



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 13, 1976

ATTORNEY GENERAL OPINION NO. 76- 13

Mr. Wilbur S. Stakes, Jr.
City Attorney
Lansing, Kansas 66043

Re: Cities--License Fees

Synopsis: License fees prescribed by paragraphs 3.3 and 3.4 of Ordinance No. 83 of the City of Lansing for mobile home park operators do not violate the equal protection clause of the United States Constitution or the Kansas Constitution.

* * *

Dear Mr. Stakes:

You enclose a copy of Ordinance No. 83 of the City of Lansing, respecting mobile home parks. Section 3.3(A) specifies the annual license fee which the operator must pay under the ordinance. The fee is assessed at \$1.50 per mobile home lot, and the annual license renewal fee is fixed at the same rate. Section 3.4 prescribes a quarterly license fee thus:

"In addition to the annual license fee, there shall be a quarterly license fee of Two dollars (\$2.00) for each trailer coach space which has been occupied during the quarter for a period or periods aggregating more than thirty (30) days."

You advise that with one exception, all mobile home parks located in the City of Lansing are privately owned and operated. The streets

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in these parks are privately owned, are maintained by the operators, and are not dedicated to the city. Accordingly, the city does not maintain these private ways, and the city police department does not patrol them. As a result, the question has arisen whether the annual and quarterly license fees are assessed in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and in violation of the Kansas Constitution.

In *Matheny v. City of Hutchinson*, 154 Kan. 682, 121 P.2d 227 (1942), the court stated thus:

"The distinction between occupation tax ordinances and license ordinances is that the occupation tax ordinance is enacted pursuant to the powers given cities to levy taxes, while the license ordinance is enacted pursuant to the police power tax of the city to regulate the operation of business and occupations in the city."

Ordinance No. 83 describes the cost of the license as a license fee, and we have no basis upon which to conclude as a matter of law that the charge is other than just that, a license tax or fee. Ownership of streets in the mobile home parks whose operators are subject to licensing under the ordinance, and responsibility for maintenance and care, are irrelevant to liability for the charge. The fee is assessed for a license to conduct a certain business or occupation.

The Kansas Supreme Court has upheld the assessment of a license fee or tax computed on a graduated basis. In *Matheny, supra*, the court upheld a city license tax on the right to operate vending machines in the city, computed, as to machines requiring more than five cents, at five dollars per machine per year. The court there cited *In re Martin*, 62 Kan. 638, 64 Pac. 43 (1901), in which it upheld a graduated license tax on merchants, according to the value of their inventory.

In *Matheny, supra*, the court also referred to *City of Leavenworth v. Booth*, 15 Kan. 627, 1 P. 291 (1875) in which it stated, considering the validity of an ordinance fixing a license tax on the business of operating an insurance business:

"In granting licenses the items which may be taken into consideration as elements in fixing the costs of the same, would seem to be about as follows: first, the value of the labor and material in merely allowing and issuing the license; second, the value of the benefit of

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the license to the person obtaining the same;
third, the value of the inconvenience and cost
to the public in protecting such business, and in
permitting it to be carried on in the community;
fourth, and in some cases an additional amount
imposed as a restraint upon the number of persons
who might otherwise engage in the business."
15 Kan. at 634.

The number of mobile home spaces, and the number of occupied mobile home spaces, bears a facially reasonable relationship to the criteria set forth by the court as permissible considerations in the fixing of license taxes and fees.

I must conclude that the license fees prescribed by paragraphs 3.3 and 3.4 of Ordinance No. 73 of the City of Lansing does not deny the operators liable therefor equal protection of the laws, in violation of either the Kansas or the United States Constitution.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj