriction upon the exercise of county home rule powers. Clearly, the matter is one of "local legislation and administration," for it affects only Lyon County.

The statutory grant of local legislative powers must be construed in accordance with K.S.A. 19-101c thus:

"The powers granted counties pursuant to this act shall be referred to as county home rule powers and they shall be liberally construed for the purpose of giving to counties the largest measure of self-government."

In my judgment, the proposed charter resolution is fully within the statutory powers of self-government granted by K.S.A. 19-101a. Obligations issued pursuant to the authority of this duly adopted resolution would be approved by this office as being issued pursuant to lawful authority therefor.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj