



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 8, 1982

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

ATTORNEY GENERAL OPINION NO. 82- 151

The Honorable James Francisco
Senator, Twenty-sixth District
Statehouse, Room 136-N
Topeka, Kansas 66612

Re: Automobiles and Other Vehicles -- Size, Weight and Load of
 Vehicles -- Powers of Local Authorities

Synopsis: Because the legislature has preempted the field of regulating the size and weight of vehicles, counties may exercise their legislative powers in this area only pursuant to express statutory direction or authority granted in K.S.A. 8-1912. In absence of express statutory authority, a county may not create the position of weight inspection agent for the purpose of enforcing the vehicular size and weight limitations applicable on county roads. Such is the duty of the county's sheriff and his deputies. Cited herein: K.S.A. 8-1424, 8-1432, K.S.A. 1981 Supp. 8-1901, 8-1910, 8-1912, K.S.A. 8-2001, 8-2204, 19-101a, 19-813.

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Dear Senator Francisco:

You state that the Sedgwick County Commission passed a resolution establishing weight limitations for vehicles traveling county roads in Sedgwick County. Additionally, the resolution creates the position of weight inspection agent and vests authority in said agent to make

weight checks, stop traffic, issue notices to appear and arrest individuals who violate the provisions of the resolution. It is our understanding that the agent will not be commissioned as a deputy sheriff, but rather, will exercise law enforcement authority solely by virtue of the resolution. You ask whether the county may validly establish such weight limitations and create law enforcement positions under its home rule powers.

K.S.A. 19-101a grants counties the authority to "transact all county business and perform such powers of local legislation and administration as they deem appropriate" (emphasis added), subject to certain enumerated limitations. The first such limitation prohibits counties from using home rule powers where legislation exists which is uniformly applicable to all counties.

The Kansas Supreme Court has recently interpreted county home rule provisions for the first time in Missouri Pacific Railroad v. Board of Greeley County Commissioners, 231 Kan. 225 (1982). In that case, the court first noted the similarities between home rule powers granted to counties in K.S.A. 19-101a and home rule powers granted to cities in Article 5, Section 12 of the Kansas Constitution, then looked to case law interpreting city home rule for guidance. The court stated:

"The legislature may reserve exclusive jurisdiction to regulate in a particular area when an intent is clearly manifested by state law to preempt a field by uniform laws made applicable throughout the state." (Citations omitted)
Id. at 227.

Thus, determining whether the legislature has preempted a particular field involves a two-part test. The first is whether the legislative intent to preempt the field is clearly manifested in the law. The second is whether the law is uniformly applicable throughout the state. See also City of Junction City v. Griffin, 227 Kan. 330, 336 (1980).

With these principles in mind, we have considered the authority of a county to legislate regarding the size, weight and load of vehicles travelling on county roads. The pertinent statutory provisions are found at K.S.A. 1981 Supp. 8-1901 et seq. These sections are included in the Uniform Act Regulating Traffic on Highways (see K.S.A. 8-2204), which is codified in Articles 14 to 22, inclusive, of Chapter 8 of Kansas Statutes Annotated. This act is uniformly applicable throughout the state "and in all cities and other political subdivisions therein." K.S.A. 8-2001.

Hence, this act, including the provisions of K.S.A. 8-1901 et seq., applies uniformly to all counties, and the second of the two tests for legislative preemption has been met.

As for the other test, i.e., clear expression of legislative intent to preempt the field, we note that K.S.A. 1981 Supp. 8-1901 states in pertinent part: "[T]he maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this article." In our opinion, this language clearly indicates the legislature's intent to reserve unto the state the exclusive jurisdiction to regulate the size and weight of vehicles. There is a clear expression of legislative intent that local authorities may act only pursuant to express statutory direction or authority, and counties are included within the scope of this limitation by virtue of the definition of "local authorities" in K.S.A. 8-1432, which states:

"'Local authorities' means the Kansas turnpike authority and every city, county and other local board or body having authority to adopt ordinances or regulations relating to vehicular traffic under the constitution and laws of this state."

Moreover, since the provisions of K.S.A. 1981 Supp. 8-1901 et seq. are applicable on "any highway," county roads are subject to such provisions, due to the definition of "highway" in K.S.A. 8-1424, as follows:

"'Highway' means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel."

Therefore, in our opinion, the legislature has clearly preempted the field of regulating the size and weight of vehicles. Not only are the pertinent statutes uniformly applicable throughout the state, but they contain a clear expression of legislative intent to reserve to the legislature the exclusive jurisdiction of this area. Thus, counties may act in this area only pursuant to express statutory direction or authority.

Here, we note that K.S.A. 8-1912 specifically permits local authorities to enact local legislation regarding weight limitations on highways in certain circumstances. K.S.A. 8-1912 states:

"(a) Local authorities with respect to highways under their jurisdiction may prohibit, by ordinance or resolution, the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed ninety (90) days in any one (1) calendar year, whenever any said highway by reason of deterioration, rain, snow or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced.

"(b) The local authority enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective unless and until such signs are erected and maintained.

"(c) Local authorities with respect to highways under their jurisdiction also, by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight or size thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways: Provided, That adjacent premises to such restricted streets may be served, and such restrictions shall not apply to any street which is a connecting link of the state highway system, unless a satisfactory alternate route is provided and has been approved by the secretary of transportation.

"(d) The secretary of transportation likewise shall have authority as hereinabove granted to local authorities to determine by resolution and to impose restrictions as to the weight or size of vehicles operated upon any highways under the jurisdiction of said secretary and such restrictions shall be effective when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution."

Local authorities may exercise powers of local legislation regarding size and weight of vehicles only in conformance with the foregoing statute. However, we are unable to determine whether the Sedgwick County resolution complies with all the requirements set forth therein, e.g., as to whether appropriate signs or access roads are provided for. Thus, we are unable to determine whether the resolution falls within the scope of K.S.A. 8-1912. If it does not, said resolution cannot be adopted by virtue of the preemption of the field by the legislature.

We must now determine whether the county may create the position of weight inspection officer by resolution. K.S.A. 1981 Supp. 8-1910(a) provides in part:

"Any police officer or properly designated department of revenue agent or employee having reason to believe that the gross weight of a vehicle or combination of vehicles or the gross weight on any axle or tandem axles is unlawful is authorized to require the driver to stop and submit to a weighing of the same . . ."

Under this uniformly applicable statute only a police officer or a designated department of revenue agent or employee is authorized to stop vehicles for the purpose of weight checks. There is no express grant of power contained in the act which would permit a county to create a new law enforcement officer to enforce weight limitations on county roads. Because the legislature has preempted the field, such an express grant would be necessary before the county could take such action. The reason for such a rule was discussed by the Kansas Supreme Court in Missouri Pacific Railroad v. Board of Greeley County Commissioners, supra, as follows:

"The rule denying power to a local body when the state has pre-empted the field is a rule of necessity based upon the need to prevent dual regulation which would result in uncertainty and confusion" Id. at 228.

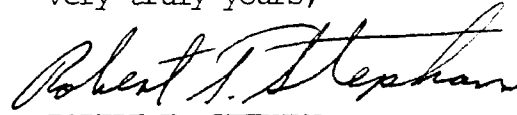
K.S.A. 19-813 vests law enforcement authority for the county in the county sheriff and his officers. In our opinion, creation of an additional law enforcement arm of the county would create the dual regulation and its attendant problems which the rule is intended to prevent. Therefore, the county may not create the position of weight inspection agent under its home rule powers.

In conclusion, therefore, it is our opinion that the legislature has preempted the field of regulating the size and weight of vehicles. Thus, counties may exercise their legislative powers in this area only pursuant to express statutory direction or authority. Accordingly, a county may not establish size and weight limitations on county roads, except in accordance with the provisions of K.S.A. 8-1912. Further, in the absence of express statutory authority, a county may not create the position of

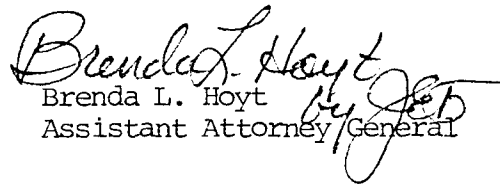
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weight inspection agent for the purpose of enforcing the vehicular size and weight limitations applicable on county roads. Such is the duty of the county's sheriff and his deputies.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

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