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January 3, 2017

ATTORNEY GENERAL OPINION NO. 2017- 1

D.L. Redding
Blue Township Trustee
8940 East U.S. Highway 24
Manhattan, Kansas 66502

Richard Goehring
Blue Township Clerk
4208 Green Valley Road
Manhattan, Kansas 66502

Donald F. Rothwell, Jr.
Blue Township Treasurer
3011 Tumble Weed Terrace
Manhattan, Kansas 66502

Dee McKee, Chairperson
Board of Pottawatomie County Commissioners
207 North 1st Street
P.O. Box 187
Westmoreland, Kansas 66549

Re: Cities and Municipalities—Definitions—Adoption of Codes by Reference—City Adoption of Codes by Reference in Ordinance; County Adoption by Reference in Resolution; Authority of Townships

Townships and Township Officers—General Provisions—Corporate Status; Powers; Powers and Duties Generally; Authority to Adopt Building Codes

Synopsis: A township lacks authority to enact local laws or undertake any action not specifically authorized by statute or the state constitution. Lacking such authority, a township may not adopt a uniform code by reference, nor do the provisions in K.S.A. 12-3301 *et seq.* for the adoption of such codes apply to townships. Cited herein: K.S.A. 12-101; 12-3301; 12-3303; K.S.A. 2016 Supp. 19-101a; 80-101; 80-301; 80-401; 80-501; Kan. Const., Art. 5 § 12.

* * *

Dear Mr. Redding, Mr. Goehring, Mr. Rothwell, and Ms. McKee:

On behalf of the Board of Directors of Blue Township, and the Board of County Commissioners of Pottawatomie County, Kansas, each of you has requested an opinion regarding the authority of townships. Blue Township is located in the southwest corner of Pottawatomie County, bordering the City of Manhattan and Riley County. Your question is whether the township board has authority to adopt uniform building, electrical, and plumbing codes. If such authority exists, you also inquire about the applicability of the adoption by reference procedure for cities and counties outlined in K.S.A. 12-3301 *et seq.* In response to your questions and as explained below, we conclude that as a quasi-municipal corporation, a township may exercise only the authority granted to it by the legislature or the state constitution. Townships are granted limited authority regarding specific local matters, none of which includes the authority to create or adopt laws. As such, townships do not possess the authority to adopt building codes.

Township Authority

It is first necessary to examine what authority townships hold in order to answer your questions. Generally, townships are not considered municipal corporations.¹ “If deemed to be corporations of any kind . . . they are generally quasi-municipal corporations...as specifically provided for by a statute of the state or a provision of the state constitution.”² The Kansas Legislature chose to empower townships through statute in K.S.A. 2016 Supp. 80-101:

Each organized township in this state shall be a body politic and corporate, and in its proper name sue and be sued, and may appoint all necessary agents and attorneys in that behalf, purchase and hold real and personal property for the use of the township, sell, convey and dispose of real and personal property owned by the township,

¹ 1 McQuillin, *Municipal Corporations* § 2:57 (2010).

² *Id.*

and may make all contracts that may be necessary and convenient for the exercise of its corporate powers.

The legislature also outlined the duties of a township trustee in K.S.A. 80-301 by limiting the trustee to looking after township roads and the taxing mechanisms necessary for the upkeep of such roads. K.S.A. 80-401 and K.S.A. 80-501 respectively, also outline the narrowly defined duties of the township treasurer and clerk regarding finances and the maintenance of the records necessary to the operation of the township. In addition to roads, townships are also given the authority to raise funds for the operation of parks, libraries, fire protection, water supply and other useful public services.³ None of these statutes expand the township's power to encompass the adoption of new laws; rather, they are focused on enforcement or application of laws put in place by other bodies.

By comparison, the grant of authority to enact local laws given to cities and counties is clear. In K.S.A. 12-101, the home rule of cities, as provided for in Article 12, § 5 of the Kansas Constitution, is codified by empowering "cities to determine their local affairs and government by ordinance." K.S.A. 2016 Supp. 19-101a grants the board of county commissioners the authority to "transact all county business and perform all powers of local legislation and administration it deems appropriate." Townships possess no such broad grants of authority by statute or the state constitution.

Adoption of Codes by Reference

In your request, you note that K.S.A. 12-3301 *et seq.* do not specifically authorize a township to adopt a code by reference. Since no direct authorization for townships is provided, such authority would have to be inferred from elsewhere. However, the definitions section provides evidence that the legislature did not intend this authority to extend to townships. K.S.A. 12-3301(b) defines a municipality as "any county or local unit of government which is authorized to enact local laws under the state law or constitution." As discussed above, a township is not authorized to enact local laws and thus, a township does not meet the statutory definition of a municipality in K.S.A. 12-3301(b). Therefore, the procedures set forth for the adoption of codes by reference do not apply to townships.

Further, K.S.A. 12-3301 *et seq.* also specifically provide procedures for cities and counties in the adoption of codes by reference. In this way, the county has a mechanism to apply the proper codes to townships. K.S.A. 12-3303, which provides the procedure that should be followed by counties when making an adoption by reference, provides that a county may enact codes that apply differently based on geographic location within the county. For example, any "part of a code adopted pursuant . . . to this section may be made applicable, by resolution, either to all unincorporated portions of the county or to any area of the

³ See *generally*, K.S.A. Chapter 80.

county outside of but within three (3) miles of the nearest point of the corporate limits of any city.”⁴ This distinction indicates that the legislature has considered the need to regulate growth near expanding urban areas without unduly burdening less populated areas of a county.

A township lacks authority to enact local laws or undertake any action not specifically authorized by statute or the state constitution. Lacking such authority, a township may not adopt a uniform code, nor do the provisions in K.S.A. 12-3301 *et seq.* for the adoption of such codes by reference apply to townships. When it comes to unincorporated areas of a county, the board of county commissioners is the authorized body to adopt such laws.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Kenneth B. Titus

Kenneth B. Titus
Assistant Attorney General

DS:AA:KBT:sb

⁴ *Id.*