



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 64

Alan M. Boeh
Doniphan County Attorney
Reeder Building
Troy, Kansas 66087

Re: Kansas Constitution -- Home Rule -- Exercise of
Authority Through Ordinance; Effect of Resolution

Synopsis: Article 12, Section 5 of the Kansas Constitution confers upon cities a broad measure of authority over their own affairs. Commonly known as home rule, this power must be exercised subject to the limitations contained in the constitution, one of which is the requirement that action be taken by means of an ordinance subject to the provisions of K.S.A. 12-3001 et seq. Action by a city through a resolution rather than an ordinance does not meet this requirement, leaving invalid any exercise of home rule made as a result thereof. Cited herein: K.S.A. 10-119, 10-1003, Kan. Const., Art. 11, §1, Art. 12, §5.

* * *

Dear Mr. Boeh:

As County Attorney for Doniphan County, you request the opinion of this office on a question concerning recent actions taken by the City of Elwood. The city, by resolution, declared that any land or property annexed into it on a particular day would not be subject to any "ad valorem or property tax," the proceeds from which were used to pay off general obligation bonds or no-fund warrants which had been issued prior to that date by the city. You inquire whether the city possessed the authority to so act, and whether the result is permissible under the Kansas Constitution.

It is the general rule that, in the absence of special provision to the contrary, annexed territory becomes subject to the same burdens of taxation, as well as the same entitlement to municipal services, as property previously within the city limits. Rhyne, Municipal Law, §2.40, p. 41 (1957). This includes the payment of its proportionate share of the existing indebtedness of the municipality. 56 Am.Jur.2d Municipal Corporations, §94 (1971). Accordingly, without action on the part of the city or by operation of a state statute, property owners in the annexed area would be responsible for their share of all existing general obligation bonds and no-fund warrants which are outstanding at the time of annexation. Pursuant to K.S.A. 10-1003, the territory also is subject to any existing liabilities of the township of which it was previously a part. See also K.S.A. 10-119.

As a city of the third-class, Elwood is granted a large measure of authority to determine its local affairs by Article 12, Section 5 of the Kansas Constitution. Therein, at subsection (b), it is provided in part:

"Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class:"

The reach of this home-rule power is wide, in that subsection (d) specifically states that the powers and authority conferred by the section are to be "liberally construed for the purpose of giving to cities the largest measure of self-government." As there exists no statute which either authorizes or prohibits a city to allow an exemption from taxes for pre-existing bonded indebtedness for territory it annexes, this would appear on the surface to be an area for the exercise of home rule.

However, notwithstanding any other constitutional problems which such action could raise, in our opinion the city's attempt to grant the exemption here is invalid. This is due to the procedure which the city employed to create the exemption, i.e., by resolution rather than ordinance. Pursuant to Section 5(b) of Article 12 of the Kansas Constitution, a city's home rule authority is to be exercised by an ordinance passed by the governing body. As there are specific requirements attached to the passage of an ordinance (K.S.A. 12-3001 et seq.) which a less formal resolution would not have to meet, the difference is a significant one. Accordingly, the city's action was not a proper exercise of home

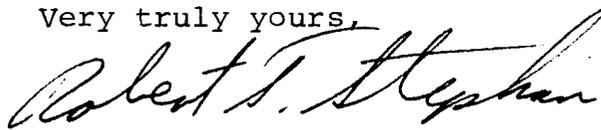
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rule power, which, like any other legislative action of a government body, must conform to the limitations imposed by the constitution. Cf., State ex rel. v. Shanahan, 178 Kan. 400 (1955).

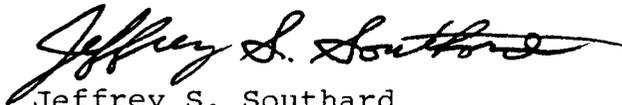
Since the above conclusion is dispositive of the question, it is not necessary to examine the issue of whether the granting of such an exemption further violates the Kansas Constitution. However, we note that Article 11, Section 1 requires the legislature to provide for a uniform and equal rate of taxation, a result which at least arguably could not occur if exemptions were granted to certain tracts in the city and not to others.

In conclusion, Article 12, Section 5 of the Kansas Constitution confers upon cities a broad measure of authority over their own affairs. Commonly known as home rule, this power must be exercised subject to the limitations contained in the constitution, one of which is the requirement that action be taken by means of an ordinance subject to the provisions of K.S.A. 12-3001 et seq. Action by a city through a resolution rather than an ordinance does not meet this requirement, leaving invalid any exercise of home rule made as a result thereof.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
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RTS:BJS:JSS:hle