



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 20, 1977

ATTORNEY GENERAL OPINION NO. 77-392

Mr. Jerry D. Fairbanks
Wallace County Attorney
Post Office Box P
Sharon Springs, Kansas 67758

Re: Counties--Home Rule--Prairie Dogs

Synopsis: It is within the statutory home rule authority of a county under K.S.A. 1976 Supp. 19-101a to provide for the control and eradication of prairie dogs, and to adopt as applicable to the county the provisions which are now applicable to only certain townships, under K.S.A. 1976 Supp. 80-1202.

* * *

Dear Mr. Fairbanks:

We have your letter of December 15, 1977, enclosing a copy of a proposed charter resolution which is being considered for adoption by the board of county commissioners of Wallace County, concerning the eradication of prairie dogs.

Section 1 authorizes the board to hire necessary personnel and to purchase the necessary equipment and materials for the eradication of prairie dogs on land within the county which are infested with same. Section 2 provides for written notice to landowners of infestation of their property, and affords them a period of fifteen days in which to make diligent efforts to control prairie dogs thereon, whereupon the county may through its agents enter upon said land and use the necessary materials and equipment to eradicate prairie dogs thereon. This provision is substantially identical to the proviso in the first paragraph of K.S.A. 1976

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Supp. 80-1202, applicable only to certain townships. Section 3 is substantially identical to the second paragraph of the cited section, which is likewise applicable only to certain townships. It provides for the assessment and collection of costs of prairie dog eradication efforts which are undertaken by the county on the property of a landowner.

You inquire, first, whether the county has the power by resolution or charter resolution to assume the responsibility of eradicating prairie dogs in Wallace County. K.S.A. 1976 Supp. 19-101a(a) commences thus:

"Counties are hereby empowered to trans-act 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"

K.S.A. 80-1201 authorizes the township board of any township to employ persons and purchase materials for the destruction of prairie dogs within the limits of the township. Certainly, the control and eradication of prairie dogs is an appropriate responsibility of government. The fact that townships are authorized by law to act in the matter in no wise suggests that counties are foreclosed from any governmental action whatever in that regard. Within a single county, some townships may find themselves without adequate financial resources, e.g., to control the prairie dog population, leaving the problem to be dealt with adequately only on a county-wide basis. In my judgment, it is an appropriate subject of county legislative and administrative action, to be authorized by the exercise of counties' statutory home rule powers under K.S.A. 1976 Supp. 19-101a.

It is necessary for the county to adopt a charter resolution to invoke this authority. Under K.S.A. 19-101a(b), 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."

In asserting the authority to provide for the control and eradication of prairie dogs, the county does not need to exempt itself

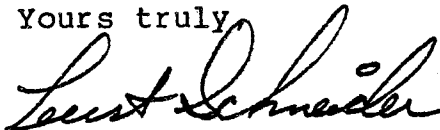
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from any act of the legislature, for there is no statutory provision which prohibits the county from assuming this authority. The resolution may properly be adopted in an ordinary resolution, as provided in K.S.A. 1976 Supp. 19-101a(b):

"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 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."

Secondly, you request our opinion whether the resolution enclosed with your letter is substantially in the form as prescribed by law. I have reviewed the resolution, and in my opinion, it is in entirely proper form for adoption by the board, save and except for the first paragraph, designating it a charter resolution. The resolution as drafted concerns only the powers of the county itself, and there is no occasion for the county to amend K.S.A. 80-1201, which concerns only the powers of townships. Those statutory powers may remain intact, for they are unrelated to the power of the county which is recited in this resolution. With the omission of the first paragraph, the proposed resolution is in entirely proper form.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj