



STATE OF KANSAS

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September 20, 1982

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ATTORNEY GENERAL OPINION NO. 82-206

James R. Cobler
Director
Accounts and Reports
Department of Administration
First Floor - State Office Bldg.
Topeka, Kansas 66612

Re: Cities and Municipalities -- Public Utilities --
 Annual Audit

 Bonds and Warrants -- Revenue Bonds -- Annual Audit
 of Municipal Utilities

Synopsis: 1980 House Bill No. 3178 (L. 1980, ch. 64) is an enactment of the legislature which does not uniformly apply to all cities. Thus, since K.S.A. 1981 Supp. 10-1208 and 12-866 were sections of that enactment, a city, pursuant to its constitutional home rule powers, may exempt itself by charter ordinance from the whole or any part of these statutes applicable to such city. Cited herein: K.S.A. 1981 Supp. 10-1208, 12-866, 13-1243, 13-14d12, 75-1123, 75-1124, Kan. Const., Art. 12, §5.

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Dear Mr. Cobler:

You have inquired whether K.S.A. 1981 Supp. 10-1208 and 12-866 are non-uniform in their application, thereby enabling any city to which these statutes apply to exercise its constitutional home rule powers and exempt itself by charter ordinance from all or any portion of these statutes.

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A city's home rule powers, including the power to adopt charter ordinances, are provided by Article 12, Section 5 of the Kansas Constitution. Under these powers, a city may exempt itself by charter ordinance from

"the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness." (Emphasis added.) Kan. Const., Art. 12, §5(c)(1).

The emphasized portion of the above-quoted provisions defines the scope of this power, *i.e.*, a city may exempt itself from any non-uniform "enactment of the legislature" (other than enactments prescribing limits of indebtedness). In City of Junction City v. Griffin, 227 Kan. 332 (1980), the Kansas Supreme Court had occasion to consider the meaning of this language as it applied to the Kansas Code of Procedure for Municipal Courts (K.S.A. 12-4101 et seq.). Of the 59 sections of this Code, as originally enacted (L. 1973, ch. 61), only one of the sections (K.S.A. 12-4105) was non-uniform in its application, in that it differentiated between cities of the first class and other cities regarding qualifications of municipal judges. The Court considered the effect the non-uniformity of this section had on the remaining sections of the Code, stating:

"In order to preserve the uniformity of the code it has been urged that this section be declared no part of the enactment of the procedural code. However, this section is one of the sections included in L. 1973, ch. 61. It is clearly one of the sections comprising the enactment. The division into chapter, article and sections in the Kansas Statutes Annotated does not have the effect of making separate enactments of a single bill passed by the legislature of the State of Kansas. Marks v. Frantz, 179 Kan. 638, 298 P.2d 316 (1956)." Id. at 335, 336.

From this, the Court concluded that, by virtue of the non-uniformity of K.S.A. 12-4105, the entire Code was not "applicable uniformly to all cities." Id. at 337. It is clear, therefore, that a single bill passed by the legislature, *i.e.*, a single chapter of the session laws, is an "enactment of the legislature" for purposes of Article 12, Section 5 of the Kansas Constitution. Further, as noted in Clafin v. Walsh, 212 Kan. 1, 9 (1973), "[i]n order for a statute to be uniformly applicable to all cities there must be no exceptions."

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With these principles in mind, we have considered your inquiry. K.S.A. 1981 Supp. 10-1208 and 12-866 were most recently amended as sections 1 and 2, respectively, of 1980 House Bill No. 3178 (L. 1980, ch. 64). Both of these statutes were amended in this bill so as to require an annual audit of certain municipal utilities by a licensed municipal public accountant or certified public accountant. We also note that related amendments were made in K.S.A. [now 1981 Supp.] 13-1243, 13-14d12, 75-1123 and 75-1124 by sections 3, 4, 5 and 6, respectively, of the bill. Collectively, these six sections contain all of the bill's substantive provisions, and as required by Griffin, supra, all must be considered in determining whether House Bill No. 3178 is uniformly applicable to all cities.

In our judgment, the Griffin and Claflin cases compel the conclusion that, if any provision of 1980 House Bill No. 3178 is non-uniform in its application to cities, the entire bill must be regarded as an enactment of the legislature that is not uniformly applicable to all cities. Here, we note that K.S.A. 12-866 (as amended by section 2 of the bill) is not uniformly applicable to all cities. Since its enactment in 1953 (L. 1953, ch. 72, §11), it has been limited in application to cities having a population of less than 80,000. Thus, it is our opinion that 1980 House Bill No. 3178 is an enactment of the legislature which is not uniformly applicable to all cities. Hence, a city may exempt itself by charter ordinance from any of the provisions of said bill which are applicable to such city.

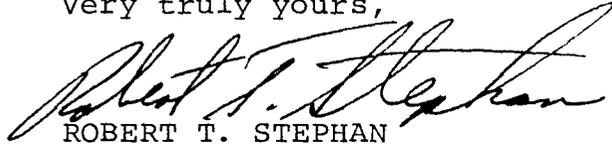
Although the foregoing conclusion is dispositive of your inquiry, and it is unnecessary to consider the remaining sections of House Bill No. 3178, it requires little discussion to note that neither K.S.A. 13-1243 nor 13-14d12, as amended by sections 3 and 4, respectively, of the bill, is uniformly applicable to all cities. The former was originally enacted in the Special Session of 1933 (L. 1933, ch. 43, §6) as part of an act applicable only to cities having a population of at least 115,000 (see K.S.A. 13-1238). The application of this act has not changed since its enactment. Similarly, K.S.A. 1981 Supp. 13-14d12 was originally enacted in 1953 (L. 1953, ch. 104) as section 12 of an act applicable only to certain cities of the first class. This act also has not changed in scope since its enactment. Thus, the presence of these statutes in House Bill No. 3178 also renders the bill non-uniform in its application to cities.

In summary, therefore, it is our opinion that 1980 House Bill No. 3178 (L. 1980, ch. 64) is an enactment of the legislature which does not apply uniformly to all cities. Thus, since

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K.S.A. 1981 Supp. 10-1208 and 12-866 were sections of that enactment, a city, pursuant to its constitutional home rule powers, may exempt itself by charter ordinance from the whole or any part of these statutes applicable to such city.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



W. Robert Alderson
First Deputy Attorney General

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