



STATE OF KANSAS

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October 28, 1980

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ATTORNEY GENERAL OPINION NO. 80- 238

The Honorable August Bogina, Jr.
State Representative--Thirtieth District
13513 West Ninetieth Place
Lenexa, Kansas 66215

Re: Cities and Municipalities--Home Rule Powers--Charter Ordinances

Synopsis: A city of the second class has no constitutional authority to adopt a charter ordinance whereby the city, in anticipation of a change in status to a city of the first class, would exempt itself prospectively from the provisions of legislative enactments applicable only to cities of the first class. Cited herein: Kan. Const., Art. 12, §5.

* * *

Dear Representative Bogina:

You have requested the opinion of this office whether a city of the second class may, by charter ordinance, prospectively exempt itself from the provisions of statutes applicable to cities of the first class, inasmuch as such city of the second class anticipates a change in its classification in the near future.

In our opinion, the home rule amendment to the Kansas Constitution, Article 12, Section 5, does not permit the prospective exemptions about which you inquire. Subsection (c) of the amendment, which authorizes the adoption of charter ordinances, and establishes the procedure therefor, provides, in pertinent part:

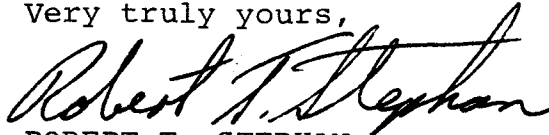
"Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such

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city, other than enactments . . . applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city." (Emphasis added.)
Kan. Const., Art. 12, §5(c)(1).

Clearly, a legislative enactment applicable only to cities of the first class is not subject to exemption by a charter ordinance adopted by a city of the second class because, simply stated, such enactment is not one "applying to such city" of the second class. In our judgment, a city of the second class has no constitutional authority to adopt a charter ordinance whereby the city, in anticipation of a change in status to a city of the first class, would exempt itself prospectively from the provisions of statutes applicable only to cities of the first class.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:pf