



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 17, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81-167

Leonard L. Buddenbohm
Atchison County Counselor
109 North 6th Street
Atchison, Kansas 66062

Re: Corporations -- Cemetery Corporations -- Estab-
lishment of Cemetery District; Procedure

Counties -- Home Rule Powers -- Non-Uniform
Legislation; Charter Resolution

Synopsis: K.S.A. 1980 Supp. 17-1330(a) provides that a ceme-
tery district may be established by a board of
county commissioners following the receipt of a
petition signed by not less than 51% of the elec-
tors residing in the proposed district. However,
as the statute contains provisions which render
it non-uniformly applicable to all counties, a
county may exercise its home rule powers, pursu-
ant to K.S.A. 1980 Supp. 19-101a, and exempt it-
self from the operation of said statute through
the enactment of a resolution, pursuant to K.S.A.
19-101b, establishing different procedures for
the creation of such a district. Cited herein:
K.S.A. 1980 Supp. 17-1330, 19-101a, K.S.A. 19-101b.

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Dear Mr. Buddenbohm:

As County Counselor for Atchison County, you request the
opinion of this office concerning the operation of K.S.A.
1980 Supp. 17-1330. Specifically, you wish to know whether
the county may establish a cemetery district without the
requirement of a petition being circulated and signed by
residents of the proposed district, as required by K.S.A.
1980 Supp. 17-1330(a).

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In pertinent part, that subsection states:

"Whenever a petition, setting forth the proposed cemetery district, and signed by not less than fifty-one percent (51%) of the qualified electors of said proposed district shall be presented to the board of county commissioners of the county in which the greatest portion of territory comprising said district is located, the board of county commissioners at its next regular meeting shall examine said petition, and upon finding said petition regular and in due form, shall enter an order in their proceedings establishing said cemetery district. The board of county commissioners in each county in which any part of said cemetery district is located shall thereafter authorize the levy of a tax on all the taxable tangible property within the cemetery district, in a sum not to exceed three thousand dollars (\$3,000) for the maintenance, operation, regulation and care of such cemetery" (Emphasis added.)

On the face of the section, it would appear that there is no alternative to the above-underscored procedure being followed, i.e., a petition is a necessary pre-condition to the creation of such a district. However, we would direct your attention to subsections (c) and (d) of the same statute which relate to limits on the amount of tax which may be imposed by a county in support of such a district. The former subsection is limited in its application to counties in the 6,000-7,000 population range with assessed taxable tangible valuations over \$30,000,000, while the latter applies only to counties with populations more than 6,300 but less than 6,900, and valuations of more than \$37,000,000 but less than \$38,000,000.

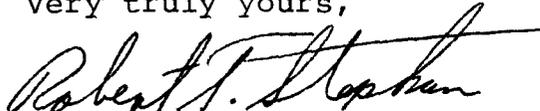
In our opinion, the existence of these subsections renders the entire act, including the remainder of K.S.A. 1980 Supp. 17-1330, non-uniform in its application to Atchison County. We reach this conclusion in view of the holding of City of Junction City v. Griffin, 227 Kan. 337 (1980), which, while not involving a county, does apply in situations as here, where the extent of home rule powers is at issue. Accordingly, even though subsection (a) is, on its face, applicable to Atchison County, the presence of subsections (c) and (d) renders it non-uniform as to all counties, and so within the county's home rule power pursuant to K.S.A. 1980 Supp. 19-101a(a). As a result, Atchison County may, if it desires, exempt itself

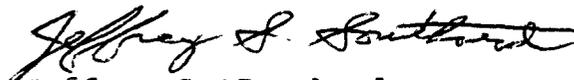
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from the provisions of K.S.A. 1980 Supp. 17-1330, including the petition requirement, by enacting a charter ordinance which contains "substitute and additional provisions" on this subject. K.S.A. 19-101b(b). Other procedures set forth therein and at K.S.A. 19-101b(c) must also be followed, i.e., passage of a charter resolution, publication and, if necessary, an election following the filing of a protest petition.

In conclusion, K.S.A. 1980 Supp. 17-1330(a) provides that a cemetery district may be established by a board of county commissioners following the receipt of a petition signed by not less than 51% of the electors residing in the proposed district. However, as the statute contains provisions which render it non-uniformly applicable to all counties, a county may exercise its home rule powers, pursuant to K.S.A. 1980 Supp. 19-101a, and exempt itself from the operation of said statute through the enactment of a resolution, pursuant to K.S.A. 19-101b, establishing different procedures for the creation of such a district.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle