



STATE OF KANSAS

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Curt T. Schneider
Attorney General

August 1, 1978

ATTORNEY GENERAL OPINION NO. 78-251

The Honorable Jack L. Rodrock
State Representative
Post Office Box 159
Leoti, Kansas 67861

Re: Cities--Zoning--Mobile Homes

Synopsis: A city may lawfully forbid the location of mobile homes for residential purposes in any area of the city except those locations zoned expressly for mobile home parks or mobile home communities, under *City of Colby v. Hurtt*, 212 Kan. 113, 509 P.2d 1142 (1973).

* * *

Dear Representative Rodrock:

I have your letter of July 14, 1978, including certain enclosures relating to the difficulty which constituents of yours have encountered in seeking a special use permit authorizing them to locate a modular home on property which they have purchased in Scott City, Kansas. You enclose a photocopy of Ordinance No. 750, section 1 of which includes a definition of the term "mobile home" as follows:

"A mobile home shall include any structure used for living, sleeping, business or storage purposes, having no foundation other than wheels, blocks, skids, jacks, horses, or skirting and which has been or reasonably may be equipped with wheels or other devices for transporting the structure from place to place, whether by motive power or other

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means. The term 'Mobile Home' shall include modular home, trailer home, camp car and house car. This definition shall not apply to any vehicle lawfully operated upon fixed rails."

The material you enclose states that the modular home in question meets all building codes and may be financed by an FHA loan. The applicants for the permit consider that they have been discriminated against. According to your correspondents, they understand that the ordinance was enacted in order to keep all modular and trailer houses off private residential lots in the city, except for those located in mobile home parks.

In *City of Colby v. Hurtt*, 212 Kan. 113, 509 P.2d 1142 (1973), the court considered an appeal from a conviction under a zoning ordinance which restricted the location of mobile homes. The ordinance in question, which restricted mobile homes to so-called mobile home communities or parks, defined the term "mobile home" as

"'A vehicle used, or so constructed as to permit being used as conveyance upon the public streets or highways, and constructed in such a matter [sic] as will permit occupancy thereof for human habitation, dwelling or sleeping places for one or more persons, provided further than this definition shall refer to and include all portable contrivances used or intended to be used generally for living and sleeping quarters and which are capable of being moved by its own power, or of being towed or transported by another vehicle, and regardless of whether such vehicle is dismounted from its wheels or placed on a permanent foundation. Provided further, that this Ordinance shall not apply to those prefabricated or module units transported over highways only for location at a permanent construction site.'"

The court stated thus, concerning mobile homes:

"Mobile homes are used for residences but they possess special characteristics which

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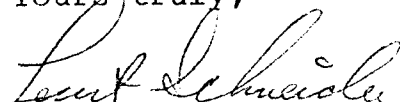
warrant their separate regulation. They involve potential hazards to public health if not properly located and supplied with utilities and sanitary facilities. Mobile homes scattered promiscuously throughout the residential district of a city might well stunt its growth and certainly stifle development of an area for residential purposes."

Scrutinizing the record in the case, the court found itself convinced

"that the appellant has failed to produce any evidence which tends to show the ordinance was not enacted to promote the health and general welfare of the citizens of the city, conserve the value of property, and encourage the most appropriate use of land." 212 Kan. at 116.

It is not at all clear that the modular home described in the enclosures with your letter is similar to or unlike the mobile home defined in the ordinance as quoted above. However, the ordinance involved here expressly includes modular homes within its scope. In view of the statements of the Kansas Supreme Court in the case cited above, the ordinance must be deemed to be presumptively valid. Obviously, the individuals affected might seek to challenge the ordinance on the ground that it is sought to be enforced against a residential structure different in kind from that involved in the *Colby* case. We have no basis upon which to determine whether such a distinction can be drawn in this instance, and whether, if the structures involved do differ, whether the Court would take a different view than as stated in its opinion in that case. We cannot, of course, represent the individuals involved in any legal action which they might wish to consider bringing against the city. At this point, we have no basis upon which to conclude, purely as a matter of law, that the ordinance itself is invalid, or that it is being enforced in any unlawful manner in this particular instance.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj