



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

January 29, 1985

ATTORNEY GENERAL OPINION NO. 85- 10

John C. Johnson
Attorney at Law
President of the City Council
116 East Grand
Hillsboro, Kansas 67063

Re: Cities and Municipalities--Planning and Zoning--
Board of Zoning Appeals; Membership

Synopsis: K.S.A. 12-714 and Chapter 58 of the 1974 Session
Laws of Kansas are uniformly applicable to all
cities. Therefore, a city may not adopt a charter
ordinance exempting itself from that part of K.S.A.
12-714 which prescribes that all members of the board
of zoning appeals shall be residents of the city.
Cited herein: K.S.A. 12-714; K.S.A. 1984 Supp.
12-715; L. 1974, ch. 58; Kan. Const., Art. 12, §5.

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Dear Mr. Johnson:

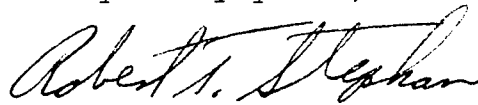
You request our opinion as to whether the City of Hillsboro may adopt a charter ordinance exempting the city from that part of K.S.A. 12-714 which prescribes that all members of the board of zoning appeals shall be residents of the city. You indicate that the city has adopted zoning regulations affecting land located outside the city but within 3 miles thereof pursuant to K.S.A. 1984 Supp. 12-715b, and that the city council would like to appoint one or more persons who reside in that area to the board of zoning appeals.

John C. Johnson
Page Two

Article 12, Section 5(c) of the Kansas Constitution provides that any city may by charter ordinance exempt itself from all or part of "any enactment of the legislature applying to such city, other than . . . enactments applicable uniformly to all cities." K.S.A. 12-714 provides for creation of a board of zoning appeals in cities which have enacted a zoning ordinance, and prescribes procedures for appointment of members thereof. Our examination of that statute and the enactment of which it is a part (L. 1974, ch. 58) reveals that the enactment is uniformly applicable to all cities. Therefore, in our judgment a city may not adopt a charter ordinance exempting itself from the language of K.S.A. 12-714 which prescribes that all members of the board of zoning appeals shall be residents of the city.

Although what has been said above is dispositive of your question, we are compelled to respond to your contention that certain statutes within Article 7 of Chapter 12 of Kansas Statutes Annotated are not uniformly applicable to all cities, and that this fact makes K.S.A. 12-714 subject to charter ordinance. The statutes which you refer to are not part of the enactment (L. 1974, ch. 58) of which K.S.A. 12-714 is a part, and, therefore, cannot affect the uniformity of that enactment. See City of Junction City v. Griffin, 227 Kan. 332, 335 (1980). Since, as we have concluded above, L. 1974, ch. 58 is uniformly applicable to all cities, it is our opinion that no part of that enactment is subject to charter ordinance.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm