STATE OF KANSAS

# Office of the Attorney General

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

*Curt T. Schneider*
*Attorney General*

September 7, 1978

ATTORNEY GENERAL OPINION NO. 78- 283

The Honorable Wm. L. Smith
Mayor of Rossville
Rossville, Kansas 66533

The Honorable Oscar McKenzie
Mayor of Willard
Route 8
Topeka, Kansas 66604

The Honorable Leonard Lee
Mayor of Silver Lake
Silver Lake, Kansas 66539

The Honorable Wilton Kellogg
Mayor of Auburn
Auburn, Kansas 66402

Re: Elections--Airport Authority--Constitutionality

Synopsis: The provision in 1978 Senate Bill 564 for a countywide election upon the establishment of a county public airport authority, permitting voters of both the City of Topeka and those residing outside the city to vote, does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

* * *

Gentlemen:

As mayors of four cities in Shawnee County, Kansas, specifically Rossville, Willard, Silver Lake and Auburn, you inquire concerning the constitutionality of certain portions of 1978 Senate Bill 564, now found at ch. 148, L. 1978.

Section 2 thereof directs the board of county commissioners of Shawnee County, Kansas, to direct the county election officer to place the question of the adoption of the provisions of the act upon the ballot at the November, 1978, general election, to be voted upon by all electors of the county. The proposition is stated thus:

> "Shall the county of _____ adopt the provisions of 1978 Senate Bill No. 564, providing for a city-county airport authority with ability to levy up to 1.85 mills county-wide to replace the current city airport authority with ability to levy up to 3.00 mills city-wide?"

Under section 7 of the act, an authority created thereunder may "annually levy a tax not to exceed one and eighty-five hundredths (1.85) mills upon each dollar of assessed taxable tangible valuation of the property located within the county for the furtherance of the purposes of the authority."

It is objected that those voters of the county who do not reside in the City of Topeka are placed at an unfair advantage by those portions of the act which permit all qualified electors of the county, including those in the city, to vote on the question, and by not limiting the vote on this particular question to only those voters residing outside the City of Topeka. The existing airport authority is authorized to levy not to exceed 3 mills annually only within the City of Topeka. Topeka voters, it is argued, will benefit by adoption of the proposition by reducing the levy limit for airport purposes to 1.85 mills, and by extending the levy to the assessed valuation of the entire county. Thus, it is urged, because Topeka voters comprise the clear majority of all county voters, those residing outside the City of Topeka are deprived of a fair voice in the question.

The central objection to a county-wide election under these circumstances is that voters in the county who reside outside Topeka are treated unequally. Because they constitute a clear minority of all county votes, and because Topeka voters as a class have a common interest in reducing their tax burden by approval of

the proposition, it is argued, presumptively, that the voters of those qualified electors residing outside the City of Topeka are unconstitutionally diluted.

In a number of cases, the United States Supreme Court has addressed the application of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution to questions of equal voting rights. Thus, for example, in *Reynolds v. Sims*, 377 U.S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964), the Court stated thus:

> "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage had made this indelibly clear . . . . And the right of suffrage may be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

In *Gray v. Sanders*, 372 U.S. 368, 9 L. Ed. 2d 821, 83 S. Ct. 801 (1963), the Court held invalid the Georgia county unit system, applicable in statewide primary elections, because it resulted in a dilution of the weight of the voters of certain voters merely because of where they resided:

> "How then can one person be given twice or ten times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote -- whatever their race, whatever their sex, whatever their occupation, whatever their income, or wherever their home may be in that geographical unit. This is required by the

> Equal Protection Clause. The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions." 372 U.S. at 379-380.

In the bill in question here, the legislature authorizes the establishment of a county, rather than a municipal, public airport authority empowered to levy a tax throughout the county. The vote of each voter in the county, whether residing in Topeka or elsewhere in the county, counts equally. This is not an instance in which equality of voting rights is claimed to be impaired by malapportionment, in which the weight of votes cast in one voting district is substantially unequal to the weight of votes cast by electors in another voting district because of population disparities between the voting districts.

Here, it is argued that one group of voters in the voting district, those residing in the City of Topeka, has a distinct interest in the question submitted which is adverse to the interest of a smaller group of voters, those residing outside the city. The "one man, one vote" principle means that every individual elector's vote should carry the same weight as that of every other voter in the same voting district. The weight of the votes of a group of electors is not impaired merely because that group is outnumbered by others in the same voting district who have a different view of the question to be voted upon, or the candidate to be nominated or elected. The Constitution does not require that an "equal voice" be a winning voice.

In any election, whether it be for candidates for office or for a special question, as here, one group of voters in the voting district may have a distinct and identifiable interest which is adverse to others in the same voting district. Yet each vote counts equally, and carries equal weight. It must be remembered that the "one man, one vote" principle mandates that each elector's vote be given equal weight as every other elector's vote. It is a catch phrase for the rights of individuals. It is not a

principle which may be invoked to rectify numerical imbalances between voting blocs with different interests, so long as each member of each group has an equal voice in the electoral process. It is a principle designed to assure genuine electoral majority rule, and may not be relied upon to enhance the weight of a voting bloc merely because it is outnumbered by another bloc in the same voting district. I can find no reported decision of any court in which the Equal Protection clause was cited as a basis for excluding from an election a particular group of electors based merely upon their place of residence. The question which is to be submitted at the November, 1978, general election, concerns the establishment of a county public airport authority, upon which every elector in the county must have a vote. To exclude electors of the city from the election, based merely upon their place of residence and their resulting likely interest in the question, would clearly operate to abridge the equal voting rights of those electors in the city.

The "one-man, one-vote" principle is not an antidote for every political disadvantage. It is not a remedy for numerical disparities between voting blocs, however those blocs are identified, so long, once again, as each individual elector has a right to vote in common with every other elector of the voting district.

In summary, in my judgment, the Fourteenth Amendment requires that, if a question is to be submitted to a county-wide election upon a county question, every qualified elector in the county must be permitted to vote thereon. Once the 1978 legislature decided, as it did, to authorize the establishment of a county public airport authority, and to condition that establishment upon the approval of the electorate, it was required to submit the question to every qualified elector of the county, and could not deny the franchise in that election to one group of voters, such as those residing in the City of Topeka, merely because that group was likely to have a different view on the question from the view of another and smaller group of voters, those living outside the City of Topeka. To deny the franchise to one group of voters on such a basis is entirely foreign to our constitution.

Certainly, your grievance is entirely understandable, because of the very probable benefit to Topeka voters from approval of the proposition, and the fact that these voters far outnumber those residing elsewhere in the county. You might justifiably feel that the voice of those electors residing outside the City

of Topeka will not be heard effectively at the polls, precisely because of the number of Topeka voters. However, I cannot find any basis in either the United States or Kansas Constitution to rectify this imbalance, for I can find no decision of any court which has held the Equal Protection Clause to be violated in any similar circumstances.

Yours truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj