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February 29, 1980

ATTORNEY GENERAL OPINION NO. 80-59

Mr. Evan Nightingale
Grant County Attorney
County Courthouse
Ulysses, Kansas 67880

Re: Counties and County Officers--County Homes--Management by Board of Trustees Created Under County's Home Rule Powers

Synopsis: (1) The Board of County Commissioners of Grant County may exercise its home rule powers under K.S.A. 1979 Supp. 19-101a and K.S.A. 19-101b to adopt a charter resolution exempting Grant County from the provisions of K.S.A. 19-2110 and K.S.A. 19-2111, relating to the operation of a county care home by the county commissioners, since the latter statutes do not, when read <u>in pari materia</u> with statutes relating to the same subject, apply uniformly to all counties.

(2) Grant County is exempt from the provisions of K.S.A. 19-206 and 19-208, relating to payment of wages by the county on a monthly basis, since these statutes apply only to counties with populations in excess of 8,000 persons.

(3) The expending of funds by a board of trustees appointed pursuant to said charter ordinance would not necessarily contravene K.S.A. 19-229 as long as the county commission would still have ultimate control over the issuance of warrants.

* * *

Dear Mr. Nightingale:

On behalf of yourself and Senator Leroy Hayden, you have requested the opinion of this office regarding the powers of a county to appoint a board of trustees to manage the affairs of county-owned care homes for the elderly. Your request is made in light of Senate Bill No. 609, which is currently under consideration by the Legislature. That measure, authorized by Senator Hayden, would specifically grant a county the power to appoint such a board, and also would empower the county to give the board certain powers concerning the management of the home and the control of its expenses. You wish to know whether in fact the same measures could be adopted by means of home rule powers given by K.S.A. 1979 Supp. 19-101 et seq.

Pursuant to subsection (a) of K.S.A. 1979 Supp. 19-101a, counties are "empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate," subject to certain specified limitations, restrictions and prohibitions. The only one of these limitations or restrictions having any apparent relevance here is that "counties shall be subject to all acts of the legislature which apply uniformly to all counties."

In your inquiry, you note that the proposed bill deals with a number of areas where action by a single county might be preempted by this exception to home rule. However, as is set out in greater detail below, it is our opinion that each of the statutes which might proscribe a county from so acting is either of non-uniform application, and therefore may be superceded by charter ordinance, or is inapplicable altogether to Grant County.

The first statutes which must be so examined are K.S.A. 19-2110 and 19-2111. These statutes govern the operation of a county home for the aged and grant certain powers to the board of county commissioners to so do. In pertinent part, they read as follows:

> "Every home for the aged established under this act and not leased by the board of county commissioners as provided for under K.S.A. 19-2112 or any amendments thereto, shall be operated under the supervision of the county board of commissioners and shall be for the benefit of all the inhabitants of such county; . . .

> "The county board of commissioners is hereby authorized to promulgate and adopt rules and regulations pertaining to the operation of homes for the aged. The county board of commissioners shall appoint a responsible and qualified person who shall at all times be in charge of the home, who shall be known as the administrator, and such other employees as is deemed necessary for the proper and adequate care of the residents in the home." K.S.A. 19-2110.

> "The board of county commissioners are hereby authorized to receive grants of federal funds and any person, or persons, firm, organization, corporation or society desiring to make donations of money, personal property or real estate for the benefit of such home for the aged, shall have the right to vest, and the board of county commissioners is authorized to accept, title to the money or real estate so donated in said county to be controlled when accepted, by the board of county commissioners according to the terms of the deed, gift, devise or bequest of such property or funds: . . ." K.S.A. 19-2111.

The proposed bill would allow the board of commissioners to transfer, if they so desired, the operation of such homes to a board of trustees. (Sec. 2.) The trustees also would have the power to pay any expenses incurred by means of warrants they would issue (Sec. 4.), and would receive federal grants and private donations in the same manner as the commission may now do under K.S.A. 19-2111(Sec. 6).

In our opinion, a board of trustees with such powers may be established at the present time by a county through home rule, due to the non-uniform application of K.S.A. 19-2110 and 19-2111. While the statutes on their face appear to be uniform, it is well-established that in making such a determination, all the parts of an act relating to the same subject must be considered and construed together _in pari materia_. _Claflin v. Walsh_, 212 Kan. 1 (1973). When this is done here, it becomes apparent that there are numerous portions of Article 21 of Chapter 19 which are of non-uniform application.

For example, K.S.A. 1979 Supp. 19-2122 deals only with counties having populations of between 4,500 and 5,500 and taxable tangible valuations of more than 25 million dollars. Likewise, K.S.A. 1979 Supp. 19-2106e, K.S.A. 19-2117 and K.S.A. 19-2120 all deal with counties having various sizes of population and tax valuation amounts. While none of these statutes were enacted at the same time as K.S.A. 19-2110 and 19-2111, this fact is irrelevant in considering them *in pari materia*. *Claflin*, 212 Kan. at 8. Therefore, because of the clearly non-uniform application of other statutes dealing with the same subject and contained in the same act, K.S.A. 19-2110 and 19-2111 are likewise of non-uniform application and accordingly do not have to be followed by Grant County. Furthermore, it is our opinion that here, as in *Claflin*, there is no indication that it was the intent of the Legislature to enact uniform measures which leave no room for a county to act on its own.

A second set of statutes with which you are concerned is K.S.A. 1979 Supp. 19-206 and K.S.A. 19-208. While not dealing with county homes for the aged, these statutes do speak to a subject which appears in the proposed legislation, namely the payment of wages. Senate Bill No. 609 would allow the wages of care home employees to be paid by the board of trustees, and you indicate this would probably be done on a bi-weekly basis. While K.S.A. 1979 Supp. 19-206 and K.S.A. 19-208 prescribe that such claims against the county for salaries be paid at the meeting of the commissioners, *i.e.*, monthly, in our opinion these statutes would be of no application here, thus making an inquiry as to their uniformity unnecessary. We base this conclusion on the wording of the statutes themselves, for both are clearly worded so as to be mandatory only for counties with populations in excess of 8,000. As the population of Grant County was listed as 7,253 in the 1979 *Kansas Directory* (p. 229), the requirements are not applicable. As a result, counties of less than 8,000 population may treat this matter as being one of local concern, and may, if they so desire, adopt payment policies of the type you mention.

A third area of concern is presented by K.S.A. 19-229, a statute of uniform application which states that a board of county commissioners "shall have exclusive control of all expenditures" incurred by a county. Section 3 of the proposed bill places control of expenditures in the hands of the trustees. You inquire if, in view of the language of K.S.A. 19-229, a county could act under home rule to authorize a similar board to so act. We would conclude that it could, in fact, do so as long as ultimate control of expenditures was left with the county. We note that K.S.A. 1979 Supp. 19-1860b, dealing with the creation of a board of hospital trustees, deals with control of expenditures in a similar manner as proposed in Section 3. However, despite this control, at subsection (4) it is made clear that funds are to be paid out only upon warrants drawn in a manner as other county warrants, thus satisfying the terms of K.S.A. 19-229. If similar language were adopted by Grant County in establishing a board of care home trustees, the requirements of K.S.A. 19-229 would be met.

In conclusion, the Board of County Commissioners of Grant County may exercise its home rule powers under K.S.A. 1979 Supp. 19-101a and K.S.A. 19-101b to adopt a charter resolution exempting Grant County from the provisions of K.S.A. 19-2110 and K.S.A. 19-2111, relating to the operation of a county care home by the county commissioners, since the latter statutes do not, when read in pari materia with statutes relating to the same subject, apply uniformly to all counties. Grant County is exempt from the provisions of K.S.A. 19-206 and 19-208, relating to payment of wages by the county on a monthly basis, since these statutes apply only to counties with populations in excess of 8,000 persons. The expending of funds by a board of trustees appointed pursuant to said charter ordinance would not necessarily contravene K.S.A. 19-229 as long as the county commission would still have ultimate control over the issuance of warrants.

Very truly yours,

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