STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

November 8, 1976

ATTORNEY GENERAL OPINION NO. 76-338

Mr. Doyle J. Heft
Assistant Commissioner
Kansas Animal Health Department
Mills Building - 4th Floor
109 West 9th Street
Topeka, Kansas 66612

Re: Counties--Home Rule Powers--Brand Inspection

Synopsis: A county may in the exercise of its home rule powers under K.S.A. 19-101a amend the application of K.S.A. 47-441 and -442 to such county by charter resolution.

* * *

Dear Commissioner Heft:

You inquire concerning the validity of Charter Resolution No. 3, as adopted by the board of county commissioners of Greeley County, Kansas.

Adopted in the exercise of the home rule powers of the county, under K.S.A. 19-101, section 1 of the resolution states in pertinent part thus:

> "That the County of Greeley, State of Kansas, by the power invested in it by K.S.A. 19-101 et seq (as amended) hereby elects to exempt itself from and make inapplicable to it all provisions of the following cited Kansas Statutes pertaining to the brand inspection in Greeley County, Kansas:

> K.S.A. 47-441 (as amended) pertaining to brand inspection
> K.S.A. 47-442 pertaining to brand inspection insofar as they pertain to feedlot operators licensed under the provisions of article 15 of chapter 47 of the Kansas Statutes Annotated, and amendments thereto."

K.S.A. 47-434 *et seq.*, enacted in 1959, permits the board of county commissioners of each Kansas county, upon the petition of not less than fifty-one percent of the resident owners of cattle, to designate the county a brand inspection area or to withdraw the designation. In addition, under K.S.A. 47-435(b), Hamilton, Kearney, Wichita and Wallace counties are declared as a matter of law to constitute a basic brand inspection area.

Once a brand inspection area is designated, the state brand commissioner has certain duties therein, which are imposed by state law, including brand inspections, furnishing assistance in establishing ownership of livestock, issuance of official inspection certifications, and the collection of inspection fees.

K.S.A. 47-438 through -442 each specifies certain acts which shall be unlawful in brand inspection areas. Under K.S.A. 47-438, it is unlawful to purchase, sell or otherwise dispose of cattle or sheep unless persons selling or disposing of them furnish the purchaser or person otherwise acquiring them a bill of sale. Under K.S.A. 47-439, it is unlawful to refuse to exhibit the bill of sale to the commissioner or to any peace officer upon request. Under K.S.A. 47-440, it is unlawful to offer for sale any cattle or sheep with the brand of another, without a bill of sale showing the transfer of such livestock to the seller from the record owner of the brand.

K.S.A. 47-441, from the application of which the resolution exempts licensed feedlot operators, provides in pertinent part thus:

> "It shall be unlawful for any person, in any brand inspection area . . . to move, drive, ship or transport, in any manner, any cattle from any point in a brand inspection area, to any point outside such area other than another brand inspection area, unless such cattle shall have first been inspected for brands by the state brand commissioner . . . unless such cattle are accompanied by a brand inspection certificate . . . ."

K.S.A. 47-442, likewise affected by the resolution, states thus, in part:

> "It shall be unlawful for any person in any brand inspection area, to move any cattle within such area unless such cattle have been first inspected for brands by the brand commissioner or his inspectors or deputies . . . ."

The resolution was adopted under the authority of K.S.A. 19-101a, which provides in pertinent part as follows:

> "(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 . . . ." [Emphasis supplied.]

Thus, to be an appropriate subject for county legislation, the subject matter must be local to the county. Secondly, even if the subject matter is local, the county may exercise its powers of local legislation only subject to "all acts of the legislature which apply uniformly to all counties."

The decision whether to become a brand inspection area is itself essentially a local one. Here, the resolution does not affect the statute under which the election itself is made. Rather, it affects or alters certain statutory restrictions or prohibitions which apply to the county, imposed by state law, as a result of the county, *i.e.*, local, election to become a brand inspection area.

The question, then, is whether the resolution intrudes upon the application of an act of the legislature which applies uniformly to all counties. The act in question is a 1959 enactment, ch. 228, L. 1959, found at K.S.A. 47-434 through -444. K.S.A. 47-435 applies uniformly to all but four counties of the state. One hundred and one counties are granted uniformly the right to designate themselves brand inspection areas, and to abandon that designation. Four counties, Hamilton, Kearny, Wichita, and Wallace

have no such privilege of election, and are declared brand inspection areas as a matter of law.

K.S.A. 47-438 *et seq.*, which declares the acts unlawful as described above, apply uniformly to all counties which elect to become brand inspection areas, and to Hamilton, Kearny, Wichita and Wallace. As a matter of *fact*, thus, K.S.A. 47-441 and -442, the provisions affected by this resolution, do not apply uniformly to all counties, but only to the four counties named, and any other which elects to become a brand inspection area.

In *Claflin v. Walsh*, 212 Kan. 1, 509 P.2d 1130 (1973), the court discussed the question whether a particular statute was applicable uniformly to all cities, a question arising under Article 12, § 5 of the Kansas Constitution, the municipal home rule amendment. The court stated thus:

> "In some cases the legislative intention has been made clear and unequivocal. By specific language the legislative intent is shown to be that the statute is to be applied uniformly to all cities . . . .
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> The difficulty is that in many statutes the legislative intention to have unformity throughout the state is not expressly stated. In that situation courts are required to glean legislative intent by applying established rules of statutory construction. In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof *in pari materia*. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law. . . . In addition to be *in pari materia* statutes need not have been enacted at the same time. . . .
>
> These rules of construction require us to consider all statutes relating to the same subject together in determining legislative intent. We should follow these rules in determining

> whether the legislature intended to have a statute applied 'uniformly to all cities.'" 212 Kan. at 8.

There is, of course, no occasion here to resort to rules of statutory construction to determine legislative intent: "[W]here the language used is plain and unambiguous and also appropriate to the obvious purpose the court should follow the intent as expressed by the words used . . . ." *Alter v. Johnson*, 127 Kan. 443, 273 Pac. 474 (1929).

The language of the act in question here, K.S.A. 47-434 *et seq.* insofar as involved here, is entirely plain and unambiguous, and the legislative intent is plainly apparent. The decision to become a brand inspection area rests with the board of county commissioners in 101 counties, and is a *fait accompli* in the remaining four counties. The statutory prohibitions which apply to a county upon its designation as a brand inspection area obviously apply only to those counties making the election, as well as the four so designated by the legislature, and do not attach uniformly to all counties. They attach to some, and not to others, depending upon local action or legislative designation. Lacking uniform application to all counties, the county may act under K.S.A. 19-101a to alter or amend those prohibitions in the exercise of county legislative powers by the adoption of a charter resolution, unless it is shown that the provisions affect other than local interests.

K.S.A. 47-441 requires pre-shipment brand inspection of any cattle to be transported from within a brand inspection area to any point outside such area, unless certain conditions are satisfied. K.S.A. 47-442 applies to the shipment of cattle within the brand inspection area. These statutory restrictions apply to a county only if it is designated a brand inspection area, which is the result of county, *i.e.*, local action, in most instances. Necessarily, then, in my judgment, these same provisions must be regarded as local in nature, and thus subject to alteration or amendment by county legislative action.

It is further objected that the resolution is discriminatory, because small feedlots, those with a capacity of less than 1,000 head, are not required to be licensed by article 15, ch. 47, K.S.A., and thus remain subject to the brand inspection law in Greeley County. The legislature itself chose to require licensing of only those lots with a capacity in excess of 1,000. We cannot say that the adoption of that same criterion for application of the brand inspection law is arbitrary or unlawfully discriminatory.

You also suggest that if the classifications of exempt livestock should proliferate among the counties eligible to adopt such exemptions, the uniform administration and enforcement of brand inspection laws may be "next to impossible." This factual suggestion does not provide any legal ground upon which to conclude that the county may not exercise legislative power which, in my judgment, it clearly enjoys under K.S.A. 19-101a.

In my judgment, I can but conclude that Charter Resolution No. 3 of Greeley County, Kansas, is within the statutory power of the county under K.S.A. 19-101a.

Yours very truly,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS:JRM:RRS:kj

cc: Mr. Brainard L. Anderson
Greeley County Attorney
Greeley County Courthouse
Tribune, Kansas 67879