STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

Opinion No. 75- 242

June 5, 1975

Mr. Jerry J. Hess
City Attorney of Westwood
100 Cloverleaf 3 Building
Overland Park, Kansas 66202

Dear Mr. Hess:

You have requested that this office advise you whether intoxicating liquors may be consumed at social gatherings to be conducted in a community hall which is city property. You state that the property has been recently leased by your city and that requests have been made by local citizens that the hall be used for functions such as weddings and other social events and that the consumption of alcoholic liquor be allowed on those occasions.

K.S.A. 41-719 of the Kansas Liquor Control Act specifically provides places where the consumption of intoxicating liquor is prohibited. This statute states in part that:

> "It shall be unlawful for any person to drink or consume alcoholic liquor upon the public streets, alleys, roads, or highways, or in beer parlors, taverns, pool halls, or places to which the general public has access, whether or not an admission or other fee is charged or collected, or upon property owned by the state or any governmental subdivision thereof or inside vehicles while upon the public streets, alleys, roads or highways.."(Emphasis added.).

Whether the prohibition contained in this statute would apply to privately owned property that is leased to a city would depend on whether the term "owned" is construed to signify only absolute ownership in fee or interpreted to encompass leasehold property. While it may be contended that the legislature did not

intend for the statute to be narrowed to exclude governmental property held by lease, particularly with respect to property held under long term lease, we find little basis for construing the word "owned" to mean anything other than property held in fee by the state or a governmental subdivision and we feel compelled to define the term in its strictest sense in light of the penal nature of the statute. Penal statutes should not be so read as to add that which is not readily found therein, with ordinary words given their ordinary meaning. State v. Logan, 198 K 211, 213.

Thus, it being our opinion that consumption in the community hall is not prohibited by K.S.A. 41-719, it is only necessary that this place qualify under K.S.A. 41-2602 as a permissible place of consumption. That statute specifically sets out the areas where the consumption of alcoholic liquor is authorized. Under the described facts, consumption would be permissible under section (a) of the statute if conducted in the manner prescribed in the section. That section specifically allows consumption:

> "Upon private property by those occupying such private property as an owner or as the lessee of an owner and by the guests of said owner or lessee provided that no charge is made by the owner or lessee for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance comixed with any alcoholic liquor; and if no sale of alcoholic liquor in violation of K.S.A. 41-803 takes place on said private property...."

Therefore at any of the social gatherings held in community hall, consumption would only be in compliance with law if conducted in the manner recited by the section with such gatherings being strictly private, with no accessibility afforded the general public, and with no charge being assessed for any liquor or mix served.

Very truly yours,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS:WMS:eb