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ATTORNEY GENERAL OPINION NO. 81-275

Mayor Joyce Hamm
City of West Plains
City Hall
West Plains, Kansas 67869

Re: Cities, Third Class--Public Improvements--
Street Improvements in West Plains, Kansas

Synopsis: From an examination of the legislative intent and history behind Chapter 62 of the 1981 Session Laws of Kansas it is clear that the legislature was referring to the City of West Plains by using the words "Plains, Kansas." Therefore, in accordance with the rule of statutory construction that legislation should be construed so as to uphold its validity and give it effect, it should be interpreted to refer to West Plains. Furthermore, it is no longer impermissible to identify specific units of local government in legislation and thus Chapter 62 of the 1981 Session Laws of Kansas is not prohibited by Article 2, Section 17 of the Kansas Constitution. Cited herein: Kan. Const., Art. 2, §17, L. 1981, Ch. 62, §1.

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Dear Mayor Hamm:

You have requested our opinion on the validity of Chapter 62 of the 1981 Session Laws of Kansas. You question the application of that statute to the city of West Plains, Kansas, since the statute refers to the city of Plains, Kansas. Furthermore, you question whether the statute is unconstitutional as being special legislation.

In response to your second question, we assume that you are referring to a possible violation of Article 2, Section 17 of the Kansas Constitution. While it is true that prior to 1974 that provision prohibited "special legislation," with an exception for designated urban areas, it was amended in 1974 and much of the then existing constitutional language was removed. Prior to the 1974 amendments, when this section was said to prohibit special legislation, Article 2, Section 17 stated:

"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." (Emphasis added.)

However, the 1974 amendments removed the underscored language, and while this section has not been construed by a court of record since the extensive revisions of 1974 the effect of the amendments was the subject of Attorney General Opinion No. 80-199. In that opinion we opined that:

"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." (Emphasis added.)
Id. at 4 and 5.

Therefore, in accordance with the above-stated conclusion, an act of the Kansas Legislature is not subject to a uniformity requirement if it is limited by its provisions to apply only to a certain city. Accordingly, it is our opinion that the limiting of the application of the act in question to the city of Plains does not violate Article 2, Section 17 of the Kansas Constitution, and it is not invalid as special legislation.

In response to your initial question, it would appear that even though the act is not unconstitutional as improper special legislation it might be ineffective since, officially there is no Kansas city officially incorporated and named "Plains." However, it is well established that the courts of this state will construe legislation in a way so as to uphold its validity and give it effect where possible. Parker v. Continental Casualty Co., 191 Kan. 674 (1963).

Therefore, the inquiry becomes whether there is a reasonable construction of the act in question which would result in the effect intended by the legislature.

In attempting to construe the statute it is necessary to apply several fundamental rules of statutory construction. First of all, "[t]he fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute." State v. Dumler, 221 Kan. 386, 389 (1977). Furthermore, that rule holds true, "even though words, phrases or clauses at some place in the statute might be omitted or inserted." Easom v. Farmers Insurance Co., 221 Kan. 415, 421, 422 (1977), citing Farm & City Ins. Co. v. American Standard Ins. Co., 220 Kan. 325 (1976); Wolf v. Mutual Benefit Health & Accident Assoc., 188 Kan. 694 (1961); and Hunziker v. School District, 153 Kan. 102 (1941).

Therefore, in light of the foregoing rules of construction it is clear that the omission of the word "West" from in front of "Plains" is not necessarily fatal, if the legislative intent was otherwise clearly expressed that the statute was enacted for the benefit of the city of West Plains. Thus, if the addition of the word "West" fulfills the legislative intent and gives effect to the act, such an interpretation would be reasonable.

In determining the legislative intent behind the enactment of the act, we again look to basic rules of statutory construction. First, "[t]he words of a statute must be taken in the sense in which they were understood at the time the statute was enacted." United Parcel Service, Inc. v. Arnold, 218 Kan. 102, 107 (1975), citing State, ex rel., v. Moore, 154 Kan. 193 (1941). Furthermore, "[c]ourts are not bound to an examination of the language

alone, but may properly inquire into the causes which impel the statute's adoption, the objectives sought to be attained, the statute's historical background, and the effect the statute may have under the various constructions suggested." State, ex rel., v. Kalb, supra at 464. Therefore, in accordance with the foregoing rules, the proper factors to be taken into account in determining the legislatures intent are the language of the statute as understood by the legislature at the time the statute was enacted, the causes which impelled the statute's adoption, the statute's historical background and the effect of the statute under various constructions.

Section 1 of Chapter 62 of the 1981 Session Laws of Kansas states:

"The city of Plains, Kansas, may issue general obligation bonds in an amount not exceeding \$500,000 for the purpose of constructing, surfacing, resurfacing or paving any street or avenue if such issuance is approved by a majority of the electors voting on the question at an election called and held in the manner prescribed for the calling and holding of elections under the general bond law. Such bonds are exempt from and shall not be included in computing the bonded debt limit of Plains, Kansas."

From an examination of the statutory language, it is apparent that the purpose of this statute is to allow for an election to approve bonds for street improvements, without such bonds being computed as part of the bonded debt limit. However, the statutory language refers to "Plains, Kansas" which is not the name of any city in Kansas, therefore it is necessary to look behind the language used, in order to determine what city the legislature intended when they referred to Plains.

One of the most important factors here is the fact that the city of West Plains is commonly referred to as Plains. On the 1978-1980 Kansas Transportation Map published by the Department of Transportation, West Plains is shown as "Plains." In the 1981 National ZIP Code and Post Office Directory it is listed as "Plains." Also, the 1980-1981 Directories of Kansas Public Officials uses both names, with the Cities, Schools, Buyers Guide using West Plains and the Federal, State, County and Township edition using both West Plains and Plains. Furthermore, the West Plains City Treasurer advises that on the city's legal documents it is referred to as "the city of West Plains commonly called Plains." Therefore, it is clear that when most people or agencies refer to "Plains" they mean "West Plains," and it is therefore equally reasonable to assume that the legislature in referring to "Plains" understood the term in its common usage, namely a reference to the city of West Plains, Kansas.

The foregoing conclusion is also supported by an examination of the history of the act. On March 27, 1981, the Senate Committee on Local Government considered Senate Bill No. 420, the predecessor to Chapter 62 of the 1981 Session Laws of Kansas. At that time Senator Angell, who is a resident of West Plains, spoke in favor of the bill which according to the committee minutes was "requested by the City Council of Plains." Also in attendance, according to the committee minutes, were several other residents of West Plains, including Phyliss Angell, Athol Chase and Waldon Allen. On that date, the bill under consideration did not specifically refer to Plains or West Plains but used a narrow classification to specify the city. The classification used was: "Any city of the third class located in a county having a population greater than 4,800 and less than 6,000 and having a tangible valuation greater than \$63,000,000 and less than \$65,000,000" This classification fits the city of West Plains and few other, if any, cities in Kansas. Therefore, it is reasonable to conclude in light of the foregoing history that the use of the name "Plains" was intended to refer to the city of West Plains. This conclusion is buttressed by the amendment of Senate Bill No. 420 on March 31, 1981, by the Senate Committee on Local Government to refer specifically to Plains and the amended version's subsequent approval by the committee.

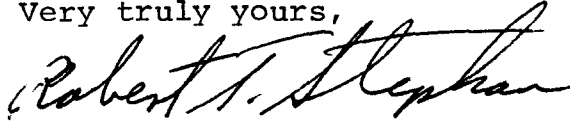
One other factor which cuts in favor of interpreting "Plains" as referring to "West Plains" is the fact that the only other city which closely resembles the name Plains is Plainville, and while it is also a city of the third class it is located in Rooks County which has a population of 7,235 and therefore does not fit within the classification originally used in Senate Bill No. 420. Thus, to give the statute any interpretation other than to refer to the city of West Plains would render it nugatory and void, contrary to the above-stated rule that legislation should be construed in a way so as to uphold its validity and give it effect where possible.

Therefore, in conclusion it is clear from an examination of the legislative intent and the legislative history of L. 1981, ch. 62, §1 that the legislature was referring to the City of West Plains when it used the term "Plains." In accordance with the rule that legislation should be construed so as to uphold its validity and give it effect, such an interpretation is reasonable and should be followed. Furthermore, it is no longer impermissible to

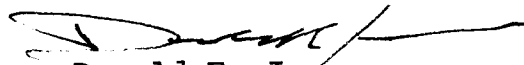
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identify specific units of local government in legislation and, therefore, L. 1981, ch. 62 is not prohibited by Article 2, Section 17 of the Kansas Constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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RTS:BJS:DEJ:jm