



STATE OF KANSAS

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December 17, 1980

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ATTORNEY GENERAL OPINION NO. 80- 264

Mr. William Jeter
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P.O. Box 725
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Re: Counties and County Officers--Home Rule Powers
--Anti-Nepotism Policy

Synopsis: A county resolution which prohibits county officers from employing members of their immediate family (as defined in the resolution in question) in county departments or offices is a valid exercise of the county home rule powers. Cited herein: K.S.A. 13-2903, 14-537, K.S.A. 1979 Supp. 19-101a, as amended by L. 1980, chs. 84, 85, K.S.A. 19-101c, 74-605, L. 1901, ch. 186.

* * *

Dear Mr. Jeter:

You have asked for our opinion whether the board of county commissioners has authority, in the exercise of its home rule powers, to adopt a resolution establishing an anti-nepotism policy in Ellis County. On September 8, 1980, the board adopted such a resolution, which provides, in relevant part:

"NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ELLIS COUNTY, KANSAS, that no elected official or appointed department head shall cause to be placed or have under his or her employment of said office or department any member of his or her immediate family. Immediate family is defined as mother, father, daughter,

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son, sister, brother, step-mother, step-father, step-daughter, step-son, mother-in-law, sister-in-law, husband or wife. Any employee who becomes an immediate family member on account of marriage after his or her initial date of employment shall be terminated within ninety (90) days after said marriage. This resolution will be effective upon publication in the official county newspaper and shall not apply to current immediate family relationships and their respective employment positions."

Subsection (a) of K.S.A. 1979 Supp. 19-101a, as amended by L. 1980, ch. 84, §3, and further amended by L. 1980, ch. 85, §1, empowers all counties "to transact all county business and perform such powers of local legislation and administration as they deem appropriate." Subsection (b) of that section further provides that

"[c]ounties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. . . ."

Our research reveals no Kansas statutory authority on the subject pertaining to counties, nor is the resolution in question "contrary to" any act of the legislature. In our opinion, the resolution comes within the scope of the county's powers of "local legislation and administration" authorized by the county home rule statute, described above, and is, accordingly, a valid exercise of the county home rule powers.

Our conclusion is reinforced in consideration of statutes in Kansas and other states which forbid nepotism. For example, we note that K.S.A. 14-537 prohibits members of parks commissions in cities of the second class from being related by blood or marriage to the mayor, a city commissioner or council member, or other city officer. K.S.A. 13-2903 provides that similar prohibitions apply for office holders in cities of the first class. K.S.A. 74-605 prohibits relatives of members of the Kansas Corporation Commission from appointment or employment by the commission.

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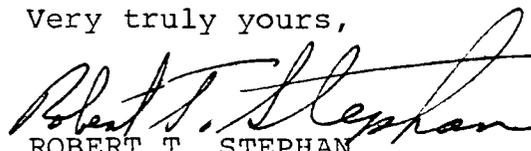
Although anti-nepotism statutes have come under constitutional attack, they are generally upheld as attempts to rid government of the evils of hiring based on family relationship rather than merit, and thus are considered valid exercises of the police power. See, e.g., Barton v. Alexander, 148 P. 471 (Idaho, 1915). In that case, it was argued that the statute in question unduly limited the executive power to hire qualified individuals. (Elected county officials in Ellis County could make a similar argument, inasmuch as the resolution you have submitted for our review similarly limits their hiring practices.) The Idaho court rejected that argument, finding that "in the interest of efficiency in public service and for the best interests of the people and of the municipal subdivisions of the state, . . . [the statute is] a legitimate police regulation, in regard to which the lawmaking power may legislate. . . ." Id. at 475.

Similarly, the Kansas Supreme Court has declared that the legislature has power to limit the discretion of the executive in selecting officers for government positions in state and local offices. In Goodrich v. Mitchell, 68 Kan. 765 (1904), the Court upheld a preference for veterans in hiring and in the making of appointments to public office over equally qualified non-veterans, and found the Veterans' Preference Law (L. 1901, ch. 186) to be a constitutional act.

The question whether anti-nepotism statutes unconstitutionally usurp the power of the executive has apparently not been raised in Kansas. We submit, however, that the Kansas courts would find them to be valid exercises of the legislature's authority. In Goodrich, supra, the Court said that "[o]ffice-holding is a political privilege . . . and the power of the legislature is supreme in respect to appointments, save as the constitution has limited it." 68 Kan. at 772.

In matters of local legislation and administration, the Kansas legislature has vested broad powers in the several counties, under the home rule statute. Guided by the foregoing authority and by the mandate of K.S.A. 19-101c that the county home rule powers "shall be liberally construed for the purpose of giving to counties the largest measure of self-government," and in view of the public policy interests being served, we conclude that the Ellis County resolution which prohibits county officers from employing members of their immediate family in county departments or offices is a valid exercise of the county home rule powers.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Steven Carr
Assistant Attorney General