



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

October 24, 1985

ATTORNEY GENERAL OPINION NO. 85-145

J. Gregory Swanson
Sublette City Attorney
506 North Kansas Avenue
P.O. Box 1829
Liberal, Kansas 67901

Re: Taxation--Aggregate Tax Levy Limitations--Application
of Act

Synopsis: Pursuant to Article 12, Section 5 of the Kansas Constitution, a charter ordinance must designate specifically the enactment of the legislature (or part thereof) made inapplicable to the city by adoption of the ordinance. As Charter Ordinance No. 6 of the City of Sublette fails to make such a designation with respect to the tax lid law (K.S.A. 79-5001 et seq.), it does not exempt the city from the tax lid, regardless of whether the city governing body intended to create such an exemption. Cited herein: K.S.A. 79-1953, 79-5001; Kan. Const., Art. 12, §5.

* * *

Dear Mr. Swanson:

You request our opinion as to whether the City of Sublette has exempted itself from the provisions of the tax lid law (K.S.A. 79-5001 et seq.) by adopting Charter Ordinance No. 6 (copy attached hereto as Exhibit "A").

Article 12, Section 5 of the Kansas Constitution prescribes the following requirements for adoption of a charter ordinance:

"Such charter ordinance shall be so titled, shall designate specifically the enactment of the legislature or part thereof made inapplicable to such city by the adoption of such ordinance and contain the substitute and additional provisions, if any, and shall require a two-thirds vote of the members-elect of the governing body of such city. Every charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper or, if there is none, in a newspaper of general circulation in the city."
(Emphasis added.)

In our opinion, a city must strictly comply with the above requirements, including a specific designation of statutes which are made inapplicable to a city, in order to exempt itself from an enactment of the legislature. See e.g., State v. Kearns, 229 Kan. 207 (1981), in which the Kansas Supreme Court strictly construed the language of Article 2, Section 20 of the state constitution (which prescribed specific wording be contained in legislative acts).

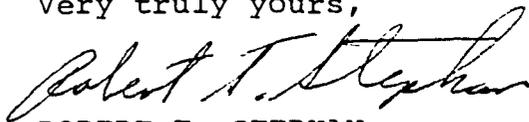
An examination of Charter Ordinance No. 6 of the City of Sublette reveals that it does not specifically make the provisions of the tax lid law inapplicable to the city. While the title of the ordinance recites that it is an ordinance "removing any limitation of tax levy," such a statement could refer to removal of either individual levy limitations or aggregate levy limitations. Section 1 of the ordinance specifically makes the individual levy limitations of K.S.A. 79-1953 inapplicable to the city, but makes no reference whatsoever to the tax lid law (K.S.A. 79-5001 et seq.). Section 3 of the ordinance provides, in part, as follows:

"[T]he aggregate [sic] of all city-wide tax levies of the City of Sublette is not limited, except as prohibited by legislative enactment uniformly applicable to all cities in Kansas."

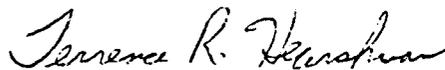
The above-quoted provision does not indicate that the city is exempting itself from any enactment of the legislature. While the governing body may have intended thereby to exempt the city from the tax lid law, the specific designation required by Article 12, Section 5 of Kansas Constitution is not present. Such specificity is necessary in order to make the protest and referendum provisions of the home rule amendment meaningful.

In summary, it is our opinion that pursuant to Article 12, Section 5 of the Kansas Constitution, a charter ordinance must designate specifically the enactment of the legislature (or part thereof) made inapplicable to the city by adoption of the ordinance. As Charter Ordinance No. 6 of the City of Sublette fails to make such a designation with respect to the tax lid law (K.S.A. 79-5001 et seq.), it does not exempt the city from the tax lid, regardless of whether the city governing body intended to create such an exemption.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm

A CHARTER ORDINANCE EXEMPTING THE CITY OF SUBLETTE, KANSAS FROM THE PROVISIONS OF KANSAS STATUTES ANNOTATED 79-1953, AS AMENDED, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT AND REMOVING ANY LIMITATION OF TAX LEVY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SUBLETTE, KANSAS:

SECTION 1. In accordance with the authority granted to municipalities by Article 12, Section 5, of the Constitution of the State of Kansas, the City of Sublette hereby elects to exempt itself from and to make inapplicable to the City of Sublette, Kansas, the provisions of Kansas Statutes Annotated 79-1953, as amended, and to provide substitute and additional provisions as are set out in this ordinance. The provisions of the above mentioned statute apply to the City of Sublette, Kansas and cities of the third class, but do not apply uniformly to all cities in Kansas.

SECTION 2. Any charter ordinance or part thereof of the City of Sublette, Kansas which is in conflict with this ordinance is hereby specifically repealed.

SECTION 3. The Governing Body of the City of Sublette, Kansas is hereby authorized and empowered to levy taxes in each year for the general fund and other city purposes at any rate of levy needed for the City of Sublette and to fix said rate of levy as needed; and the aggregate of all city-wide tax levies of the City of Sublette is not limited, except as prohibited by legislative enactment uniformly applicable to all cities in Kansas.

SECTION 4. This ordinance shall be published twice in the Haskell County Monitor Chief, the official newspaper of the City of Sublette, Kansas; and this ordinance shall take effect and be in force 60 days after its final publication.

PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF SUBLETTE, KANSAS ON THE 3RD DAY OF DECEMBER, 1984.

(SEAL)



ROBERT ORTH, MAYOR

ATTEST:



MARIE L. MOORE, CITY CLERK