



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 16, 1992

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 92- 134

Nick A. Tomasic
District Attorney
Wyandotte County Justice Complex
710 N. 7th
Kansas City, Kansas 66101

Re: Counties and County Officers -- General Provisions
-- Home Rule Powers; Term Limitations; Advisory
Elections

Synopsis: A board of county commissioners does not have the authority to place any greater eligibility criteria on county officials than is provided by statute or constitution. Term limitations would constitute an eligibility criterion and therefore may not be imposed by such a board. Cited herein: K.S.A. 1991 Supp. 101a; K.S.A. 19-201; 19-301; 19-501; 19-801; 19-1201; 19-1401; Kan. Const., art. 9, § 2.

* * *

Dear Mr. Tomasic:

As district attorney for the 29th judicial district, you have requested our opinion on the following questions:

"1. Can a Board of County Commissioners by Charter Resolution, under home-rule with a vote of the people, attempt to limit the terms of elected officials which said officials are established by state statute, and also their terms are set by state statute?

"2. Can a single Board of County Commissioners in any one county, without legislative action, limit the terms of the duly elected county office holders even if it is approved by the people?

"3. In your opinion, is this question that is to be placed on the November 3rd ballot advisory or binding on the specific offices mentioned?"

In your request letter you include a copy of charter resolution no. 92-2, signed by the Wyandotte county board of commissioners on August 25, 1992, which attempts to limit the term of office for the county clerk, county treasurer, register of deeds, sheriff, county surveyor and county commissioners to not more than 2 consecutive elected terms or not more than 11 total years upon an approval by the voters.

"State laws applicable to municipalities frequently prescribe what persons are eligible to hold office, and as a rule no other or greater qualification will be required than what is prescribed." 56 Am.Jur.2d Municipal Corporations, Etc., § 246 (1971).

Eligibility criteria for county offices is discussed in 20 C.J.S. Counties § 99 and states in pertinent part:

"In the absence of exceptional circumstances otherwise disqualifying him, qualification not prescribed by constitution or statute need not be possessed by persons to make them eligible for county offices or positions. . . ."

The qualifications listed in the Kansas statutes to be a county clerk (K.S.A. 19-301 et seq.), county treasurer (K.S.A. 19-501 et seq.), register of deeds (K.S.A. 19-1201 et seq.), sheriff (K.S.A. 19-801 et seq.), county surveyor (K.S.A. 19-1401 et seq.), and county commissioner (K.S.A. 19-201 et seq.) do not limit the number of terms of office the person may hold.

A county may exercise its home rule powers, subject to acts of the legislature which apply uniformly to all counties (K.S.A. 1991 Supp. 19-101a(1)), with certain exceptions. Among those exceptions, counties are subject to "all acts of the legislature concerning elections, election commissioners and

officers and their duties as such officers and the election of county officers." K.S.A. 1991 Supp. 19-101a(7).

The court in Blevins v. Hiebert, 247 Kan. 1 (1990) held that "home rule legislation is prohibited in a field of law in which there is a state statute uniformly applicable to all cities or counties. Home rule is applicable in the area of regulation and prohibition, where local government exercises its police power for the health, safety and general welfare of the public." The Blevins court went on to state that "an enabling act is uniformly applicable to all cities or counties if it authorizes all cities or counties to perform certain acts. Such statutes are state law and preempt the filed of their application without the use of preemptive language unless there are express exceptions in the statutes or unless the statutes pertain to police power regulations." See Blevins, 247 Kan. at 11.

Therefore, even if K.S.A. 1991 Supp. 19-101a did not itself preclude the use of home rule, the county could not exercise this power because the statutes setting out the qualifications for these county offices are uniform.

Article 9, § 2, of the Kansas constitution states that "[t]he legislature shall provide for such county and township officers as may be necessary." The constitution does not grant such authority to counties. Thus, it is our opinion that, as the office is legislatively created and controlled by state law, individual counties are without constitutional or statutory authority to affect qualification requirements. We therefore must conclude that, unless given the express authority (see e.g., the authority of the board of county commissioner to affect the salary of county officers) local legislation cannot affect changes in legislatively created eligibility rules for county elected officials.

Since the board of county commissioners does not have authority to create eligibility criteria for county elected officials, the approval or disapproval of local voters of such a matter would not have any meaningful effect.

Your final question is whether the placement of such a question on the November 3rd ballot is advisory or binding on the specific offices. Since we have opined that the board of county commissioners does not have the authority to place any greater eligibility criteria on the county offices than is

provided by statute or constitution, your question regarding
the election need not be addressed.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma
Assistant Attorney General

RTS:JLM:MJS:bas