



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

June 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 218

Mr. Thomas W. Stockwell
City Attorney of Merriam
Suite 302 - Santa Fe Trail State
Bank Building
Highway 50 at Antioch
Shawnee Mission, Kansas 66202

Re: Municipalities--Licenses--Private Clubs

Synopsis: A restaurant operation which serves members of a private club on certain premises, and which serves nonmembers on premises which are not a part of the licensed club premises, may be required to obtain municipal licenses and permits for the latter food service operation and pay the fees required therefor, and is not exempt from such requirements by K.S.A. 1976 Supp. 41-2622, which applies only to club licensees and the operations on licensed premises.

* * *

Dear Mr. Stockwell:

You advise that a building housing a class A private club in the City of Merriam, Kansas, is served by two entrances. A sign by one entrance states "Private Club," and members and their guests presumably utilize this entrance to the club. Within the same building, approximately 50 to 75 feet away, another entrance is marked by a sign stating "Restaurant." Persons who enter here who are members of the private club are seated by the hostess in one area, where they may be served food and alcoholic beverages. Persons who are not members are seated in a different area, where they may be served food, but not alcoholic beverages.

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The question is raised whether the city may require the operator of the restaurant to secure an occupational permit for food service. K.S.A. 1976 Supp. 41-2622 prescribes the annual state license fees for private clubs, provides that cities and counties may levy and collect annual occupation or license taxes which do not exceed specified amounts, and 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." The restaurant premises which are used to serve persons who are not members of the licensed club are not part of the licensed club premises, and constitutes a business operation separate from and independent of the club operation. A club licensee is exempt from occupational or excise taxes and license fees other than those permitted by K.S.A. 1976 Supp. 41-2622. However, because the restaurant serving nonmembers is not operated in licensed club premises and thus cannot legally constitute a part of the operations of the private club, that restaurant operation is not exempt from a municipal occupational permit requirement. Thus, in my judgment, the city may enforce its licensing and permit requirements for food service operations against the restaurant operation which serves persons who are not members of the licensed private club.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. E. V. D. Murphy
Director
Alcoholic Beverage Control Division
5th Floor - State Office Building
Topeka, Kansas 66612