



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 120

John R. Horst
Caney City Attorney
P.O. Box E
Caney, Kansas 67333

Re: Constitution of the State of Kansas--Corporations--
Cities; Powers of Home Rule

Cities and Municipalities--General Provisions--
Cities Classified for Purpose of Imposing
Limitations and Prohibitions Upon Levy of Sales and
Excise Taxes

Synopsis: K.S.A. 1986 Supp. 12-187 and 12-189, as amended by
sections 1 and 2 of L. 1987, ch. 63, prescribe
that the rate of any city retailers' sales tax
shall be fixed in the amount of .5% or 1%. As the
legislature has established two valid classes of
cities for the purpose of limiting the levying of
sales and excise taxes, and the above-cited rate
limitations (and the acts of which they are a part)
apply uniformly to all cities of the same class, a
city may not increase the maximum 1% rate through
adoption of a charter ordinance. Cited herein:
K.S.A. 1986 Supp. 12-187; K.S.A. 12-188; K.S.A.
1986 Supp. 12-189; 12-192; Kan. Const., Art.
12, §5.

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Dear Mr. Horst:

You request our opinion as to whether the city of Caney may adopt a charter ordinance exempting itself from the 1% rate limitation which applies to the levy of a city retailers' sales tax.

In response, we first note that the home rule power of taxation under Article 12, Section 5 of the Kansas Constitution is subject to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction. In this regard, the legislature has established two classes of cities (class A and class B) for the purpose of limiting and prohibiting the levying of sales and excise taxes. See K.S.A. 12-188. In our opinion, the classes established are valid and comply with the explicit classification required under Article 12, Section 5 of the Kansas Constitution. See Clark v. City of Overland Park, 226 Kan. 609, 616 (1979).

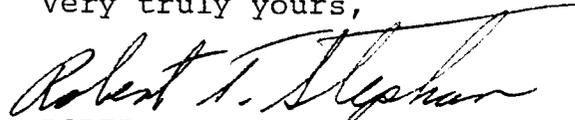
K.S.A. 1986 Supp. 12-187 and 12-189, as amended by sections 1 and 2 of L. 1987, ch. 63, prescribe that the rate of any city retailers' sales tax shall be fixed in the amount of .5% or 1%. While you acknowledge that these rate limitations are uniformly applicable to all cities, you suggest that the enactment of which they are a part is non-uniform in application to cities. Specifically, you express the opinion that the act is rendered non-uniform by the provisions of K.S.A. 1986 Supp. 12-192, as amended by L. 1987, ch. 63, §3.

K.S.A. 1986 Supp. 12-192 (as amended) prescribes the method by which revenues from a countywide retailers' sales tax are to be distributed among the county and each city located therein. The contention that the special rules for distributing county sales tax revenue in Riley County, Geary County and Johnson County render the statute non-uniform as to cities has been previously rejected by this office. See Attorney General Opinion No. 82-29 (copy enclosed). We have also examined the act of which K.S.A. 12-187 (as amended) and K.S.A. 12-189 (as amended) are a part, and are unaware of any non-uniformity within the two classes of cities established by K.S.A. 12-188.

In summary, it is our opinion that K.S.A. 1986 Supp. 12-187 and 12-189, as amended by sections 1 and 2 of L. 1987, ch.

63, prescribe that the rate of any city retailers' sales tax shall be fixed in the amount of .5% or 1%. As the legislature has established two valid classes of cities for the purpose of limiting the levying of sales and excise taxes, and the above-cited rate limitations (and the acts of which they are a part) apply uniformly to all cities of the same class, a city may not increase the maximum 1% rate through adoption of a charter ordinance.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm