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May 9, 1986

ATTORNEY GENERAL OPINION NO. 86- 70

Larry E. Scheller
Leavenworth County Clerk
Courthouse
4th and Walnut
Leavenworth, Kansas 66048

Re: Counties and County Officers -- County
Commissioners; Powers and Duties -- Rearrangement
of Commissioner Districts

Synopsis: The Leavenworth County Board of County
Commissioners has the authority to rearrange its
commissioner districts by county resolution, as
long as the commissioners comply with the broad
guidelines for redistricting contained in K.S.A.
19-204 and Kansas case law. The statute requires
the board of commissioners to divide the county
into commissioner districts which are "as compact
and equal in population as possible." As stated in
the statute, the commissioner districts are subject
to rearrangement at least once every three years.
Additionally, the Kansas Supreme Court has imposed
the requirement that the integrity of the
boundaries of voting precincts be maintained. If a
county adheres to these guidelines in rearranging
its county commissioner districts, the fact that
the redistricting shifts some electors from one
commissioner district to another, with the result
that certain electors' ability to vote or run for
the office of county commissioner is affected, will

have no bearing on the legality of the county resolution. Cited herein: K.S.A. 19-204; Gen. Stat. 1915, §2539; Kan. Const., Art. 4, §2.

* * *

Dear Mr. Scheller:

As county election officer in Leavenworth County, you request our opinion as to the legality of a resolution passed by the Leavenworth County Board of County Commissioners which rearranges their districts to make the districts more equal in population. The resolution redistributes the population in the following manner: 1st district - 32.09%; 2nd district - 33.95%; and 3rd district - 33.96%. The result is that some electors are shifted from one commissioner district to another. As certain electors' ability to vote or run for the office of county commissioner is affected by the redistricting, you inquire whether such action is legal.

The Kansas Constitution provides at Article 4, §2:

"Not less than three county commissioners shall be elected in each organized county in the state, as provided by law."

K.S.A. 19-204, which sets out the Kansas requirements for the redistricting of county commissioner districts, provides at subsection (a):

"The board of county commissioners shall, on the day of the organization of the board or as soon thereafter as may be possible, meet and divide the county into three commissioner districts or such number of districts as is prescribed by resolution of the board, as compact and equal in population as possible, and number them, subject to alteration at least once every three years."

Accordingly, the board of commissioners is statutorily required to divide the county into at least three commissioner districts which are as compact and equal in population as possible. In addition, the statute specifically states that the districts are subject to alteration at least once every

three years. In addressing the issue of whether the resolution passed by the Leavenworth County Board of County Commissioners is legal, it is helpful to examine relevant Attorney General Opinions and Kansas Supreme Court cases. These opinions and cases analyze the meaning of "compact and equal," and discuss when a county must reapportion its commissioner districts in order to meet the statutory requirements of K.S.A. 19-204.

In a letter to Merle Duncan Jr. dated March 7, 1986, the Attorney General gave a general analysis of the law regarding the redistricting of county commissioner districts. The letter stated that K.S.A. 19-204 does not require an automatic redistricting every three years. Rather, the statute merely sets the guideline that commissioner districts should be examined in light of the stated criteria "as compact and equal in population as possible" at least once every three years. (See also letter to Jan Banker from the Attorney General dated January 27, 1966.) Further, the letter provided the Kansas courts have no timetable for redistricting other than the broad guidelines set out in the statute. However, it referred to the Kansas cases annotated under K.S.A. 19-204 as providing reasonable guidelines for what our Kansas courts consider to be "as equal in population as possible."

Additionally, the Attorney General's letter referred to the United States Supreme Court cases of Avery v. Midland County, Texas, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45 (1968), and Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), which dealt with the redistricting of state legislatures to units of local government. In those cases, the Supreme Court stated that its doctrine of "one man, one vote" applied to local units of government through the Fourteenth Amendment to the United States Constitution. The Supreme Court went on to describe the criteria for establishing "one man, one vote":

"We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body."
(Emphasis added.)

The letter from the Attorney General concluded that based on the relevant Kansas Supreme Court cases and the two aforementioned United States Supreme Court cases, county commissioners were advised to begin the process of redistricting if the population of each commissioner district was not substantially equal.

Several Kansas cases describe the Kansas Supreme Court's view of what a county must do to meet the requirements of K.S.A. 19-204. An early case dealing with the issue of redistricting is The State, ex rel., v. Osage County, 112 Kan. 256 (1922), an original proceeding in mandamus to compel the board of county commissioners of Osage County to redistrict the county into three commissioner districts. The wording of the statute upon which the action was based (Gen. Stat. 1915, §2539) is nearly identical to present day K.S.A. 19-204. The court stated that the duty of determining how nearly the proposed districts shall approximate equality in population and compactness of territory is vested in the board of county commissioners. The Court went on to provide:

"The rule adopted by the courts generally is that if men of judgment and discretion may fairly differ with respect to relative weight of difference of population and compactness, the question belongs to the legislature and the courts will not interfere." (p. 261.)

Emphasizing that the legislature had placed the discretion in the board of county commissioners to determine the compactness of a district, the court concluded that the plaintiff had failed to show that there had been such an unreasonable deviation, either in population or compactness of territory, as would justify mandamus to compel further action. Clearly, the court would not interfere with the commissioners' decision absent an intentional abuse of discretion.

In The State, ex rel., v. Labette County, 114 Kan. 726 (1923), the Supreme Court of Kansas again addressed the issue of rearranging commissioner districts. In that case, the question for consideration was whether or not a public duty rested upon the county commissioners to redistrict the county. In determining that the commissioners did have a definite duty to redistrict, the court quoted Hayes v. Rogers, 24 Kan. 143 (1880):

"Full power of rearranging the county into commissioner districts is given, with the limitations that they shall be compact districts, and as equal in population as possible. In the very nature of things, the changes of population in some of our new and growing counties would require very radical changes of territory in order to make the districts equal in population . . . The alterations can be made as often as the commissioners see fit. The statute evidently contemplates one every three years." (p. 145.)" (Emphasis added.)

The court went on to find no apparent reason why the City of Parsons could not be divided, placing a portion, if necessary, in each of the three districts. Quoting The State, ex rel., v. Osage County, supra, the court reasoned:

"We think the word "compact" as used in the statute means that the territory shall be closely united, and not necessarily that the residents of each district shall be united in interest. Besides, we can conceive of no reason why a city may not be divided so that part of it lies in one commissioner district and part in another. In fact, that condition obtains in many of the counties where there are large cities. The city of Kansas City, Kansas, lies in three different commissioner districts. The boundary lines of the district in every case follow the boundary lines of the city wards so as not to interfere with the voting precincts." (p. 260.)" (Emphasis added.)

The court concluded it was the duty of the county commissioners to redistrict the county so that the districts would be as compact and equal in population as possible. Further, a district could contain only part of a city, as long as the boundary lines of the district always followed the boundary lines of the city wards, so that the division would not interfere with the voting precincts.

The Supreme Court of Kansas reinforced its decision that a city could be divided so that part of it lies in one commissioner district and part of it lies in another in the case of State, ex rel., v. Montgomery County Comm'rs., 125 Kan. 379 (1928). The court stated:

"The fact that an apportionment of a county on the basis of population may not be practical without placing parts of a city in more than one district will not prevent such a division if the boundary lines of the districts do not divide city wards nor interfere with voting precincts." (Syl. ¶3.)"

In Simone v. McPhail, 291 F.Supp. 697 (D.Kan. 1968), the United States District Court was called upon to examine the apportionment of Kansas senatorial districts and the county commissioner districts in Crawford County under the equal protection clause of the 14th Amendment to the United States Constitution.

Relying on the Kansas Constitution, Article 4, Section 2 and K.S.A. 19-204, and taking judicial notice of the powers, duties, and authorized functions of the Board of County Commissioners set forth in Chapter 19 of the Kansas Statutes Annotated, the court found:

"[T]hat the Board of County Commissioners of a Kansas county performs some functions normally thought of as 'legislative' and that it has power to make a number of decisions having broad impact on all the citizens of the county. (p. 699.) See Avery v. Midland County, Texas, 390 U.S. 474, 482-483, 88 S.Ct. 1114, 20 L.Ed.2d 45 (1968)." (Emphasis added)

The most recent occasion in which the Kansas Supreme Court addressed the issue of when a county must rearrange its commissioner districts was the 1971 case of Andrews v. Board of County Commissioners, 207 Kan. 549. In that case, the court once again focused on the meaning of the phrase "as compact and equal in population as possible." (K.S.A. 19-204.) Appellants claimed that the statutory requirements as

to compactness and equality of population had not been met by the current division of commissioner districts. The court noted that, in the rearrangement of commissioner districts, one other primary factor must be kept in mind in addition to compactness and equality of population. The court stated:

"In dividing a county into three commissioner districts the boundaries of the districts must follow the boundaries of voting precincts. The people in one voting precinct cannot be divided or placed in two or more commissioner districts." (p. 550.)

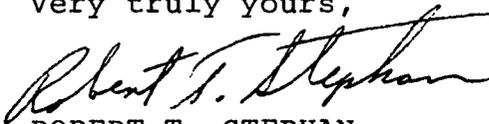
The court emphasized that what has been declared as the policy of the federal courts regarding reapportionment (i.e. "one man, one vote"), has long been recognized as the policy of the state courts, via K.S.A. 19-204. That is, when called upon, the Kansas courts have consistently enforced the requirement of the statute that each county be rearranged into commissioner districts which are "as compact and equal in population as possible." In discussing the meaning of compactness, the court referred to State ex rel., v. Osage County, supra, quoting:

"The word "compact" has various shades of meaning when used in this connection, and permits the consideration in good faith of existing lines, topography, means of transportation and other factors. It means that the territory shall be closely united, and not necessarily that the residents of each district shall be united in interest." (Syl ¶4.)" (Emphasis added.)

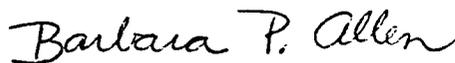
This decision by the Kansas Supreme Court reiterated the court's long-standing policy that county commissioner districts can divide a city and still meet the statutory requirement of compactness. Furthermore, in order to comply with the statutory guidelines for redistricting, the court stated it must consider not only the requirement of compactness, but also the requirement that the integrity of the boundaries of voting precincts be maintained.

In conclusion, it is our opinion that the Leavenworth County Board of County Commissioners has the authority to rearrange its commissioner districts by county resolution, as long as the commissioners comply with the broad guidelines for redistricting contained in K.S.A. 19-204 and Kansas case law. The statute requires the board of commissioners to divide the county into commissioner districts which are "as compact and equal in population as possible." As stated in the statute, the commissioner districts are subject to rearrangement at least once every three years. Additionally, the Kansas Supreme Court has imposed the requirement that the integrity of the boundaries of voting precincts be maintained. If a county adheres to these guidelines in rearranging its county commissioner districts, the fact that the redistricting shifts some electors from one commissioner district to another, with the result that certain electors' ability to vote or run for the office of county commissioner is affected, will have no bearing on the legality of the county resolution.

Very truly yours,



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Barbara P. Allen
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