



STATE OF KANSAS

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August 8, 1977

ATTORNEY GENERAL OPINION NO. 77-253

Mr. W. Keith Weltmer
Secretary of Administration
Department of Administration
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Cities--Home Rule--Aggregate Levy Limitations

Synopsis: The aggregate levy limitations enacted as a part of 1973 Substitute for Senate Bill No. 11, ch. 393, L. 1973, and now found at K.S.A. 1976 Supp. 79-5001 through -5017, were not adopted as an enactment which applies uniformly to all cities or to a class of cities created for the purpose of imposing such aggregate levy limitations, and accordingly, a city is free to adopt a charter ordinance exempting the city from such limitations. Any charter ordinance is subject to a vote of the electors upon the filing of a sufficient petition within sixty days of the final publication thereof, and if such a petition is filed, it may not take effect without approval by a majority of the voters of the taxing subdivision.

* * *

Dear Secretary Weltmer:

You inquire whether a Kansas city may exempt itself by charter ordinance from the aggregate levy limitations found at K.S.A. 1976 Supp. 79-5001 et seq., commonly known as the tax lid. The question is prompted, I assume, by a special bulletin issued by the League of Kansas Municipalities, dated May 13, 1977, in which the League suggested to member cities that the tax lid was not uniformly applicable to all cities, and was therefore subject to modification or exemption by a charter ordinance.

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The tax lid was first enacted in 1970. See chs. 401, 402, L. 1970. In 1973, the then existing sections comprising the tax lid, K.S.A. 1972 Supp. 79-4401 through -4423, were repealed, and new sections were enacted in lieu thereof, continuing the aggregate limitations but making substantial modifications to address questions which had arisen in the three years since its enactment. Ch. 393, §§ 1-16, L. 1973.

Article 12, § 5 of the Kansas Constitution, which was approved by the voters at the November 8, 1960, general election, grants Kansas cities substantial powers of self-government. At the same time, it restricts the legislature in the manner in which it legislates to curtail or restrict those powers. Article 12, § 5(b) states in pertinent part thus:

"Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: Provided, That the legislature may establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions. Cities shall exercise such determination by ordinance passed by the governing body . . . subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of indebtedness."

Thus, a city is empowered to determine its own affairs and government, excluding the "levying of taxes, excises, fees, charges and other exactions," subject only to enactments of the legislature of statewide concern applicable uniformly to all cities . . . [and] to other enactments of the legislature applicable uniformly to all cities." [Emphasis supplied.] Stated otherwise, if the

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legislature wishes to limit the exercise of this direct constitutional grant of municipal legislative power to govern local affairs and governing, excluding matters of taxation, it may do so only by an enactment which is applicable uniformly to all cities. The legislature enjoys greater flexibility in limiting or prohibiting the cities' exercise of the direct constitutional grant of legislative power to levy "taxes, excise, fees, charges or other exactions." For the purpose of imposing such restrictions and limitations, the legislature need not legislate uniformly as to all cities. Instead, it may "establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions" on the power of cities to levy taxes. This power to classify cities for the purpose of imposing such limitations has been exercised but twice in the 16 years since the home rule amendment became effective. In 1972 and 1973, the legislature created two classes of cities for the limited purpose of imposing limitations upon the levy of excise taxes and taxes in the nature of excise. See ch. 380, § 10, L. 1972, and ch. 393, § 17, L. 1973. In 1976, this classification was repealed. Ch. 71, § 4, L. 1976.

The legislature has never undertaken to classify cities, as it might do, for the purpose of imposing aggregate levy limitations on the levy of ad valorem property taxes. Thus, the question arises whether the 1973 enactment of the tax lid applies uniformly to all cities. The sections now comprising the tax lid, K.S.A. 1976 Supp. 79-5001 through -5017, were originally enacted as sections 1 through 16 and section 27 of 1973 Substitute for Senate Bill 1, found at ch. 393, L. 1973. A number of sections in that bill, apart from those comprising the tax lid, do not apply uniformly to all cities. Section 30, e.g., amended K.S.A. 1976 Supp. 79-1948 to impose ad valorem tax levy limitations for particular funds of cities of the first class having a population of 128,000 or more. Section 31 provides similar levy limitations applicable to cities of the first class having a population of more than 150,000. Section 32 amended K.S.A. 1972 Supp. 79-1950 to impose similar fund levy limitations on cities of the first class having a population of more than 60,000 and less than 130,000. Section 33 provides fund levy limits applicable to cities of the first class having a population of less than 50,000. Sections 34 and 35 provide fund levy limitations applicable to cities of the second and third class, respectively. (These classes are fixed by K.S.A. 13-101 and 14-101 for general legislative purposes, and not for the purpose of imposing limitations upon municipal powers of taxation under Article 12, § 5, and have not been adopted by the legislature for the purpose of imposing aggregate levy limitations on ad valorem property taxation.) Section 19 applies

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not to all cities, but to a class of cities described in section 18, and imposes limitations relating only to excise taxes and taxes in the nature of excise. Clearly, 1973 Substitute for Senate Bill No. 311 is not applicable uniformly to all cities. Assuming, arguendo, that sections 1 through 16 and section 27 are themselves uniformly applicable to all cities, they are but part of the enactment. Article 12, § 5(b) specifies that the legislature may limit the taxing power of a city by an enactment which is applicable uniformly to all cities or to all cities within a class which is created for the purpose of imposing such limitations. There being no classes of cities established for the purpose of imposing aggregate levy limitations such as those comprising the "tax lid," the 1973 enactment of those limitations must constitute an enactment applicable uniformly to all cities. Sections 1 through 16, and section 27, of 1973 Substitute for Senate Bill 11 do not constitute an enactment separate from and independent of the other sections of that bill. Article 2, § 20 of the Kansas Constitution mandates that the "enacting clause of all laws shall be 'Be it enacted by the legislature of the state of Kansas,' and no law shall be enacted except by bill." The division of a bill into sections, and the distribution of those sections into various chapters and articles of the Kansas Statutes Annotated, and the supplements thereto, does not alter the status of that bill as a single act. Marks v. Frantz, 179 Kan. 638, 298 P.2d 316 (1956).

The obvious intention of the voters in approving the home rule amendment was to grant cities a large measure of self-government. Prior to 1961, [c]ities were seriously limited in their power to solve local problems by local legislation." Claflin v. Walsh, 212 Kan. 1 at 6, 509 P.2d 1130 (1973). As the court pointed out, "[c]ities existed by and through statutes and had only such powers as were expressly conferred by a statute without resort to implication." 212 Kan. at 6. In order to assure that this constitutional grant of municipal legislative power should not be eviscerated by state legislative action, the amendment provided further that municipal legislative power concerning local affairs and government, except matters of taxation, should be subject only to enactments of the legislature applicable uniformly to all cities. If a bill deals in one fashion with some cities, and in a different fashion with other cities, it does not apply uniformly to all cities. While the bill remains a valid exercise of legislative power, its lack of uniform application permits a city to exempt itself therefrom by charter ordinance if it so chooses. Unless and until the city acts, of course, the legislative act, although not uniformly applicable to all cities, continues to govern the city. Article 12, § 5(b) specifies that

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"[a]ll enactments relating to cities . . . hereafter enacted and as later amended and until repealed shall govern cities except as cities shall exempt themselves by charter ordinances as herein provided for"

As pointed out earlier, the legislature retained greater flexibility in restricting cities in the levy of taxes. In order to impose limitations or prohibitions respecting the levy of taxes, excise and other fees, the legislature need not legislate uniformly as to all cities, but may classify cities for the purpose of imposing such limitations or prohibitions. It has enacted no such classification for the purpose of imposing aggregate levy limitations. At the same time, it has failed to adopt aggregate levy limitations comprising the tax lid by an enactment which applies uniformly to all cities, for the enactment includes a number of sections which apply variously to several narrowly defined categories of cities.

It may be argued, of course, that the legislature intended that the tax lid should apply to all cities, and that that intent must be respected in the construction of the residual constitutional municipal powers regarding levy limitations. In Clafin v. Walsh, supra, the court stated:

"In view of the liberal construction provision of Section 5(d) [of Article 12, § 5 of the Kansas Constitution], in determining whether a legislative enactment is applicable uniformly to all cities such a legislative intent should be clearly evident before the courts should deny a city the right to exercise home rule power in that area.

. . . .
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. . . .

The difficulty is that in many statutes the legislative intention to have uniformity 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

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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. . . ." 212 Kan. at 7-8.

Section 12 of the 1973 enactment, now K.S.A. 1976 Supp. 79-5012, prescribes a procedure whereby the aggregate levy limitations may be suspended by a majority vote of the electorate of the taxing subdivision, a provision which was obviously unnecessary in the instance of cities if the legislature contemplated that cities might by charter ordinance exempt themselves from the limitations. Assuming, arguendo, that it was the legislative intent to impose aggregate levy limitations which would apply to all cities, and from which no city could exempt itself, the question becomes not one of applying rules of statutory construction to determine legislative intent, but of applying Article 12, § 5(b), to determine if the legislation which was enacted to implement that intent was fashioned as that article requires to oust the exercise of municipal legislative powers to modify that legislation or exempt the city therefrom by charter ordinance.

Clearly, it was not. In preparing annual supplements to the Kansas Statutes Annotated, the Revisor of Statutes has selected from 1973 Substitute for Senate Bill 11 seventeen sections which are deemed to comprise the tax lid, and has included those sections as article 50 of chapter 79, K.S.A. That editorial selection does not, of course, constitute those sections a separate enactment, for they remain a part of the ch. 393, L. 1973, and must be considered as an integral part of that act. Marks v. Frantz, supra. Article 2, § 16 of the Kansas Constitution, a portion of the legislative article, distinguishes between a bill or act, and sections thereof. The use of the term "enactment" if Article 12, § 5 refers, obviously, to an act, and not to discrete sections thereof, and that reference constitutes an important and major restriction upon the fashion in which the legislature must act in order to oust a city from the exercise of its home rule powers.

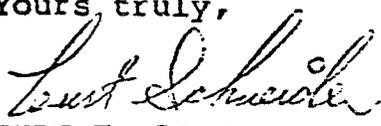
Moreover, the aggregate levy limitation imposed by section 3 of the 1973 act, now K.S.A. 1976 Supp. 79-5003, itself does not apply

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uniformly to all cities. The exemptions from the aggregate limitation enumerated in section 11 of that act, now K.S.A. 1976 Supp. 79-5011, operate effectively to destroy whatever uniformity the limitation itself might have. For example, subsection (f) of K.S.A. 1976 Supp. 79-5011 exempts levies made pursuant to K.S.A. 13-14,100, an exemption which applies only to cities having a population of not less than 120,000 nor more than 200,000. K.S.A. 13-1497. The same subsection exempts the levy authorized by K.S.A. 13-14a02 for police and fire department pension and disability funds in cities of the first class, but does not exempt a levy for virtually the identical purpose which is authorized by K.S.A. 14-10a02 for certain cities of the second class. Piecemeal multiplication of exemptions from the limitation in other legislation merely demonstrates the lack of uniformity already present in the exemptions granted by K.S.A. 1976 Supp. 79-5011. See, e.g., K.S.A. 1976 Supp. 12-1919 and 12-11a05.

To recapitulate, in my judgment, the aggregate levy limitations enacted as a part of 1973 Substitute for Senate Bill 11, ch. 393, L. 1973, and now found at K.S.A. 1976 Supp. 79-5001 through -5017, were not adopted as an enactment which applies uniformly to all cities or to a class of cities created for the purpose of imposing such aggregate levy limitations, and accordingly, a city is free to adopt a charter ordinance exempting the city from such limitations in whole or in part, in the manner prescribed by Article 12, § 5(c) of the Kansas Constitution. Any charter ordinance which is adopted for that purpose shall not take effect for sixty days after final publication thereof. If a petition is filed within that time signed by a number of electors of the city equal to not less than ten percent of the number who voted at the last regular city election, the ordinance may not take effect until submitted to a vote and approved by a majority of the electors voting thereon.

Yours truly,


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