



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 29, 1975

ATTORNEY GENERAL OPINION NO. 75- 311

Mr. William J. Ryan
City Attorney of Norton
301 East Washington Street
Norton, Kansas 67654

Re: Alcoholic Liquor--Cities--Zoning

Synopsis: K.S.A. 41-208 does not invalidate municipal zoning ordinances prohibiting the location of alcoholic liquor retail stores in particular zoned areas.

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Dear Mr. Ryan:

Section 15-107 of the ordinances of the City of Norton provides in pertinent part thus:

"In the Light Industrial District all buildings and premises except as otherwise provided in this Article may be used for any use permitted in the Business District and for no other use except the following:

* * *

6. Retail liquor stores are specifically forbidden in the Light Industrial District."

You advise that the city governing body is presently considering an application for an occupation tax license which proposes the location of a retail liquor store in an area zoned as a light industrial district adjacent to U.S. Highway 36 within the corporate city limits of the municipality.

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You inquire whether the municipal zoning prohibition against retail liquor stores in certain zoning classifications is valid in view of K.S.A. 41-208, which provides in pertinent part thus:

"The power to regulate all phases of the control of the manufacture, distribution, sale, possession, transportation and traffic in alcoholic liquor . . . except as specifically delegated in this act, is hereby vested exclusively in the state and shall be exercised as provided in this act. No city shall enact any ordinance in conflict with or contrary to the provisions of this act"

As this statute makes clear, the state has reserved exclusive power to regulate the "distribution, sale, possession, transportation and traffic in alcoholic liquor." Municipal zoning, of course, regulates primarily the uses of land within the city. Reasonable exercise of the zoning power does not in our opinion intrude on the exclusive province of the state to regulate "sale" and "traffic" in alcoholic liquor.

You draw our attention to K.S.A. 41-710, which states in pertinent part thus:

"No license shall be issued for the sale at retail of any alcoholic liquor on premises which: (1) Are located in areas not zoned for general commercial or business purposes if the city or township in which the premises are located is zoned (3) do not conform to the building ordinances or laws of the state or city"

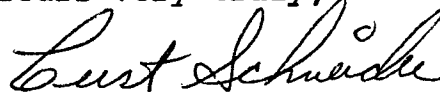
If any question exists under K.S.A. 41-208 that the state has preempted the area of municipal zoning as regards the sale of alcoholic liquor, and in our judgment there is no question, this latter statute clearly reflects the deference of the state to local zoning regulations as determinative of the eligibility of premises for licensing.

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Nowhere in the Liquor Control Act, nor in regulations promulgated thereunder, has the state undertaken the supervision and regulation of municipal zoning as it affects the eligibility of premises for licensure for the sale at retail of alcoholic liquor. The preemption of K.S.A. 41-208 does not extend, in our opinion, to municipal zoning regulations. Certainly, it is our view that municipal zoning regulations may not be used as prohibitory laws, that is, to prohibit entirely the sale of alcoholic liquor in the entire municipality. However, there is no question of that here, for under the ordinance, retail liquor stores are permitted in business district.

Accordingly, it is our opinion that K.S.A. 41-208 does not invalidate the prohibition against the location of retail liquor stores in light industrial districts contained in section 15-107 of the ordinances of the City of Norton.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. William Schutte
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Department of Revenue
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