STATE OF KANSAS

# Office of the Attorney General

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*Curt T. Schneider*
*Attorney General*

January 14, 1976

ATTORNEY GENERAL OPINION NO. 76- 14

Mr. Dan E. Turner
City Attorney
Legal Department
215 East 7th Street
Topeka, Kansas 66603

Re: Cities--Streets and Ways--Parking

Synopsis: The state may, in the exercise of its plenary legislative power, restrict parking upon public ways and streets of the City of Topeka which are dedicated to the public use, for parking privileges consistent with that public use. Restriction of such parking privileges at metered spaces for purposes consistent with K.A.R. 1-46-21 is consistent with the public use for which the parking portion of the street is dedicated, and may be enacted by the legislature in the exercise of its general legislative power, or may be adopted by the city governing body. In either event, the city is not authorized to require the state to pay a charge therefor, although it is within the authority of the state to authorize by law the payment of a sum to the city as it deems appropriate.

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Dear Mr. Turner:

At the direction of the board of city commissioners of the City of Topeka, you inquire concerning provision for parking privileges for members of the Legislature, its employees and other staff, and official guests on the streets of Topeka. Specifically, the question is raised concerning the practice followed in recent years of

reserving the use of certain metered spaces along the south side of Eighth Street and the north side of Tenth Street adjoining the statehouse.

You inquire, first, whether the State of Kansas has the "authority to render parking meters upon public streets in the City of Topeka of no consequence by placing bags over said meters," and if so, what is the basis of that authority. A fundamental distinction must be made between the constitutions of the United States and of the State of Kansas. In *Leek v. Theis*, 217 Kan. 784, ___ P.2d ___ (1975), the court stated thus:

> "The federal government is one of delegated, enumerated and limited powers. When an act of Congress is assailed as void, it is necessary to look to the federal constitution for a specific grant of power. When an act of a state legislature is assailed as void, it is only necessary to look to the federal and state constitutions for a specific restriction on that power. Thus an act of a state legislature on a rightful subject of legislation, is valid unless prohibited by the federal or state constitution." 217 Kan. at 800.

Thus, an act of the legislature respecting the parking of motor vehicles as described above must be deemed to be valid unless it is found to violate some provision of either the United States Constitution or of the Kansas Constitution. The proposed use of the parking privilege in the area in question is described by K.A.R. 1-46-21 thus:

> "The director of administrative services shall negotiate with appropriate official of the city of Topeka for parking privileges along the south curbline of 8th street and the north curbline of 10th street during legislative sessions for officers and employees of the legislative, executive and judicial departments having main duty assignments in the statehouse not accommodated with sufficient parking on the statehouse grounds proper."

Thus, parking privileges to be extended by the state extend only to state officers, such as members of the legislature, and employees

of state government who have main duty assignments in the statehouse, for the duration of the legislative session, presumptively on the ground that such access to the parking adjacent to the statehouse is necessary and convenient for the operation of offices in the statehouse during the legislative session.

"Municipalities are politically subordinate subdivisions of the state government and legislatures in conferring powers on them may impose limitations on these powers." *Koppel v. City of Fairway*, 189 Kan. 710, 371 P.2d 113 (1962). In my judgment, the only restriction upon the legislative power of the state to dispose of the parking privileges in question is that the use of the privilege mandated by law serve a public purpose. It is settled law in Kansas that the "fee title of land used as streets of a city is vested in the county in which such city is situated in trust for the public use." *Miller-Carey Drilling Co. v. Shaffer*, 144 Kan. 508 at 514, 61 P.2d 1320 (1936). The county holds title to the streets and public ways of the city as a public trustee, as it were, the use thereof being dedicated to the public. The city is vested with legal control and responsibility for the maintenance of its public streets and ways. Both are subordinate political subdivisions of the state. The state, in the exercise of its plenary legislative powers, may by law direct or restrict the use of public property which is dedicated to the public use, so long as that direction or restriction is not inconsistent with the dedication. As a general rule, a use which serves a public purpose is consistent with dedication to a public use. A legislative restriction on the use of public parking spaces which assures continued use of the property thus restricted to a public purpose is not, in my opinion, unconstitutional.

If the state were to take by the exercise of eminent domain real property for the construction of parking facilities for its officers and employees, it would not be seriously contended that the taking was for a private purpose. Similarly, any legislative restriction upon the use of the metered spaces in question here consistent with the needs of the state, restricted both in duration, that of the legislative session, and in persons entitled to privileges there, being those state officers and employees with duty assignments in the statehouse who cannot be accommodated in other available parking on the statehouse grounds and official guests of the legislature, is a restriction upon the use of the metered spaces entirely consistent with the public use to which the property is dedicated. While such a legislative restriction reserving use of the spaces as described above does incidentally serve the personal convenience of the person to whom parking privileges are extended, reservation of the use of such spaces by the state is made in the interest of the state itself, and of its agencies and departments, and not to serve personal interests of private citizens unrelated to the needs and requirements of the state itself.

It is accordingly my opinion that the State of Kansas has the authority, in the exercise of its plenary legislative power over public property dedicated to the public use, to reserve metered parking spaces upon public streets in the City of Topeka, for the use of state officers and employees as described in K.A.R. 1-46-21, and the state may by appropriate legislative act restrict the use of the spaces thus reserved to the class of persons specified in K.A.R. 1-46-21, *i.e.*, members of the legislature and other officers and employees of the state having duty assignments in the statehouse, and official guests. I wish to emphasize that this opinion is not based upon and should not be construed to relate to any specific legislative proposal or bill by which this power might be exercised. Your question relates to the existence of legal power and authority, which I conclude does exist. In so stating, however, I must withhold any opinion regarding any particular legislative proposal, should one be prepared, until its specific terms are available for consideration.

You also ask whether the City of Topeka may exercise similar power, *i.e.*, whether it may "render parking meters upon public streets therein of no consequence by placing bags over said meters." In my judgment, the city may exercise the same powers regarding the restriction of parking privileges in metered spaces which the State of Kansas is entitled to exercise. A restriction upon the use of such metered spaces for the uses within the scope of K.A.R. 1-46-21, and for official guests of the state, for the limited duration and purpose discussed above, is in my judgment a use consistent with the public use to which the space is dedicated. Although the county is vested with legal title to the public streets and ways of the city, as stated above, the city is vested with legal custody and control thereof, and may, in my judgment, in the exercise of that legal control, restrict the use of the metered spaces in accordance with the foregoing.

Lastly, you ask whether the city may require a fee from the state for the designated use of such metered parking spaces. In my opinion, it may not. In *State v. City of Lawrence*, 79 Kan. 1, 100 Pac. 485 (1909), the court discussed the legal relationship of municipal corporations to the state:

> "The question of the relation which municipal corporations bear to the state and the power of the legislature over them is exhaustively discussed in the notes to the case of *State ex rel. Bulkeley et al., v. Williams, Treasurer*, 68 Conn. 131, in 48 L. R. A. 465. The courts are not harmonious, and some apparently turn upon the right of local self-government. . . . [T]he courts are substantially

> agreed that the legislature may require a municipal corporation or other constituent public agency of the state to perform any public duty which the state itself may perform. The only limitations on this power are that the state can not require a municipal corporation to perform a duty in which the state has no concern, nor to assume an obligation wholly outside the functions for which municipal corporations are created." 79 Kan. at 253-254.

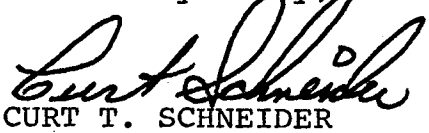
If the state should in the exericse of its plenary legislative power designate the use of the metered parking spaces in question, it may require the city to implement the legislation so passed, and the city as a subordinate political subdivision of the state acts in that capacity as an instrumentality of the state, for which it is authorized to exact a fee or charge except as expressly provided by law. If the city should agree voluntarily to restrict the use of the metered spaces as aforesaid, it would, in my judgment, merely be preserving the spaces in question for a public use and purpose serving the corporate interests of the state, as distinguished from those of the city, again for which no charge or fee may lawfully be required, for the city nonetheless acts in such capacity as an instrumentality serving the interests and needs of the sovereign legislative power of the state. The city has no authority in such an instance to exact a fee for restricting certain public parking under its legal control to temporary uses which in themselves continue to serve a public purpose consistent with the dedication for a public use, the public use served by the restriction being those of the state itself.

To recapitulate, it is my opinion that the state may in the exercise of its plenary legislative power restrict the use of the metered parking spaces in question, *i.e.*, those abutting the statehouse grounds, to the uses for which the director of administrative services is authorized to negotiate under K.A.R. 1-46-21, and for such other uses as may be consistent with the foregoing. In addition, the city may lawfully restrict the use of metered spaces in accordance with the foregoing, without the necessity of state legislative action mandating such restrictions. In either event, the city has no authority to require the payment of charges therefor by the state, although the state by appropriate legislative action authorize such payments as are deemed appropriate.

I wish to emphasize that this opinion is limited specifically to the questions discussed herein, and has no relationship whatever to any practice whereby the city may in the past have permitted

members of the legislature or others to park in metered spaces throughout the city for personal convenience and as an accomodation. In an opinion dated February 22, 1960, addressed to the city attorney of Olathe, Kansas, Attorney General William M. Ferguson concluded that the city could not lawfully grant jurors any special dispensation excusing them from conforming to the city parking ordinance, and that the city could not lawfully grant jurors free parking on the courthouse square in an area covered by the parking meter ordinance. The opinion is unduly restrictive, for the governing body of the city might reasonably conclude that the public interest was served by furnishing parking in metered spaces to jurors while engaged in the performance of their official jury duties. Certainly, however, I agree with the opinion that special dispensation may not be ordinarily granted merely for personal convenience of individuals, whatever their official station, when unrelated to their official duties and the public interest.

Yours very truly,



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