



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

June 14, 1979

ATTORNEY GENERAL OPINION NO. 79- 115

The Honorable E. Newton Vickers
Administrative Judge
Third Judicial District of Kansas
Shawnee County Courthouse
Topeka, Kansas 66603

Ms. Lauraine Brooker
District Court Trustee
Third Judicial District of Kansas
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Counties and County Officers -- General Provisions --
Home Rule Powers

Synopsis: Shawnee County Resolution No. 79-53 is contrary to an act of the Kansas Legislature and is procedurally deficient as it purports to pertain to the Office of the District Court Trustee for the Third Judicial District of Kansas

A county may not under home rule powers established in K.S.A. 1978 Supp. 19-101a enact local legislation which affects the courts located within the county.

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Dear Judge Vickers and Ms. Brooker:

You inquire whether the Shawnee County Board of Commissioners may, by general resolution, control the employment of personnel in the office of the District Court Trustee. You indicate that the Board of

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Commissioners has purported to exert such authority by the passage of Shawnee County Resolution No. 79-53 which provides:

"RESOLUTION NO. 79-53

"WHEREAS, it is the policy of the Shawnee County Commission to insure maximum utilization of tax dollars and to provide the most efficient service to county taxpayers, the Shawnee County Board of Commissioners sitting in regular session this 20 day of March, 1979, hereby resolve the following:

"1. A county-wide moratorium on hiring of new and replacement permanent employees will be implemented immediately.

"2. Any new or replacement permanent employees may be hired only with the express authorization of the Commission. Such authorization will be granted only upon written request and justification by the official or department head requesting the new employee.

"3. Nothing contained herein shall operate to limit the absolute unbridled discretion of a duly elected official of this county to appoint, to any position created, authorized, or established by this resolution, any person of the personal choice of such official. Such choice of a person to fill any such authorized position shall not require the written permission of the Shawnee County Commission, but will be subject to all relevant laws, federal, state, and local governing employment.

"4. Nothing contained herein shall operate to limit the mandate of any Kansas statute which, expressly requires the appointment of certain employees in any office held by a duly elected official.

"BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS

/s/ Larry D. Woodward
Larry D. Woodward, Chairman

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/s/ Absent
Roland G. Hug, Member

/s/ Dennis R. Taylor
Dennis R. Taylor, Member

ATTEST:

/s/ Winifred L. Kingman
Winifred L. Kingman, County Clerk"

It is our opinion that the foregoing resolution conflicts with the statutory provisions of K.S.A. 23-492 et seq. which govern the operation of the District Court Trustee's office; therefore, the resolution is invalid to the extent that it purports to regulate the employment of personnel in that office.

The enabling legislation for the creation of a District Court Trustee is K.S.A. 23-494, which provides:

"The court may provide by rule adopted by the judge or judges of each of the judicial districts of Kansas for the establishment of the office of court trustee for the judicial district. The court trustee shall be a person licensed to practice law in the state of Kansas and shall be appointed by and serve at the pleasure of the judge or judges of the judicial district." (Emphasis supplied.)

The provisions for the operation of the office are set out in K.S.A. 1978 Supp. 23-497 which states:

"To defray the expenses of operation of his or her office, the court trustee is authorized to charge an amount, not to exceed five percent (5%) of the funds collected from obligors through such office, as determined necessary by the district judge or judges. Such amounts to be paid to the county general fund of the county where the same were collected. The court trustee shall be paid compensation as determined by the district judge or judges.
The board of county commissioners of each county to which

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this act may apply shall provide suitable quarters for the office of court trustee, furnish stationary and supplies, and such furniture and equipment as shall in the discretion of the district judge or judges, be necessary for the use of the court trustee. The district judge or judges shall fix and determine the annual budget of the office of the court trustee. (Emphasis supplied.)

The statutory provision for the payment of expenditures authorized in the Enforcement of Support Act is contained in K.S.A. 1978 Supp. 23-498 which provides, in part:

"All expenditures provided for in this act shall be paid as follows:

"(1) In each judicial district consisting of a single county such expenditure shall be paid by the board of county commissioners from the county general fund." (Emphasis supplied.)

Authorization for the appointment of a deputy and other staff is established in K.S.A. 23-4,100 which provides:

"The district court shall provide by court rule for such other matters as are necessary to carry out the purpose of this act, including, but not limited to, the appointment of deputy trustees and other staff."

The foregoing authorization has been exercised by way of Shawnee County District Court Rule No. 3.106 which provides, in part:

"The Office of the District Court Trustee is established in the Third Judicial District pursuant to K.S.A. 23-492 through K.S.A. 23-4,100, as amended, to improve the enforcement of orders of support. The Court shall appoint a court trustee and deputy trustee to serve at the pleasure of the Court. . . .

"The court trustee shall have the responsibility for collection of support from the obligor upon the written request of the obligee or upon order of the court, and is hereby authorized and empowered to pursue all civil remedies which would be available to the obligee in enforcement of support." (Emphasis supplied.)

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It is our opinion that the preceding statutory scheme clearly vests the authority to appoint the District Court Trustee and subordinate employees in the District Court Judges, and to the extent that Resolution No. 79-53 conflicts with this statutory authority it is an invalid attempt to exercise county home rule power. It should be noted that the appointment power we have alluded to is not unlimited, but rather, must be exercised within the confines of the annual budget described in K.S.A. 1978 Supp. 23-497.

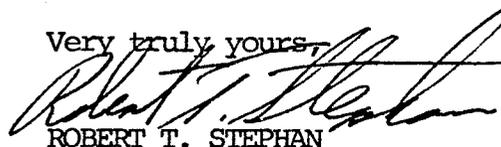
A collateral question which you have not specifically addressed, but upon which we feel incumbent to comment, is whether the Board of County Commissioners could effect control of employment practices by way of a charter resolution pursuant to K.S.A. 19-101b. Such a resolution may be utilized when the subject matter of the resolution is contrary to an act of the legislature which is not uniformly applicable to all counties. Although the creation of a District Court Trustee is arguably not uniformly applicable to all counties, it is our opinion that such a local legislative effort would be prohibited by K.S.A. 19-101a which, in part, provides:

"(a) Counties are hereby empowered to transact all county business and perform such powers of local legislation as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: . . . third, counties shall have no power under this section to affect the courts located therein;"

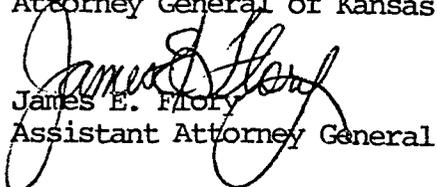
Since appointment of personnel in the Office of the District Court Trustee falls within the penumbra of court functions, it is our opinion that counties may not utilize local legislation which affects the court's appointment power once a budget for the operation of the office has been established.

In conclusion, it is our opinion that Shawnee County Resolution No. 79-53 is contrary to K.S.A. 1978 Supp. 23-497, 23-498 and K.S.A. 23-4,100 which have been made applicable to Shawnee County by way of District Court Rule; therefore, the general resolution is deficient as it pertains to the office of the District Court Trustee. Further, it is our opinion that the Shawnee County Board of Commissioners is prohibited by K.S.A. 19-101a from exercising statutory home rule powers to affect the courts located within Shawnee County.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



JAMES E. FLORY
Assistant Attorney General