



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 14, 1982

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

ATTORNEY GENERAL OPINION NO. 82-87

The Honorable Stephen R. Cloud
State Representative, Thirtieth District
Room 182-W, Statehouse
Topeka, Kansas 66612

Re: Counties and County Offices -- Planning and
Zoning -- Inapplicability of County Home Rule
Powers

Synopsis: The act which originally created township zoning boards, L. 1939, ch. 164, was nonuniform in its application due to language contained in section 1 (now K.S.A. 19-2901). By virtue of amendments in 1981 (L. 1981, ch. 122), the nonuniform language was removed, leaving K.S.A. 19-2901 through 19-2910 and 19-2912 and 19-2913 uniform in their application and thus not subject to the home rule power of a county under K.S.A. 19-101a et seq. While K.S.A. 19-2911 does contain a subsection which is nonuniform, the nonuniformity is a result of a legislative act which did not amend the remaining sections of K.S.A. 19-2901 et seq. Thus, the non-uniformity of K.S.A. 19-2911 does not affect the uniform applicability of these other sections. Furthermore, as the nonuniform language was part of an act affecting central business district redevelopment bonds, K.S.A. 19-101a(a), Eleventh, acts to prevent a county from exempting itself from even this single statute. Cited herein: K.S.A. 1981 Supp. 12-1774, K.S.A. 19-101a, 19-101b, 19-2901, 19-2911, L. 1979, ch. 52, §121, L. 1980, ch. 91, L. 1981, ch. 122, §1.

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Dear Representative Cloud:

As State Representative for the Thirtieth District, which comprises the City of Lenexa and Monticello Township in

Johnson County, you request the opinion of this office on several questions involving the statutes dealing with township zoning boards. Specifically, you inquire concerning the uniform applicability of these statutes and whether Johnson County may charter out from them through the use of its home rule authority.

In examining your request, it is apparent that two inter-related issues are involved. An initial issue which must be addressed is the uniform applicability of the various legislative enactments on township zoning, as contained in Chapter 19, Article 29 of Kansas Statutes Annotated. Second, the effect of two recent amendments to one such statute, K.S.A. 19-2911, must be considered. The first amendment, L. 1979, ch. 52, §121, was part of an act which dealt with the issuance of special obligation bonds in connection with central business district redevelopment projects. Due to the changes made by this act, as well as those made by the 1980 legislature (L. 1980, ch. 91), additional questions are presented as to the power of a county to exempt itself from all or portions of the township zoning statutes and establish its own procedures.

The statutes which now appear as K.S.A. 19-2901 et seq. were originally enacted in 1939 at chapter 165 of the Session Laws for that year. At the outset, section 1 of the act (now at K.S.A. 19-2901) contained provisions which made the act's application nonuniform across the state. By 1981, following numerous amendments, K.S.A. 19-2901 stated that the provisions of the act did not apply to counties:

"(a) Having a population of not less than thirteen thousand (13,000) and not more than fourteen thousand five hundred (14,500) with a total assessed taxable tangible valuation of not less than thirty-two million dollars (\$32,000,000) nor more than thirty-seven million dollars (\$37,000,000); or

"(b) having a population of more than twenty thousand (20,000) and with a total assessed taxable tangible valuation of less than thirty-two million dollars (\$32,000,000); or

"(c) having a population of not less than twenty-three thousand (23,000) and not more than thirty thousand (30,000) and with a total assessed taxable tangible valuation of more than sixty-three million dollars (\$63,000,000) and less than seventy-three million dollars (\$73,000,000); or

"(d) having a population of not less than thirty-six thousand (36,000) nor more than forty-five thousand (45,000) with a total assessed taxable tangible valuation of not less than eighty-five million dollars (\$85,000,000)."

In our opinion, the presence of this language in K.S.A. 19-2901 had the effect of rendering the rest of the sections of the original act nonuniform. We are persuaded to this conclusion by the analogous city home rule case of City of Junction City v. Griffin, 227 Kan. 332 (1980), where the Court held, in effect, that a "legislative enactment," within the meaning of our constitutional provisions granting home rule powers to cities (Kan. Const., Art. 12, §5), meant a single bill enacted into law, i.e., a single legislative act. From this, the Court also concluded that, unless the entirety of a legislative enactment is uniformly applicable, cities may exempt themselves from the application of all or any portion of such enactment, by use of their home rule powers.

In the absence of contrary case law regarding county home rule powers, we believe it appropriate to apply such reasoning in determining whether an act of the legislature is uniformly applicable to all counties, so as to preclude the exercise of county home rule powers. (See K.S.A. 19-101a, 19-101b.) Thus, we believe that the entirety of the 1939 act (L. 1939, ch. 165) was nonuniform in its application, since the first section thereof limited its application to certain counties.

It should also be noted that a separate act of the 1980 Legislature, L. 1980, Ch. 91, amended K.S.A. 19-2911, which statute had been enacted as section 11 of the original act. By this latter act, the legislature amended only the single statute by inserting a provision for urban counties. While this provision served to make that particular statute nonuniform, the limited scope of the act did not affect the rest of the original act. This may be contrasted with the situation in Griffin, supra, where the nonuniform section existed as part of the original act.

In view of the above two nonuniform statutes, by 1981 the whole of the original act had been rendered nonuniform. Accordingly, in the absence of other factors, Johnson County could have enacted a charter resolution on the subject of township zoning. Indeed, we are informed that such a resolution was passed by the Board of Commissioners in April, 1981. However, given other changes which have taken place, it would be our opinion that at present the county has no such authority.

One of these changes occurred in 1981, when the legislature removed the nonuniform language from K.S.A. 19-2901 (L. 1981, ch. 122, §1). Had not the charter resolution been repealed prior to July 1, 1981, it would have been negated as of that date, the effective date of the amendment to 19-2901. This is due to K.S.A. 19-101b(d), which states:

"Each charter resolution passed shall control and prevail over any prior or subsequent act of the board and may be repealed or amended only by charter resolution or by an act of the legislature uniformly applicable to all counties." (Emphasis added.)

Thus, the nonuniformity of 19-2901 is no longer a basis for a charter resolution exempting Johnson County from all or any portion of the original act. Moreover, as noted above, K.S.A. 19-2911 had been amended prior to 1981 so as to no longer be considered part of the original act for the purpose of determining the uniform or nonuniform application of the original act. Accordingly, the change in K.S.A. 19-2901 was of no effect on the applicability of K.S.A. 19-2911, due to the nonuniform language which remained in the latter statute.

However, it is our opinion that a separate basis exists for concluding that even this latter statute is beyond the county's power to alter under home rule. This is due to yet another act, L. 1979, ch. 52, §121, which amended subsection (b) of the statute to read as follows:

"The county commissioners, on or before the date prescribed by law for the certification of tax levies to the county clerk, shall certify such budget as finally approved to the county clerk and said county clerk shall make a tax levy on all the tangible property in the township equal to the amount of such budget and an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 1980 Supp. 12-1774, and amendments thereto, by cities located in the county which is to be derived from ad valorem taxation except that the rate of levy so made shall not exceed one-fourth (1/4) mill." (Emphasis added.)

At the same time, K.S.A. 19-101a was amended by the addition of a new clause Eleventh, which states:

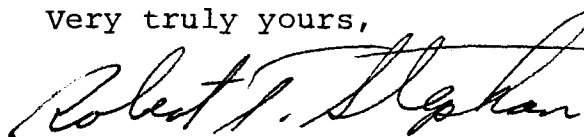
Stephen R. Cloud
Page Five

"[C]ounties shall be subject to all acts of the legislature requiring the levying of taxes to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 1980 Supp. 12-1774, and amendments thereto"

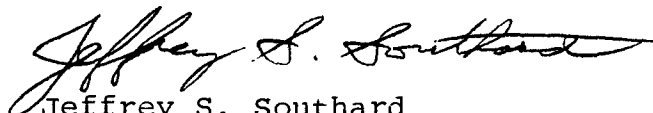
When the nonuniform, urban county language was added to K.S.A. 19-2911 in 1980, subsection (b) was re-enacted unchanged, and thus continued to contain a provision for the repayment of any bonds issued by authority of K.S.A. 1980 Supp. 12-1774. The 1980 act is therefore an act of the legislature covered by the Eleventh clause of K.S.A. 19-101a, and is therefore a matter which is exempt from the scope of county home rule.

In conclusion, the act which originally created township zoning boards, L. 1939, ch. 164, was nonuniform in its application due to language contained in section 1 (now K.S.A. 19-2901). By virtue of amendments in 1981 (L. 1981, ch. 122), the nonuniform language was removed, leaving K.S.A. 19-2901 through 19-2910 and 19-2912 and 19-2913 uniform in their application and thus not subject to the home rule power of a county under K.S.A. 19-101a et seq. While K.S.A. 19-2911 does contain a subsection which is nonuniform, the nonuniformity is a result of a legislative act which did not amend the remaining sections of K.S.A. 19-2901 et seq. Thus, the nonuniformity of K.S.A. 19-2911 does not affect the uniform applicability of these other sections. Furthermore, as the nonuniform language was part of an act affecting central business district redevelopment bonds, K.S.A. 19-101a(a), Eleventh, acts to prevent a county from exempting itself from even this single statute.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle