



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 20, 1977

ATTORNEY GENERAL OPINION NO. 77- 132

Ms. Ernestine Gilliland
State Librarian
535 Kansas Avenue
Topeka, Kansas 66603

Re: Counties--Home Rule--Regional Libraries

Synopsis: Counties may not exercise statutory home rule powers under K.S.A. 19-101a *et seq.* by resolution adopted jointly with one or more other counties. A county may not by resolution adopted pursuant to K.S.A. 19-101a(b) alter its statutory obligation to support a regional library fixed by K.S.A. 12-1234.

* * *

Dear Ms. Gilliland:

You inquire concerning a joint resolution which was adopted by the boards of county commissioners of Pottawatomie and Wabaunsee counties on March 28, 1977, in the exercise of county home rule powers under K.S.A. 19-101a, providing thus:

"The authority of the board of county commissioners to fix a rate of levy annually for the purpose of maintaining the library established under the provisions of K.S.A. 12-1231, *et sec.*, [sic] known as the Pottawatomie-Wabaunsee Regional Library, is hereby limited to an annual rate of 1.50 mills."

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You inquire whether this resolution supersedes the obligation of support provided by K.S.A. 12-1234. First, K.S.A. 19-101a et seq. contains no provision for the adoption of joint county home rule resolutions. Under subsection (a), counties are empowered "to transact all county business and perform such powers of local legislation and administration as they deem appropriate" This section vests a measure of legislative and administrative power in each board of county commissioners, and each board must exercise that power separately and independently. There is no provision whereby one board may exercise that power jointly with another county under this section, or with a city which enjoys constitutional home rule powers under Article 12, § 5 of the Kansas Constitution. The effect of the joint resolution is to impose a legal limit on the levy which may be made for the joint county library, by a resolution which was adopted jointly, and has the force and effect of law. As such it operates to prevent either county from separately exercising its own home rule powers respecting this subject at any time in the future. I know of no authority whereby a legislative body, be it a board of county commissioners or a city governing body, may effectively deprive itself of its legislative power by undertaking to exercise it jointly with another legislative body and jointly adopt a legislative or administrative measure which is thereafter binding upon both parties until both agree to amend or alter it. If the joint resolution were valid and binding upon both counties, neither is authorized thereafter to increase the levy except when and as the other agrees, a surrender of legislative power which is neither authorized by statute nor supported by any precedent whatever. I can but conclude that K.S.A. 19-101a et seq. does not authorize a county to exercise its statutory home rule legislative or administrative authority by resolution adopted jointly with another county. Thus, in my judgment, the joint resolution is beyond the statutory authority of the two counties, and is not binding upon either county. The board of county commissioners of Wabaunsee County, e.g., may not by a home rule resolution restrict the levy which may be made for libraries by Pottawatomie County, and Pottawatomie County may not restrict the Wabaunsee County levy for that purpose. The counties may not do jointly through home rule what they lack the power to do separately.

Secondly, the resolution is not adopted as a charter resolution, but as an ordinary resolution. K.S.A. 12-1234 provides thus:

"Each county or township participating in a regional library is authorized to, and shall annually levy a tax for the maintenance

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of such library in such sum as the library board shall determine within the limitations fixed by law. The costs of maintaining a regional library shall be allocated among the participating counties or townships in the proportion of their respective populations."

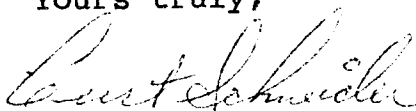
K.S.A. 1976 Supp. 19-101a(b) specifies that home rule powers not required to be utilized by charter resolution shall be exercised by resolution:

"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 of such subsection 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." [Emphasis supplied.]

The resolution proposes to limit the levy of each county for the library to not more than 1.5 mills, whereas the statute requires the counties to levy a tax for the maintenance of the library in such sum as the library board shall determine, within the levy limits therefor fixed by law, and each county must bear the burden of support as measured by the proportion population of its population related to all participating counties. The counties may not by ordinary home rule resolution avoid the duties imposed upon them by this statute, for any such resolution may contain no material which is contrary to any applicable statutes.

For these reasons, I must conclude that the resolution is of no legal force and effect, is not binding upon either of the two counties and does not alter the duties of either of them to support the regional library as required by K.S.A. 12-1234.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

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