



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 17, 1975

ATTORNEY GENERAL OPINION NO. 75- 299

Mr. Michael P. McKone
Assistant City Attorney
City of Junction City
Post Office Box 287
Municipal Building
Junction City, Kansas 66441

Re: License--Liquor--Private Clubs

Synopsis: A city may not by charter ordinance exempt itself from section 3 of 1975 House Bill 2525 so as to impose different and other occupational or other license taxes or fees than provided in that section.

* * *

Dear Mr. McKone:

You inquire whether the City of Junction City by charter ordinance may exempt itself from section 3 of 1975 House Bill 2525 and substitute other provisions in lieu thereof. That section provides thus in pertinent part:

"At the time application is made to the director for a club license under the terms of this act, an applicant for a class A club license shall pay an annual fee of two hundred fifty dollars (\$250) and an applicant for a class B club license shall pay an annual fee of one thousand dollars (\$1,000). In addition to such license fee, (1) any city in which a licensed class B club is located or if such licensed premises is not located in a city, the board of county commissioners of the county where the licensed premises is located, shall

Mr. Michael P. McKone

Page Two

July 17, 1975

levy and collect an annual occupation and license tax on such club in an amount not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250) or (2) in any county having a population of more than one hundred sixty thousand (160,000) and not more than one hundred eighty-five thousand (185,000) and in any county in which there is located not less than seventy-five (75) class A and class B clubs any city located within the county in which any such club is located or if such licensed premises is not located within a city the board of county commissioners of such county may levy and collect an annual occupation or license tax from all such clubs in an amount not to exceed two hundred fifty dollars (\$250), but no other occupational or excise tax or license fee shall be levied by any city or county against or collected from such club license."

Article 12, § 5 of the Kansas Constitution sets out the constitutional home rule powers of Kansas cities. Subsection (b) provides in pertinent part as follows:

"Cities are hereby empowered to determine their local affairs and government, including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: Provided, That the legislature may establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions. Cities shall exercise such determination or ordinance passed by the governing body . . . subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments

Mr. Michael P. McKone
Page Three
July 17, 1975

of the legislature applicable uniformly to all cities, 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 and to enactments of the legislature prescribing limits of indebtedness." [Emphasis supplied.]

Under this section, cities have constitutional authority to levy taxes, excises, fees, charges and other exactions except when and as any such levy is limited or prohibited by legislative enactment applicable uniformly to all cities of the same class or applicable to all cities uniformly.

Under the 1975 enactment, cities in certain counties are required to levy and collect an annual occupational or license tax of not less than one hundred nor more than two hundred fifty dollars, whereas cities in certain other counties, such as those with a population of not less than 160,000 and not more than 185,000 may, but are not required to, levy an annual occupation or license tax in an amount not to exceed two hundred fifty dollars. Although not facially applicable uniformly in its entirety to all cities, it does impose a limitation on the levy of a particular tax, fee or charge, i.e., occupation or license taxes for class B club licensees, of two hundred fifty dollars (\$250) which is applicable uniformly to all counties, whether located in counties with a population between 160,000 and 185,000 or otherwise. The section is not applicable uniformly to all cities in certain respects, as noted above, but it *is* applicable uniformly in its imposition of a uniform limitation of not exceeding two hundred fifty dollars upon the annual occupational or other license fee which cities may impose upon class B club licensees.

In addition, the first sentence fixed the state license fee for such clubs, which cannot be altered, of course, by charter ordinance. Lastly, the section concludes with language inferentially, if not expressly, preemptive of the field, for it directs that "no other occupational or excise tax or license fee shall be levied by any city or county against or collected from such club licensee." In *Claflin v. Walsh*, 212 Kan. 1, 509 P.2d 1130 (1973), the court stated thus:

Mr. Michael P. McKone
Page Four
July 17, 1975

"Section 5(d) of Article 12 requires a liberal construction of the powers and authority granted cities for the purpose of giving to cities the largest measure of self-government. This provision simply means that the home rule power of cities is favored and should be upheld unless there is a sound reason to deny it. Where the legislature has acted in some area a city's power to act in the same area should be upheld unless the legislature has clearly preempted the field so as to preclude city action. Unless there is actual conflict between a municipal ordinance and a statute, the city ordinance should be permitted to stand

In view of the liberal construction provision of Section 5(d), in determining whether a legislative enactment is applicable uniformly to all cities such a legislative intent should be clearly evident before the courts should deny a city the right to exercise home rule power in that area. . . .

In some cases the legislative intention has been made clear and unequivocal. By specific language the legislative intent is shown to be that the statute is to be applied uniformly to all cities. . . .

The difficulty is that in many statutes the legislative intention to have uniformity throughout the state is not expressly stated. In that situation courts are required to glean legislative intent by applying established rules of statutory construction." 212 Kan. at 7-8.

In this instance, as stated above, the section in question applies uniformly to all cities a limitation of not exceeding two hundred fifty dollars (\$250) upon the occupational or other license fee or tax it may impose upon class B club licensee, and goes on to specify that "no other occupational or excise tax or license fee" shall be levied by any county or city against such licensees.

Despite the broad construction which must be given municipal home rule powers, we are constrained in this instance to conclude

Mr. Michael B. McKone
Page Five
July 17, 1975

that the city may not by charter ordinance exempt itself from the provisions of section 3 of 1975 House Bill 2525 so as to impose a different or other occupational or license tax upon class B club licensees than as permitted and limited by that section.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj