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ATTORNEY GENERAL OPINION NO. 80-88

Helen Schabel
Montgomery County Treasurer
P. O. Box 767
Independence, Kansas 67301

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

Motor Vehicles--Registration and Taxation--
Duties of County Officers

Synopsis: A county resolution by which the board of county commissioners directs that certain persons employed by the county treasurer for the performance of duties of the office of county treasurer shall be prohibited from working for the treasurer in the performance of her duties under K.S.A. 1979 Supp. 8-145 is invalid and ineffective inasmuch as said resolution is an impermissible restraint of the exercise of the discretion of the county treasurer in managing the affairs of her office.

A county resolution by which the board of county commissioners purports to change the procedure established by state law for the classification and registration of motor vehicles by the county appraiser and the county treasurer is invalid and ineffective inasmuch as said resolution impairs or abridges the authority of the county appraiser and the county treasurer in the performance of their duties imposed by state law, and because said resolution is local legislation which is contrary to the provisions of an act of the legislature uniformly applicable to all counties and the administrative procedures established pursuant to that act.

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Statutes cited herein: K.S.A. 19-212, 19-235, 19-501 et seq., 19-503, 28-824, and K.S.A. 1979 Supp. 8-145, 19-101a, subsection (a), First of 19-101a, 79-5101 through 79-5115, inclusive, and 79-5108; 1979 House Bill No. 2605 and L. 1979, ch. 309.

* * *

Dear Ms. Schabel:

You have requested our opinion on two questions relating to the validity and effect of two resolutions adopted by the Montgomery County Board of County Commissioners, Resolution No. 4 and Resolution No. 5, both adopted January 14, 1980. Resolution No. 4 provides, in pertinent part:

"RESOLUTION #4

"It is the decision of the Board of County Commissioners on this 14th day of January, 1980 that in view of the fact that according to Kansas Statutes the Tag Office of Montgomery County, Kansas is managed solely by the County Treasurer of Montgomery County, Kansas; further, pursuant to KSA 8-145 said County Treasurer is to fund compensation for clerical employees out of the Special Fund for the operation of the Tag Office, therefore, the Board of County Commissioners have determined that personnel [sic] employed by the Montgomery County, Kansas to work in the Office of County Treasurer and whose salaries have been budgeted for from the General Fund of Montgomery County, Kansas for the purpose and business for operating the County Treasurers [sic] Office it is hereby ordered and resolved that employees of the Office of County Treasurer are henceforth prohibited from working in the Tag Office at times when they are ordinarily [sic] supposed to work or drawing compensation, in the Office of County Treasurer."

You first inquire whether the foregoing resolution is a valid exercise of the powers of the Montgomery County Board of County Commissioners (hereinafter referred to as "the Board") as such resolution impinges on the authority you exercise as county treasurer. In order to appropriately address the question of validity of the above-quoted resolution, it is first necessary to consider relevant statutory provisions which vest authority in the Board and the county treasurer, respectively.

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Powers of boards of county commissioners that are pertinent to this matter are set forth in K.S.A. 1979 Supp. 19-101a et seq., and K.S.A. 19-212. Under K.S.A. 1979 Supp. 19-101a, the Board is "empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to . . . [certain enumerated] limitations, restrictions, or prohibitions." One such limitation is that "counties shall be subject to all acts of the legislature which apply uniformly to all counties." Subsection (a), First of K.S.A. 1979 Supp. 19-101a. Under K.S.A. 19-212, the Board is empowered, inter alia,

"Second. To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle and allow all accounts chargeable against the county; and when so settled, they may issue county orders therefor, as provided by law.

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"Sixth. To represent the county and have care of the county property, and the management of the business and concerns of the county; in all cases where no other provision is made by law.

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"Thirteenth. To perform such other duties as are or may be prescribed by law."

As we said in Attorney General Opinion No. 79-113, under the above-quoted statute, it is clear that "the financial operation of the county is vested in the board of county commissioners, and the fiscal responsibility for county affairs is placed upon the board." Attorney General Opinion No. 79-113, p. 4. The home rule power of counties empowers the Board to effectively carry out that responsibility.

In general, the powers and duties of county treasurers are established under K.S.A. 1979 Supp. 19-501 et seq. Under K.S.A. 19-503, the treasurer is authorized to appoint a deputy county treasurer. Employment of clerks and office assistants by all county officers, including county treasurers, is governed by K.S.A. 19-235, which provides:

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"That whenever the county commissioners of any county in the state of Kansas shall allow any sum of money to any county officer for clerk hire or for an assistant in his office, the said sum so allowed shall be available for the payment of any such clerk hire or assistance, upon itemized and verified vouchers presented by the clerk or assistant employed in such office, and such voucher shall be approved by the county officer in whose office such clerical work or assistance is performed. All payments made on account of such voucher shall be made directly to the clerk or assistant performing such services, and in no case shall any part of the moneys so allowed by the county commissioners be paid to the county officer in whose office such work or assistance is performed." (Emphasis added.)

See also K.S.A. 28-824.

In addition to his or her general duties, the treasurer is vested with responsibilities for motor vehicle registration and collection of fees therefor under K.S.A. 1979 Supp. 8-145. Under that statute, the treasurer is directed to collect all registration and certificates of title fees and to remit fees collected to the secretary of revenue. The statute also authorizes the treasurer to retain a certain portion of those fees for deposit in a special fund,

"which fund is . . . appropriated for the use of the county treasurer in paying for necessary help and expenses incidental to the administration of duties in accordance with the provisions of this law and extra compensation to the county treasurer for the services performed in administering the provisions of this act." (Emphasis added.)

You have indicated that, pursuant to the above-noted statute, you have established what is known as the "tag office" for which you have employed office personnel who also have duties in the other operations of the office of the county treasurer. You indicate that your use of such personnel for "tag office" functions and other operations of your office prompted the

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Board's adoption of the above-quoted Resolution No. 4. You argue that your use of employees for both the "tag office" and other operations of your office is a measure of good office management and is, in fact, efficient use of your personnel. (Please note Attorney General Opinion No. 79-74, concerning the treasurer's use of the special fund appropriated under K.S.A. 1979 Supp. 8-145, enclosed for your consideration.)

In consideration of the above-quoted statutes, it is our opinion that Resolution No. 4 is invalid and ineffective, and impermissibly infringes upon the power of the county treasurer to manage the affairs of her office. We reach that conclusion for two reasons, both of which were extensively discussed in Attorney General Opinion No. 79-113, to which we have earlier referred, a copy of which is attached for your consideration. In that opinion, we considered the question of validity of a Shawnee County resolution by which the county commissioners purported to impose a countywide moratorium on the hiring of new and replacement permanent employees in all county offices, and further provided that any new or replacement employees could only be hired with the express authorization of the commissioners. We determined that the Shawnee County resolution was invalid and ineffective, concluding thus:

"[T]he power of appointment [of employees or office personnel] which is statutorily vested in duly elected county officials carries with it an authority for office management which may not be directly abridged by a general resolution couched in the language of fiscal restraint, however well-intentioned. The power of the county commissioners is extensive; however, that power may not be exercised so as to impinge upon the statutory authority of other elected county officials." Attorney General Opinion No. 79-113, p. 12.

In making that determination, we reached two important conclusions, which are the two reasons for the conclusion we have reached in answer to your first question. First, considering K.S.A. 19-235, quoted above, we said that

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"the critical language of [that] . . . statute is that which we emphasized. From that language it is apparent that the county commissioners have discretion regarding the sum of money which may be allowed to any officer for clerk hire and assistants; however, there is no language which indicates that the county commission is empowered to directly control the number of clerical personnel or office assistants. Rather, it is our impression that once the county commissioners have allowed a sum of money to the county officer, for the purpose of employing clerical employees, the determination of how many employees should be hired is within the discretion of the county officer." (Emphasis added.) Attorney General Opinion No. 79-113, p. 9.

Secondly, we concluded that the county commissioners are not without authority, in the exercise of the Board's fiscal powers described above, to have an effect upon the management of the county business in the various county offices to insure efficiency and fiscal responsibility, but that such authority is principally manifested in the budgetary process, as is extensively discussed in Attorney General Opinion No. 79-113, pages 9 through 11. That is, in the course of the budgetary process, involving budget proposals from all county officers, and negotiations and compromise between the officers and the Board, and finally, involving input from the taxpayers in a public hearing on proposed budgets, the Board has an opportunity each year to exercise its fiscal powers to insure sound management of county business and to fulfill its duty of fiscal responsibility on behalf of the county taxpayers. Thereafter, as we said in the above-mentioned opinion,

"the elected officials must be free to carry on the duties of their offices in their sound discretion. As long as these officials operate within the confines of the approved appropriations, it is our opinion that neither the Kansas statutes nor decisional law permits an infringement upon their functions. In our judgment nothing less would assure their autonomy as duly elected officials clothed with the public trust and confidence by which they attained their office." Attorney General Opinion No. 79-113, p. 12.

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We think these principles apply with equal force to your first question concerning the validity of the Board's Resolution No. 4, and for the reasons expressed above, we conclude that Resolution No. 4 is invalid and ineffective inasmuch as said resolution is an impermissible restraint of the exercise of the discretion of the county treasurer in managing the affairs of her office in all its various operations and functions.

The resolution would prohibit the treasurer from exercising her lawful discretion in the use and control of her personnel for the performance of the various functions of her office, whether for her duties to collect fees and distribute license plates or for any of the other duties imposed on the office of county treasurer, and is, therefore, invalid and ineffective, in our opinion. Within the constraints of the statutes discussed above, the county commissioners have no authority to manage the internal affairs of the various offices of duly elected county officials, nor to make management decisions affecting the use of personnel in those offices. That authority and discretion is placed in the hands of the respective county officers to enable them to carry out the statutory duties they were elected to perform.

You next inquire as to the validity and effect of Resolution No. 5, adopted by the Board on January 14, 1980, which provides, in pertinent part:

"RESOLUTION # 5

"ON THE 14th DAY OF January, 1980, BE IT RESOLVED by the Board of County Commissioner of Montgomery County, Kansas that the following procedures be implemented to expeditiously administer the provision of HB 2605; that the Tag Office submit all Vehicle Registration Forms to the Office of County Appraiser after Tax Payer customers have transacted their business in the Tag Office so that the County Appraiser can comply with the Provision [sic] with House Bill 2605. The County Appraiser and his employees are hereby ordered to tender signed receipts to Tag Office Personnel after collecting vehicle Registration Forms and the County Appraiser and his employees are ordered to obtain signed receipts from Tag Office Personnel when returning Vehicle Registration Forms to that office.

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"The County Appraiser and his employees are ordered to process the Vehicle Registration Forms as expeditiously as possible and return same to Tag Office personnel immediately after processing.

"This Resolution is hereby RESOLVED, ORDERED AND ADOPTED upon the belief the Procedure set forth herein will protect the best interests of the Tax Payer of Montgomery County in the following Ways:

"#1. Reduce congestion in Courthouse hallways and offices.

"#2. Minimize inconvenience for tax payer.

"#3. Minimize the likelihood of personal injury to Courthouse patrons.

"#4. Protect Revenues of Montgomery County by minimizing the opportunity for inaccurate or false assessed valuation.

"#5. Maximize the efficiency of the County Appraiser Personnel."

The foregoing resolution mentions "House Bill 2605," which you indicate is a reference to 1979 House Bill No. 2605, adopted during the 1979 legislative session and placed in the Session Laws at chapter 309 (L. 1979, ch. 309). Provisions of that act relevant to your inquiry have been codified in the Kansas Statutes Annotated at sections 79-5101 through 79-5115, inclusive (K.S.A. 1979 Supp. 79-5101 et seq.). This act establishes the policies and procedures for the valuation and taxation of motor vehicles throughout the state of Kansas. Section 8 of the act, K.S.A. 1979 Supp. 79-5108, provides, in relevant part:

"(a) The secretary of revenue shall provide county officials of the several counties with copies of manuals for the taxation of motor vehicles together with such other information and forms as may be necessary for the administration of the provisions of this act. The county officials of the several counties shall provide the secretary of revenue with such information as may be deemed necessary by the secretary for the proper administration of the provisions of this act." (Emphasis added.)

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Pursuant to the foregoing provision, the secretary of revenue, by and through the Title and Registration Bureau, issued a memorandum entitled TR-79-21 on November 1, 1979, which memorandum outlined the "County Treasurer's Procedure For Processing Renewal or Original [Motor Vehicle] Registration Applications after January 1, 1980, To Comply With House Bill 2605." The memorandum outlines the processing procedures for renewal registration of vehicles, for compliance with the 1979 act (House Bill No. 2605), as follows. County Appraisers are first directed to provide certain property tax information on forms provided by the State Division of Vehicles by "coding" on said forms information as to county situs and vehicle class. Next, county treasurers are directed to process the renewals "after they have been properly coded as required by H.B. 2605." Memorandum TR-79-21, p. 2. For original registration forms, the memorandum directs county treasurers to process such forms after receiving from the county appraisers the forms properly "coded" indicating the vehicle class and tax situs. Id., p. 3. Resolution No. 5 would change that procedure. Under its express terms the treasurer's office is directed to submit the vehicle registration forms to the appraiser's office for coding of such forms after "Tax Payer customers have transacted their business in the Tag Office [treasurer's office]." That directive contravenes Memorandum TR-79-21 and the procedure outlined therein, and you inquire whether the Board is empowered to make such a directive. In our opinion, the Board is not so empowered, and we conclude that Resolution No. 5 is invalid and ineffective. The resolution exceeds the legal authority of the Board for the same reasons already expressed in response to your first question inasmuch as it impairs or abridges the authority of the appraiser and the treasurer in the performance of their duties imposed by state law.

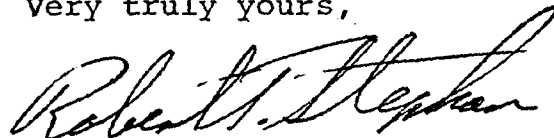
Moreover, it is our opinion that the resolution in question is invalid and ineffective inasmuch as it is local legislation which is contrary to an act of the legislature which applies uniformly to all counties. As we have noted in the foregoing, the county home rule power is circumscribed by and may not be exercised contrary to acts of the legislature which apply uniformly to all counties. Subsection (a), First of K.S.A. 1979 Supp. 19-101a. K.S.A. 1979 Supp. 79-5108, part of an act uniformly applicable to all counties, directs "county officials of the several counties" to administer the provisions of the act as prescribed by the manuals and other directives provided by the secretary of revenue. The secretary established the procedure for the processing of original and renewal vehicle

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registrations, as discussed above, to facilitate the administration of the act. Resolution No. 5 changes that procedure, albeit for laudable purposes as recited in the resolution, but the resolution, in our judgment, is an impermissible exercise of the county home rule power, because it is legislation contrary to a uniform state law and the administrative procedures established pursuant to that law.

In summary, we conclude that Montgomery County Resolution No. 4 is invalid and ineffective, inasmuch as said resolution is an impermissible restraint of the exercise of the discretion vested by statute in the county treasurer to manage the affairs of her office, and that, within the constraints of K.S.A. 1979 Supp. 19-101a et seq. and 19-501 et seq., and K.S.A. 19-212, discussed above, the county commissioners have no authority to manage the internal affairs of the office of county treasurer, nor to make management decisions affecting the use of personnel in those offices. Secondly, we conclude that Montgomery County Resolution No. 5 is invalid and ineffective inasmuch as said resolution impairs or abridges the authority of the county appraiser and the county treasurer in the performance of their duties imposed by state law, and because said resolution is local legislation which is contrary to the provisions of an act of the legislature uniformly applicable to all counties and the administrative procedures established pursuant to that act.

Very truly yours,



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Enclosures: Attorney General Opinions No. 79-74 and No. 79-113