



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

September 23, 1980

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

ATTORNEY GENERAL OPINION NO. 80-199

The Honorable Neal Whitaker  
State Representative, Ninety-First District  
2568 Cardinal Drive  
Wichita, Kansas 67204

Re: Kansas Constitution--Legislative Article--Uniform  
Operation of Laws of A General Nature

Synopsis: Prior to its amendment in 1974, Article 2, Section 17 of the Kansas Constitution required that in all cases where a general law could be made applicable, no special law could be enacted. This required the legislature to engage in the practice of enacting measures which, while not referring to any unit of local government by name, were so drafted as to be applicable only to them. This practice was condoned by the Supreme Court, even though the "general" nature of the law was in fact a legal fiction. However, following the revision of Section 17, it only remains that laws of a general nature be uniform across the state. As laws applicable to only a few local governmental units are not general, they are therefore outside the scope of Article 2, Section 17 as it now reads, and cannot be voided merely because they are non-uniform in their application. Cited herein: K.S.A. 19-101, K.S.A. 1979 Supp. 19-101a, K.S.A. 19-2657, 19-2882, K.S.A. 27-327, Kan. Const., Art. 2, Sec. 17, Art. 12, Sec. 5.

\* \* \*

Dear Representative Whitaker:

As Chairman of the Special Committee on Federal and State Affairs, you request our opinion on a matter involving Article 2, Section 17

The Honorable Neal Whitaker  
Page Two  
September 23, 1980

of the Kansas Constitution. That provision requires that laws of a general nature operate in a uniform manner, and has historically been responsible for the voiding of numerous statutes by the courts on the grounds that they constitute "special" legislation. In response, the Legislature has employed the use of population and assessed valuation figures to limit the scope of measures which are otherwise general in nature. Now, however, with more frequent revisions of valuation figures, plus the continuing expansion in population of many local governmental units, cities or counties originally intended to come within a statute often outgrow the limits within a short time, while others may be unwillingly pushed into a statute not originally intended for them. You wish to know if this problem can be avoided by statutes which identify by name the unit of local government involved, and yet still are constitutional.

Few sections of the Kansas Constitution have been more frequently involved in litigation than Article 2, Section 17, at least prior to the extensive amendment made to the provision in 1974. The following illustrates the way in which it has been whittled down, as all of the underscored language before the proviso was removed:

"All laws of a general nature shall have a uniform operation throughout the state; and in all cases where a general law can be made applicable, no special law shall be enacted; and whether or not a law enacted is repugnant to this provision of the constitution shall be construed and determined by the courts of the state: Provided, The legislature may designate areas in counties that have become urban in character as "urban areas" and enact special laws giving to such counties or urban areas such powers of local government and consolidation of local government as the legislature may deem proper."

For many years the distinction made between "general" and "special" laws caused innumerable headaches for the Legislature and Supreme Court alike, as the former attempted to enact measures which, though in practice quite narrow, at least had the appearance of a general law which would win the latter's approval. Accordingly, a brief look at the history of the provision is necessary to determine the effect of the amended version, which has yet to be construed by the Court.

The provision in question was a part of the original Wyandotte Constitution of 1859, and at that time consisted only of the first two clauses of the language quoted above. The need to construe the provision arose almost as soon as statehood was achieved, with the

The Honorable Neal Whitaker  
Page Three  
September 23, 1980

case of State ex rel. Johnson v. Hitchcock, 1 Kan. 173, being decided in 1862. There, the Supreme Court wrestled with the issue of when a special law must be used rather than a general one, i.e., is a local law void only if a general law can conveniently be made applicable, or must a general law be used any time the circumstances are not totally unique to the particular governmental unit? In holding that the Legislature was the arbiter of when a general law could or could not be used, the Court effectively removed any check on the passage of special legislation, a situation which existed with few exceptions until 1906. Typical of this deferential approach is City of Wichita v. Burleigh, 36 Kan. 34 (1886), in which an act to vacate certain streets and alleys in Wichita was held valid, the Court finding:

"The legislature may pass a special act where a general law cannot be made applicable, and this although the special act may to some extent affect the uniform operation throughout the state of other laws; and generally, it is a question for the legislature to determine whether a general law can be made applicable, or not." 36 Kan. at 42.

See also Eichholtz v. Martin, 53 Kan. 586 (1894) (act establishing Altamont high school held valid), Chesney v. McClintock, 61 Kan. 94 (1900) (act creating city court of Topeka held valid), Campbell v. Labette County, 63 Kan. 377 (1901) (act fixing Labette County probate fees held valid).

Following a constitutional amendment in 1906, language was added to the provision which made it clear that the courts, not the legislature, had the right to decide whether an act conflicted with the prohibition against special laws. This the Supreme Court proceeded to do with vigor, immediately striking down a statute which by name dealt with only bridges over the Republican River in Cloud County. Anderson v. Cloud County, 77 Kan. 721 (1908). No longer would the Court defer blindly to the determination of the legislature as to the need for a special statute, but instead would decide itself whether a general act would work as well. At the same time, however, the Court upheld a statute which, though proposed in general terms, made use of property valuation figures so as to apply to only two counties, thus setting a pattern which exists to this day. State ex rel., Jackson v. Butler County Comm'rs, 77 Kan. 527 (1908).

Even so, such phrasing was sometimes inadequate, for the Court did not hesitate to strike down statutes which had been artfully drafted to seem general, yet applied to only one or two units of government, if in fact no special needs existed in those areas which a general law could not also have met. An extreme example, which the Court

indeed termed a "travesty," is found in State ex rel., Jackson v. Rice County School Dist. No. 2, 140 Kan. 171 (1934), where the law in question was limited to school districts "containing cities of the second class located in any county having a population of not more than 13,450 and not less than 13,200, and having an assessed tangible property value of not more than \$36,400,000 and not less than \$35,800,000, and having an area of not more than 750 square miles and not less than 650 square miles." (Emphasis added). Laws targeted specifically at Kansas City also fared poorly in most instances. See Ashley v. Wyandotte County Comm'rs, 121 Kan. 408 (1926), Carson v. City of Kansas City, 162 Kan. 455 (1947), and State ex rel., Martin v. Tucker, 176 Kan. 192 (1954).

The next addition to Article 2, Section 17 came in 1954, when the "urban areas" proviso was adopted by constitutional amendment. This provision foreshadowed home rule in allowing the legislature to designate as "urban" counties or areas therein, thus empowering them to independently exercise powers given them by the former. However, only Johnson County, together with certain areas therein, has been so designated (K.S.A. 19-3524, 19-2656), with the subsequent grant of certain powers such as annexation (K.S.A. 19-2657), control of park districts (K.S.A. 19-2882 et seq.), and the adoption of a charter for county government (K.S.A. 1979 Supp. 19-2680). Moreover, in view of the subsequent enactment of home rule for both cities (Kan. Const., Art. 12, §5) and counties (K.S.A. 19-101, K.S.A. 1979 Supp. 19-101a), it would appear that the impact of this proviso in the future will be a limited one, proving useful only when non-home rule units (e.g., townships or school districts) are designated as urban areas. In addition, it is our opinion that the retention of this proviso after the 1974 changes does not indicate that the power of the legislature to enact special legislation is limited only to areas designated as urban. To conclude otherwise would severely restrict the effect of the very significant deletions which did occur, and would leave in limbo those areas which are not, and probably will never be, urban in character. In the absence of any case law authority supporting such a result, we are unwilling to so conclude.

The most recent change in the provision came in 1974, when, as noted above, much of the existing language was removed. Apart from the urban areas proviso, all that remains is the statement that "[a]ll laws of a general nature shall have a uniform operation throughout the state." As the general law-special law distinction has now been removed from the Kansas Constitution, it may properly be asked whether the need still exists for disguising local legislation as something else. In our opinion, it does not, making it constitutionally permissible to identify local units of government by name in Kansas

statutes. We reach this conclusion from the wording of the section itself, in that only laws of a general nature need to operate uniformly. If an act is limited by its provisions to apply only to a certain county or city, it cannot be termed "general" in nature, and hence is not subject to the uniformity requirement. A case in point is K.S.A. 1979 Supp. 27-327 et seq., which deal with the use of surplus federal property to establish airport authorities and which apply only to Shawnee County. While the measure continues the practice of identifying the county through a population/property value classification, there remains no reason under Article 2, Section 17 why this indirect method be used. See Attorney General Opinion No. 79-285.

Such a result also dovetails with the county home rule statutes, K.S.A. 1979 Supp. 19-101 and 19-101a, and the city home rule constitutional provision, Article 12, Section 5. In both, the local units' powers of home rule (i.e., to enact their own "special legislation") are curtailed when a uniform act of the legislature exists. Accordingly, if an act does not have any limits or classifications, by the operation of Article 2, Section 17 it is uniform, and beyond the power of home rule. On the other hand, if an act applies only to a few cities or counties, or applies differently to different classes, it is non-uniform, and home rule allows them to decide whether they wish to remain under its coverage. For a rather extreme example of this, see, City of Junction City v. Griffin, 227 Kan. 332 (1980) (entire Code of Procedure for Municipal Courts held non-uniform due to distinction drawn in one statute between different classes of cities).

As a final note, we would observe that the need for the type of strict construction given to Article 2, Section 17 has lessened since the days of the general law-special law distinction, for home rule makes it unlikely that cities and counties will again besiege the legislature with requests for special bills, as they did in the pre-1906 era. Additionally, while the above represents what in our opinion is the current, albeit limited, impact of Article 2, Section 17, we reiterate that this section has not been construed by a court of record since the extensive revisions of 1974. As a consequence, this opinion cannot be based on a definitive ruling, for none has yet been issued.

In summary, prior to its amendment in 1974, Article 2, Section 17 of the Kansas Constitution required that in all cases where a general law could be made applicable, no special law could be enacted. This

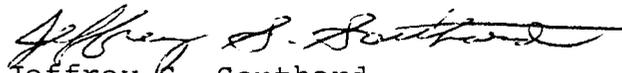
The Honorable Neal Whitaker  
Page Six  
September 23, 1980

required the legislature to engage in the practice of enacting measures which, while not referring to any unit of local government by name, were so drafted as to be applicable only to them. This practice was condoned by the Supreme Court, even though the "general" nature of the law was in fact a legal fiction. However, following the revision of Section 17, it only remains that laws of a general nature be uniform across the state. As laws applicable to only a few local governmental units are not general in nature, they are therefore outside the scope of Article 2, Section 17 as it now reads, and cannot be voided merely because they are non-uniform in their application.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Assistant Attorney General

RTS:WRA:JSS:phf