

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Elwaine F. Pomeroy at  
Chairperson

12:00 ~~am~~/p.m. on April 3, 19<sup>84</sup> in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Hein, Hess, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Secretary Michael Barbara, Department of Corrections  
John Myers, Division of Budget  
Representative Marvin Smith  
Peter Rinn, Social and Rehabilitation Services Attorney

House Bill 3012 - Informal administration of estates.

Senator Gaar moved to amend the bill by adopting the technical amendments presented by Professor Kuether; Senator Gaines seconded the motion, and the motion carried. Senator Gaar moved to amend the bill by delaying the informal probate proceedings to January 1, 1985; Senator Gaines seconded the motion, and the motion carried. Senator Gaar made a conceptual motion to amend the bill to provide for three additional judges to the Court of Appeals and to incorporate Senate Bill 857, and include the salaries; Senator Gaines seconded the motion, and the motion carried. Senator Gaar moved to report the bill favorably as amended; Senator Gaines seconded the motion, and the motion carried.

Senate Bill 863 - Wills probated outside state; amendment not to effect existing litigation.

Senator Burke moved to report the bill favorably; Senator Gaines seconded the motion. Committee discussion was had, during which the views were expressed that if the legislation passed did correctly reflect the public policy views of the legislature that wills admitted to probate in other states should be recognized as valid wills in Kansas, then that policy should apply to pending cases as well as to future cases. Following committee discussion, Senator Gaar made a substitute motion to table the bill; Senator Mulich seconded the motion, and the motion carried.

Senate Bill 858 - Penalties and sentencing for certain crimes.

Secretary Barbara described the effects of what is going to happen to our prison population. A committee member stated, I can't support the proposal. If this legislation does not prevail, what is your next step? Secretary Barbara replied, 192 beds which the governor has requested. If don't get Senate Bill 858 and all available beds in all facilities are filled, I don't know what we are going to do. He said another option is that the federal court might declare the system unconstitutional and call in a master and learn from him what needs to be done; the court appoints someone to run the system. Considerable committee discussion followed concerning finding additional beds in the present facilities.

John Myers explained, in order to calculate the overall effect of this bill four variables are needed. A copy of his handout is attached (See Attachment No. 1). He stated they have concern about getting those additional 192 beds as quickly as we can. There are three bills that relate to the governor's request, one is this bill and there are two bills that are being requested to be introduced in the House.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
 room 529-S, Statehouse, at 12:00 ~~xxx~~/p.m. on April 3, 1984

House Bill 2957 - Civic centers in Shawnee county.

Representative Marvin Smith, the sponsor of the bill, explained the bill to the committee. A copy of his remarks and a copy of the attorney general's opinion are attached (See Attachments No. 2).

The chairman reported he had heard from the intergovernmental coordinator of Shawnee County and from the county commissioners and their stance is neutral on the bill.

Senator Gaines moved to report the bill favorably; Senator Hess seconded the motion, and the motion carried.

House Bill 2040 - Subpoena and investigative powers of secretary of SRS.

Peter Rinn appeared in support of the bill. A copy of Secretary Robert C. Harder's statement is attached explaining their need for the bill (See Attachment No. 3).

Senator Steineger moved to report the bill favorably; Senator Gaines seconded the motion, and the motion carried.

SB 858 - Penalties and sentencing for certain crimes.

Following committee discussion of particular section of the bill, Senator Gaines moved to amend the bill by raising the initial threshold from what is the present amount to \$150 in Sections 2, 3, 4, 5, 7, and 8 in all cases except the forgery section. Following further committee discussion, the motion carried. Senator Gaines moved to amend the bill in Section 2, upon second offense, it is a class D felony when more than one hundred fifty dollars. Senator Gaines then withdrew his motion. Senator Gaines moved to amend the bill to reduce the class D to class E except Section 6 dealing with forgery; theft above \$150 is class E felony. Senator Mulich seconded the motion, and the motion carried. Senator Gaines moved to amend the bill in Section 6 by reducing to class E on forgery; Senator Mulich seconded the motion, and the motion carried. Senator Hein moved to amend the bill in Section 2, the habitual worthless check, as the provision is in Senate Bill 633. Senator Gaines seconded the motion, and the motion carried. Considerable committee discussion was held concerning the proposed amendments presented by Secretary Barbara contained in the balloon copy (See Attachment No. 4). Senator Gaines moved to amend the bill by adopting the proposed amendments; Senator Mulich seconded the motion, and the motion carried. Senator Feleciano moved to amend the bill on page 6, lines 217 through 221, to make the same exception that appears on line 24, page 1; Senator Winter seconded the motion, and the motion carried. Senator Gaines moved to report the bill favorably as amended; Senator Mulich seconded the motion, and the motion carried.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Alan Brookes	Topeka	Kan Bar Assn
Marjorie J. Van Buren	"	OJA
Ken Miller	Lawrence	Stevage
M. Hawen	Topeka	Capital Journal
Rob Karwatz	Lawrence	Univ. Daily Kansan
Doug Grant	Topeka	KCC
John J. Pappas	Topeka	Pub Int
Michael C. Barber	Topeka	DOC
Danny J. Kemp	Topeka	DOC
Jessica J. Perry	Overland Park	
W. Kelly		AJ
Peter R. ...	Topeka	SRS
Jim Cloer	"	KC OAA
Jesse Banker		Winter
Endi Miles	Lawrence	UPF

4-3 84

Mayer

Attach. #1

### Further Impact of House Bill 3104

In order to calculate the overall effect of House Bill 3104, four variables are needed:

- 1) initial prison population;
- 2) current length of stay of the initial population;
- 3) estimated annual admissions; and
- 4) estimated length of stay of annual admissions.

The impact of House Bill 3104 in comparison to pre-July 1982 law is as follows:

	<u>Class D and E Felons</u>	
	<u>Old Law</u>	<u>3104</u>
Initial prison population (6-30-83)	1,515	1,515
Current length of stay - initial population	12.6 mos.	12.6 mos.
Estimated annual admissions	1,694	1,694
Estimated length of stay	12.6 mos.	20.7 mos.
Year-end Population		
1984	1,696	1,892*
1985	1,739	2,231
1986	1,763	2,495
1987	1,773	2,668
1988	1,776	2,774
Peak	1,779	2,922

\*1,723 projected actual admissions used for the FY 1984 population. An average of 1,694 admissions was used for all subsequent years.

Prepared by Planning, Research, Evaluation and Accreditation Unit  
April 3, 1984.

Attch. 1

STATE OF KANSAS

4-3-84

Attach. # 2

MARVIN E. SMITH  
REPRESENTATIVE, FIFTIETH DISTRICT  
SHAWNEE AND JACKSON COUNTIES  
123 N. E. 82ND STREET  
TOPEKA, KANSAS 66617



COMMITTEE ASSIGNMENTS  
VICE CHAIRMAN GOVERNMENTAL ORGANIZATION  
MEMBER EDUCATION  
FEDERAL AND STATE AFFAIRS

TOPEKA

HOUSE OF  
REPRESENTATIVES

APRIL 3, 1984

RE: HOUSE BILL 2957

TO: SENATE JUDICIARY COMMITTEE

MR. CHAIRMAN AND MEMBERS OF COMMITTEE:

I appreciate the opportunity to bring my concerns regarding H.B. 2957.

Last year in the early part of the session, the Shawnee Delegation was asked to support H.B. 2025, which would give approval for the Civic Center bonds if approved by the voters of Shawnee County in April of 1983, to exceed the counties bond limit.

The Delegation gave unanimous approval and subsequently H.B. 2025 passed and became law.

In November 1983, the Shawnee County Commissioners approved a home rule resolution, CH-83-6, exempting from the Civic Center statutes the vote of the electorate for \$20,000,000.00 general obligation bonds. They provided in the resolution for a 20% protest in 15 days for an election.

After some protest from constituency they offered another resolution on December 8, 1983, CH-83-7, for \$6,000,000.00 - and rescinded the \$20,000,000.00. But not calling for an election as provided in law.

In December 1983, Senator Pomeroy, Representatives Barr, Hensley and Smith asked for an opinion from the Attorney General concerning the home rule resolution exempting a called election for the general obligation bonds and the issue of exceeding the counties bond limit.

I have an attached copy of the Opinion No. 84-5 concerning the questions.

On lines 98-102, we are proposing counties may not exempt from or effect changes in KSA 19-15,139, 19-15,140 and 19-15,141.

Also lines 121-132, we are asking that legislation provide when bonds will exceed the debt limit in Shawnee County, that the voters be provided the opportunity on a ballot to approve or reject exceeding the bond limit.

Atch. 2



4-3-81  
Attach. #2

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  
ANTITRUST: 296-5299

January 31, 1984

ATTORNEY GENERAL OPINION NO. 84- 5

The Honorable Elwaine F. Pomeroy  
State Senator, Eighteenth District  
1415 Topeka Avenue  
Topeka, Kansas 66612

Re: Counties and County Officers--General Provisions--  
Home Rule Powers; Limitations, Restrictions and  
Prohibitions

County and County Officers--County Buildings--  
Civic Centers in Certain Counties; Exercise of  
Home Rule Power

Synopsis: Utilizing the authority granted by K.S.A. 1983 Supp. 19-15,139 et seq., Shawnee County may issue bonds for the construction or acquisition of "civic and other multi-use public facilities." The authority granted by the act is not limited to the construction or acquisition of a single facility and may be utilized for distinct and separate facilities if such facilities may be defined as civic or other multi-use public facilities.

A county may exempt itself by charter resolution from the particular issue limitations found in non-uniformly applicable statutes like K.S.A. 1983 Supp. 19-15,140 and may authorize the issuance of bonds in amounts greater than that authorized by the statute.

When relying upon home rule the county is subject to the aggregate debt limitations found in K.S.A. 10-306 and the county may not use a charter resolution to exempt from the aggregate debt limitations. The

exemption from aggregate debt limitations established in K.S.A. 1983 Supp. 19-15,141 is available to the county only when the county issues bonds under the authority of K.S.A. 1983 Supp. 19-15,140. Such an exemption is not available if the county chooses to issue bonds pursuant to a charter resolution enacted in the exercise of county home rule.

K.S.A. 1983 Supp. 19-15,139 et seq., is not legislation "concerning elections" within the meaning of K.S.A. 1983 Supp. 19-101a(a)(7), and is subject to the exercise of the powers of county home rule. Cited herein: K.S.A. 10-306 et seq., K.S.A. 1983 Supp. 19-101a; K.S.A. 19-101b, 19-101c, K.S.A. 1983 Supp. 19-15,139, 19-15,140, 19-15,141.

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Dear Senator Pomeroy:

As State Senator for the Eighteenth District, and on behalf of several other members of the Shawnee County legislative delegation, you have requested an Attorney General Opinion on the legality of a charter resolution recently adopted by the Shawnee County Board of County Commissioners.

Shawnee County Charter Resolution No. CH-83-7 relies upon the authority granted to Shawnee County in K.S.A. 1983 Supp. 19-15,139 which provides in relevant part:

"The board of county commissioners of . . . Shawnee . . . count[y] may acquire by condemnation, gift, bequest, purchase or lease from public or private sources and may plan, construct, reconstruct, repair, remodel, furnish, equip, operate and maintain, and may lease to others for operation and maintenance, civic and other multi-use public facilities for the benefit of the people of the county. . . . The board may do all things incidental or necessary to establish public or private facilities, located upon, above or below the ground, for the types of functions and activities deemed suitable by the board." (Emphasis added.)

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The charter resolution also utilizes county home rule powers as found in K.S.A. 1983 Supp. 19-101a and K.S.A. 19-101b to exempt the county from the requirements of K.S.A. 1983 Supp. 19-15,140 and 19-15,141, both of which relate to the exercise of the authority granted by 19-15,139.

K.S.A. 1983 Supp. 19-15,140 provides in portions relevant here:

"In order to carry out the authority granted in K.S.A. 19-15,139, and for no other purpose, the board of county commissioners of Shawnee . . . count[y] may issue general obligation bonds of the county in an amount not to exceed \$20,000,000. . . . No bonds shall be issued until the question of their issuance has been submitted to vote of the qualified electors of the county at any county general election, school board election or special election called and held for that purpose, and a majority of the qualified electors voting thereon votes in favor thereof. The election shall be called and held and the bonds shall be issued, sold, delivered, registered and retired in the manner provided by the general bond law."  
(Emphasis added.)

Charter Resolution No. CH-83-7 also exempts Shawnee county from the application of K.S.A. 1983 Supp. 19-15,141 which provides:

"Bonds issued pursuant to K.S.A. 19-15,140 and amendments thereto shall not be subject to or within any bonded debt limitation fixed by any other law of this state."

In lieu of the requirements of K.S.A. 1983 Supp. 19-15,140 and 19-15,141, the charter resolution at issue here provides:

"Section 2. In order to carry out the authority granted in K.S.A. 19-15,139, as amended, and for no other purpose the Board is hereby authorized to issue general obligation bonds not to exceed \$6,000,000. The Board of County Commissioners shall publish a notice of intention to issue general obligation bonds. If, within fifteen (15) days after the publication of such notice in the official paper, there shall be filed



with the County Clerk written protest against the issuance of such bonds signed by not less than twenty percent (20%) of the qualified electors of such County, the Board of County Commissioners shall thereupon submit the proposed project and proposed bond issue to the electors of the County at a special election to be called for that purpose upon at least ten day's notice, to be held not later than sixty (60) days after the filing of such protest or at a general election which will occur not sooner than thirty (30) days nor not later than sixty (60) days after the filing of such protest. In the event that a majority of such voters voting on such proposition at such election shall vote in favor thereof, such proposed improvements shall be made and such bonds may be issued in payment of the cost thereof.

"Section 3. Bonds issued pursuant to K.S.A. 19-15,140, as amended, or charter resolutions in substitute therefor by Shawnee County shall not be subject to or within any bonded debt limitation fixed by any other law of this state."

We are informed that the bonds authorized by this resolution are to be used to build a race track and headquarters building for the Sports Car Club of America.

You raise three different questions concerning this resolution. First, you inquire whether the county may use the authority of K.S.A. 1983 Supp. 19-15,139 et seq., "more than one time either by adopting a charter resolution . . . or by following the statutory procedures a second time and placing the proposition of the issuance of more general obligation bonds before the voters?" You note that on April 5, 1983, Shawnee County voters approved a \$19.7 million bond issue in an election held under K.S.A. 19-15,140 for the construction of a civic center in Shawnee County. Second, you inquire whether the charter resolution exempts the county from statutorily prescribed bonded debt limitations in violation of K.S.A. 1983 Supp. 19-101a(a)(4). Similarly, you ask whether the charter resolution exempts the county from the election requirements of K.S.A. 1983 Supp. 19-15,140 in violation of K.S.A. 1983 Supp. 19-101a(a)(7).

Addressing your first inquiry, we note that K.S.A. 1983 Supp. 19-15,139 authorizes the county to build or acquire "civic and

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other multi-use public facilities." Under the authority of K.S.A. 1983 Supp. 19-15,140, Shawnee County voters have approved the issuance of \$19.7 million in Shawnee County general obligation bonds for the construction of a civic center. We find no indication in the language of 19-15,139 that the authority of the section may be utilized only once for the construction of a single facility. The language "other multi-use public facilities", although perhaps not enacted in contemplation of an automobile race track facility, is certainly broad enough to encompass such a facility, if the track and attendant structures will be available and suitable for other uses. We note at this juncture that we have not been provided with a complete description of the proposed facility and its possible uses. Thus, our conclusion that the facility could be included within the description "multi-use public facility" is subject to the caveat that the facility must indeed be available to the public as a "multi-use" facility.

Your remaining questions concern the proper exercise of the home rule power of the county. A discussion of certain general matters relevant to the exercise of county home rule will provide a background for response to your inquiries. K.S.A. 1983 Supp. 19-101a sets forth the extent of and limitations upon the exercise of county home rule powers and provides in pertinent part:

"(a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions: (1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties. . . . (4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness. . . . (7) Counties shall be 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. 19-101b provides in relevant part:

"(a) Any county may by charter resolution elect in the manner prescribed in this section that the whole or any part of any act of the legislature applying to such county other than those acts concerned with those limitations, restrictions or prohibitions set forth in subsection (a) of K.S.A. 19-101a shall not apply to such county.

"(b) A charter resolution is a resolution which exempts a county from the whole or any part of any act of the legislature and which may provide substitute and additional provisions on the same subject. . . ." (Emphasis added.)

The first limitation upon the exercise of county home rule is that counties are subject to all acts of the legislature which apply uniformly to all counties. K.S.A. 1983 Supp. 19-15,139 et seq., does not apply uniformly. The act is applicable only to Shawnee, Wyandotte and Seward counties and thus is not subject to the first limitation stated in K.S.A. 1983 Supp. 19-101a.

The second limitation on county home rule power relevant here is found in K.S.A. 19-101a(a)(4) which states that counties are subject to all acts of the legislature prescribing limits of indebtedness. You ask whether Shawnee County's charter resolution violates this provision because it substitutes \$6,000,000 for the \$20,000,000 limitation found in K.S.A. 1983 Supp. 19-15,140. This particular limitation of county home rule apparently has not been the subject of any previous Attorney General opinions nor have we discovered any court decisions construing the provision in this context. However, the constitutional provisions for city home rule contain a similar limitation which has been discussed in two previous Attorney General opinions. Article 12, Section 5 of the Kansas Constitution provides that cities may exercise their home rule powers subject "to enactments of the legislature prescribing limits of indebtedness," whether such enactments apply uniformly to all cities or are nonuniform in application. Attorney General Opinion No. 80-229 interpreted the quoted language and concluded that the phrase "enactments prescribing limits of indebtedness" in the home rule amendment referred only to limitations on total or aggregate indebtedness, and not to individual statutory limitations on the amounts of issues authorized for particular purposes. See also Attorney General Opinion No. 77-368. Attorney General Opinion No. 80-229 addressed the question of whether a city could, by charter resolution, exempt from the issue limitations found in K.S.A. 13-1024a. That provision authorizes the issuance of bonds, within prescribed limits, for public improvements. In concluding that the city could exempt from the particular issue limitations of K.S.A. 13-1024a the Attorney General noted that such authority must be exercised within the parameters of the aggregate debt limitations.

"The obvious purpose of this particular restriction on cities' home rule powers [enactments prescribing limits of indebtedness] is to permit the legislature to

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prescribe statutory limits on indebtedness which may not be exceeded by cities, in order to provide some measure of protection against the insolvency of the cities. That protection, of course, is afforded by the aggregate limits on indebtedness, rather than those statutes which limit the amount of a particular bond issue, since the assumption of indebtedness under the latter statutes is still subject to the statutory limits on total indebtedness." (Emphasis added.)

It is our opinion that these conclusions apply with equal force to the fourth limitation on county home rule power stated in K.S.A. 1983 Supp. 19-101a. Thus a county may, by charter resolution, exempt the county from nonuniform statutory limitations upon the amounts of bond issues authorized for particular purposes.

Counties may not, however, use a charter resolution to exempt from the aggregate debt limitations established by K.S.A. 10-306 et seq. and which are applicable to counties. In Attorney General Opinion No. 82-186 the attorney general said:

"Even though the limits of bonded indebtedness prescribed by K.S.A. 1981 Supp. 10-306 do not apply uniformly to all counties, a county is precluded by K.S.A. 19-101a, Fourth, from exempting itself from these limits."

This point raises two additional concerns about the validity of Shawnee County Charter Resolution No. CH-83-7. First, we are informed that Shawnee County utilized this charter resolution to finance this project because there was "insufficient authority between the county's existing outstanding bonded indebtedness and the limitation imposed by K.S.A. 10-306 for the proposed project" thus necessitating an "alternate means of financing the project." (See Letter of January 11, 1984 to the Shawnee County Commissioners from W. Edward Nichols) Second, we note that the charter resolution at issue here provides that bonds issued pursuant to the charter resolution, which substitutes for K.S.A. 19-15,140, "shall not be subject to or within any bonded debt limitation fixed by any other law of this state." Both points raise the question of whether the county may properly utilize the charter resolution in a manner which removes the proposed county bonds from the aggregate debt limitations provided in K.S.A. 10-306 et seq.

The statutes at issue here are distinguishable from the statutes discussed in previous Attorney General Opinions in that the

legislature, in enacting K.S.A. 1983 Supp. 19-15,141 exempted Shawnee County from any bonded debt limitation fixed by any other law of the state when issuing bonds pursuant to K.S.A. 1983 Supp. 19-15,140 for the purposes stated in the act. K.S.A. 1983 Supp. 19-15,140 limits the issuance of bonds under its provisions to \$20,000,000 and requires that the issuance be submitted to and approved by the voters. Shawnee County does not propose here to issue bonds under the authority of §19-15,140. Instead the County would issue bonds under its home rule authority as represented by a charter resolution which specifically exempts the County from §19-15,140 and enacts substitute provisions which increase the particular issue limitation found in that section and alter the election requirements. To preserve the exemption from aggregate debt limitations provided by the legislature for bonds issued under §19-15,140, the charter resolution removes the county from the effect of §19-15,141 (which creates the exemption) and then attempts to "re-enact" that section to include within the exemption bonds issued pursuant to the charter resolution enacted in lieu of §19-15,140. The effect of this resolution in this particular situation is to permit Shawnee County to issue bonds which exceed the aggregate debt limitation found in K.S.A. 10-306. It is our opinion that this is precisely the type of act which is precluded by the fourth limitation on county home rule power found in K.S.A. 1983 Supp. 19-101a(a).

We note here that earlier Attorney General Opinions which approved the exercise of home rule charter resolutions to exempt a municipality from a particular debt limitation accept as a basic premise that such exemptions will be made within the parameters of the applicable aggregate debt limits. See Attorney General Opinion Nos. 80-229; 76-44. Shawnee County Charter Resolution No. CH-83-7 goes beyond these parameters because it exempts bonds issued pursuant to and authorized entirely by a home rule charter resolution from the aggregate debt limitations created by state statute. This is beyond the scope of county home rule.

The exemption from aggregate debt limitations provided to Shawnee County by §19-15,141 is available only when the county complies with the requirements stated in §19-15,140. When the county elects to enact a charter resolution which removes the county from the effect of §19-15,140, the county loses the benefit of §19-15,141 and remains subject to aggregate debt limitations. K.S.A. 19-101a(a)(4) prevents a county from using home rule authority to exempt from the aggregate debt limitations found in K.S.A. 10-306. Shawnee County Charter Resolution No. CH-83-7 attempts to do exactly what is prohibited and thus, in our opinion, does not constitute a lawful exercise of county home rule.

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K.S.A. 19-101b provides that any county may, by charter resolution elect that the "whole or any part of any act of the legislature applying to such county other than those acts concerned with those limitations, restrictions or prohibitions set forth in subsection (a) of K.S.A. 19-101a shall not apply to such county." When a county chooses to use the power of home rule it must act within the limitations of that power. In our opinion, K.S.A. 19-101b does not permit Shawnee County to pick and choose among various favorable and unfavorable legislative enactments, combine them with home rule authority and craft a charter resolution which accomplishes that which the county may not otherwise in the pure exercise of county home rule, i.e., exempt the county from the aggregate debt limitations applicable to the county.

Finally, you inquire whether the Shawnee County Charter Resolution violates K.S.A. 1983 Supp. 19-101a(a)(7) which provides that counties shall be "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." The charter resolution provides for a protest style election. The seventh limitation on county home rule power significantly restricts county home rule power in providing that counties shall be subject to all acts of the legislature, whether uniform or not, concerning elections. Several recent Attorney General Opinions have concluded that this seventh limitation is intended to prevent action concerning the manner of how an election is to be held. See Attorney General Opinion Nos. 81-243; 79-47; 76-44. Thus, the issuance of bonds for "civic and other multi-use public facilities," which under statute requires an election, is not a matter pertaining to elections within the meaning of K.S.A. 1983 Supp. 19-101a(a)(7) as that section has been interpreted by the Attorney General. We do not construe K.S.A. 1983 Supp. 19-15,140 as legislation "concerning elections"; rather, the statute concerns the issuance of bonds for certain purposes which incidently requires a prior election. As such, the statute is subject to the legitimate exercise of county home rule. We note, however, that if the county chooses to operate under home rule the county remains subject to the aggregate debt limitations as discussed in this opinion.

We conclude that, utilizing the authority granted by K.S.A. 1983 Supp. 19-15,139 et seq., Shawnee County may issue bonds for the construction or acquisition of "civic and other multi-use public facilities." The authority granted by the act is not limited to the construction or acquisition of a single facility and may be utilized for distinct and separate facilities if such facilities may be defined as civic or other multi-use public facilities.

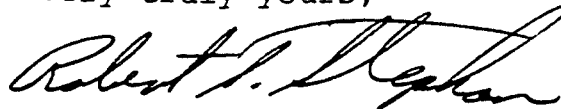
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A county may exempt itself by charter resolution from the particular issue limitations found in non-uniformly applicable statutes like K.S.A. 1983 Supp. 19-15,140 and may authorize the issuance of bonds in amounts greater than that authorized by the statute.

When relying upon home rule, a county is subject to the aggregate debt limitations found in K.S.A. 10-306 and the county may not use a charter resolution to exempt from the aggregate debt limitations. The exemption from aggregate debt limitations established in K.S.A. 1983 Supp. 19-15,141 is available to the county only when the county issues bonds under the authority of K.S.A. 1983 Supp. 19-15,140. Such an exemption is not available if the county chooses to issue bonds pursuant to a charter resolution enacted in the exercise of county home rule.

K.S.A. 1983 Supp. 19-15,139 et seq., is not legislation "concerning elections" within the meaning of K.S.A. 1983 Supp. 19-101a(a)(7). Thus the statute is subject to the exercise of the powers of county home rule.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Mary F. Carson  
Assistant Attorney General

RTS:BJS:MFC:jm

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

House Bill No. 2040

1. Short Title of Bill:

An act concerning the secretary of social and rehabilitation services; conferring certain investigative and subpoena powers; amending K.S.A. 75-3306 and repealing the existing section.

2. Problem:

The Secretary of Social and Rehabilitation Services does not have the authority to issue subpoenas duces tecum (requests for documents, etc.) when conducting investigations pursuant to K.S.A. 75-3306.

3. Background:

K.S.A. 75-3306 states in part that "The secretary of social and rehabilitation services shall have authority to investigate any claims and vouchers and persons or businesses who provide services to the secretary of social and rehabilitation services or to welfare recipients . . . and the eligibility . . . of providers of services. The secretary of social and rehabilitation services shall have authority when . . . conducting investigations as provided for in this section, to subpoena witnesses, administer oaths, take testimony . . .".

However, the attorney general has ruled (Opinion No. 79-194) that said statute does not grant the secretary the authority to issue subpoenas duces tecum (requests for books, records, papers, or other documents).

The inability of the department to review books, records, papers, or other documents in the possession of a provider or third party may well hamper any effective investigation into a provider's billing practices vis-a-vis the department. Oral testimony alone is usually insufficient to prove or disprove any allegation of wrongdoing.

Further, investigations into client wrongdoing are hampered if a third party fails to voluntarily provide the agency with necessary information. An example would be if an employer would withhold wage and other employee information from SRS.

4. SRS Position:

Amend K.S.A. 75-3306 to grant the secretary the authority to issue subpoenas duces tecum.

Even though the authority to issue subpoenas duces tecum will be used sparingly by the department, its mere existence will facilitate the review of materials necessary to conduct an effective investigation. Example: The attorney of one provider under investigation for wrongdoing immediately upon learning of the above mentioned negative opinion drafted a letter of rebuke citing said opinion and refused to share records with the department.

Office of the Secretary  
Robert C. Harder  
296-3271  
March 20, 1984





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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August 28, 1979

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ATTORNEY GENERAL OPINION NO. 79- 194

Mr. Peter E. Rinn  
Director, Fraud and Recoupment Section  
Kansas Department of Social and  
Rehabilitation Services  
State Office Building  
Topeka, Kansas

Re: Department of Social and Rehabilitation Services--  
Investigations--Subpoena Power of Secretary of  
Social and Rehabilitation Services

Synopsis: In conducting investigations pursuant to K.S.A. 75-3306, the subpoena power of the Secretary of Social and Rehabilitation Services extends to any person possessing information which is relevant and material to the inquiry, and is not confined to those persons who are under investigation. However, the above-cited statute grants only the power to subpoena witnesses, and does not authorize the issuance of subpoenas duces tecum.

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Dear Mr. Rinn:

You have requested our opinion relative to the following two questions:

1. May the Secretary of Social and Rehabilitation Services issue an administrative subpoena to a person in the course of an investigation, even though such person is not under investigation?

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2. May the Secretary of Social and Rehabilitation Services issue a subpoena duces tecum requiring the production of business records, materials, and other papers during the course of an investigation?

K.S.A. 75-3306 enumerates the investigative and subpoena powers of the Secretary of Social and Rehabilitation Services and provides, in part, as follows:

"The secretary of social and rehabilitation services shall have authority to investigate any claims and vouchers and persons or businesses who provide services to the secretary of social and rehabilitation services or to welfare recipients and the eligibility of persons to receive assistance or of providers of services. The secretary of social and rehabilitation services shall have authority, when hearing appeals or conducting investigations as provided for in this section, to subpoena witnesses, administer oaths, take testimony, and render decisions . . . ."

Answering your first question, K.S.A. 75-3306 must be construed as granting power to issue subpoenas to any person possessing information which is relevant and material to the investigation being conducted, and such subpoena power is not limited to those persons who are under investigation. Numerous cases support such a construction of similar statutes granting subpoena powers to administrative agencies. Pope & Talbot, Inc. v. Smith, 340 P.2d 960, 965 (1959); Federal Communications Commission v. Cohn, 154 F.Supp. 899, 906 (1957); Freeman v. Fidelity-Philadelphia Trust Company, 248 F.Supp. 487, 492 (1965).

In response to the second question, it is clear that K.S.A. 75-3306 grants only the power to subpoena witnesses, and does not authorize the issuance of subpoenas duces tecum by the Secretary of Social and Rehabilitation Services. The power to subpoena witnesses does not, in the absence of other statutory provisions, include the power to require the production of records. Donatelli Building Co. v. Cranston Loan Company, 140 A.2d 705 (1958). Further, it has been held that "the power to issue subpoenas duces tecum does not inhere in administrative agencies

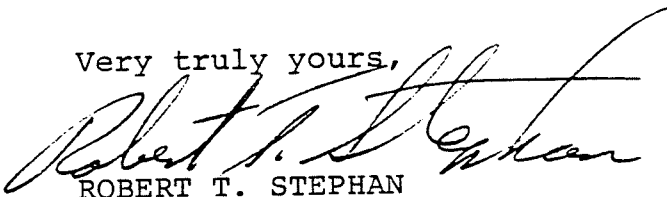
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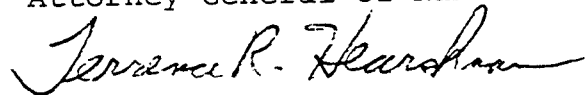
or committees and can be exercised by such committees only when expressly authorized by statute." (Emphasis added.) Id. at 707. In accordance with this authority, it is our opinion that K.S.A. 75-3306 cannot be construed to authorize the issuance of subpoenas duces tecum by the Secretary of Social and Rehabilitation Services because such statute does not expressly grant such power.

In passing, we note that the legislature has enacted numerous statutes expressly authorizing certain administrative agencies and public officials to issue subpoenas to compel the production of records and documents: K.S.A. 1978 Supp. 44-1004(5) (Civil Rights Commission); K.S.A. 74-3902 (Board of Abstracters); K.S.A. 1978 Supp. 75-2929d(c) (Civil Service Commission); K.S.A. 74-1707 (Board of Embalming); K.S.A. 22-3720 (Kansas Adult Authority); K.S.A. 79-3233 and 79-3419 (Director of Taxation); K.S.A. 74-1106(d) (Nursing Board); K.S.A. 74-1504(g) (Optometry Board); K.S.A. 74-5309(b) (Board of Psychologists); K.S.A. 58-3016(c) (Real Estate Commission); K.S.A. 17-1265(b) (Securities Commission); and K.S.A. 74-2437a (Board of Tax Appeals). Action by the legislature is necessary, however, if the Secretary of Social and Rehabilitation Services is to be granted such subpoena powers in investigations under K.S.A. 75-3306.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm

29 tence for which shall be in accordance with the sentence speci-  
30 fied in the statute that defines the crime. If no sentence is  
31 provided in the statute, the offender shall be sentenced as for a  
32 class E felony.

33 ~~Sec. 10.~~ K.S.A. 21-3701, 21-3704, 21-3707, 21-3708, 21-3710,  
34 21-3720 and 21-3729 and K.S.A. 1983 Supp. 21-4501 are hereby  
35 repealed.

36 ~~Sec. H.~~ This act shall take effect and be in force from and  
37 after its publication in the statute book.

Sec. 10 (a) The minimum terms of imprisonment established by Section 9, subsections (d) and (e) of this Act, shall be applied retrospectively to those individuals sentenced for offenses committed after July 1, 1982.

(b) Any individual sentenced to a minimum term of imprisonment in excess of one year for a Class E felony committed after July 1, 1982, shall automatically have that minimum term of imprisonment reduced to one year.

(c) Any individual sentenced to a minimum term of imprisonment in excess of one year for a class D felony committed after July 1, 1982, shall have that sentence reviewed by the sentencing court within sixty days of the effective date of this act. The sentencing court may resentence the individual to a minimum term of confinement as provided by Section 9, subsection (d) of this act.

(d) An individual whose minimum terms of imprisonment is modified by this section shall be parole eligible as provided by K.S.A. 1983 Supp. 22-3717.

(e) An individual who has had a parole eligibility hearing based on the minimum term of imprisonment prior to modification as provided by subsections (b) and (c) shall be scheduled for a parole hearing within sixty days of any reduction of the minimum term of imprisonment resulting from this act.

Attach. # 4

Sec. 11

Sec. 12

Kansas Register

Atch. 4